



TERMS AND CONDITIONS

The following Terms and Conditions represent the agreement made between the Supplier and the Customer and apply to the provision of Goods and/or Services by the Supplier to the Customer on the Customer's Account.

1. INTERPRETATION

In these Terms and Conditions and any other associated or collateral documents (unless a contrary intention is stated):

- a) **"Account"** means the commercial credit account applied for by the Customer with the Supplier by virtue of completing this Application and if approved, will be governed by these Terms and Conditions;
- b) **"Application"** means this Application for an Account, which the Supplier has sole discretion whether or not to approve;
- c) **"Confidential Information"** means all information passing from the Supplier to the Customer relating (in any way, shape or form) to these Terms and Conditions, any Quotation and any Contract (including any documents attached thereto), including but not limited to, trade secrets, drawings, know-how, techniques, concepts, projections, arrangements and deeds with third parties, the Supplier's information and information proprietary to the Supplier, formulae, concepts not reduced to material form, designs, plans, models, financial data and pricing lists, other than information which is in the public domain for any reason other than by the breach of these Terms and Conditions by the Customer;
- d) **"Contract"** means a Contract/s formed between the Customer and the Supplier pursuant to clause 2 of these Terms and Conditions;
- e) **"Controller"** has the same meaning as in the PPSA;
- f) **"Credit Limit"** means the amount (GST inclusive) as specified by the Supplier in the Credit Application (whether before or after execution), or as otherwise agreed to in writing, that may be charged to the Account by the Supplier;
- g) **"Customer"** means a person whose Order for the purchase of Goods and/or Services is accepted by the Supplier;
- h) **"Documentation Costs"** means all fees and outlays associated with the registration of any Security Interest on the PPSR;
- i) **"Event of Default"** occurs when:
 - i. an administrator, liquidator or provisional liquidator is appointed in respect of the Customer; or
 - ii. a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer; or
 - iii. the Customer goes into bankruptcy or is wound up; or
 - iv. the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due, or
 - v. there is a breach by the Customer of any of these Terms and Conditions.
- j) **"Goods and Services" or "Goods" or "Services"** means and includes, but is not limited to, those goods, services, products and/or further items (as the case may be) requested by the Customer to be supplied by the Supplier pursuant to an Order and charged to the Customer's Account;
- k) **"Guarantor"** means those guarantors noted in the Application who guarantee the Customer's obligations under these Terms and Conditions, including but not limited to all directors of a customer which is a company;
- l) **"Intellectual Property"** means all intellectual property rights, as may be applicable to these Terms and Conditions and any Goods and Services supplied pursuant to these Terms and Conditions, including (but in no way limited to) all Confidential Information, copyright, patents, trademarks, design rights, trade secrets, domain names, knowhow and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.
- m) **"Order"** means a request by the Customer to the Supplier to provide certain goods and/or services (whether or not in writing) including, but not limited to acceptance of a Quotation (either by written notice or an overt act of acceptance), a purchase order or instructions for work to be completed;
- n) **"Personal Property"** has the same meaning as in the PPSA as it relates to:
 - i. all personal property of the Customer, including without limitation present and after acquired property of the Customer;
 - ii. any personal property provided by the Secured Party to the Customer on a retention of title basis;
 - iii. any personal property leased or provided on bailment by the Secured Party to the Customer; and
 - iv. including without limitation, any Proceeds associated with the above personal property.
- o) **"PMSI"** means a purchase money security interest as defined in the PPSA;
- p) **"PPSA"** means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it;
- q) **"PPSR"** means the Personal Property Securities Register established pursuant to the PPSA;
- r) **"Price"** means the price to be paid by the Customer to the Supplier for Goods and/or Services in accordance with the Quotation or other communication between the Supplier or Customer as to how the Customer will be charged, excluding any delivery or freight costs and GST;
- s) **"Proceeds"** has the same meaning as in the PPSA;
- t) **"Quotation"** means the written quotation provided by the Supplier to the Customer (if any) as an estimate of the price to supply the Goods and/or Services pursuant to an Order;
- u) **"Security Interest"** has the same meaning as in the PPSA;
- v) **"Secured Party"** means the Supplier or any lawful assignee, transferee or successor of the Supplier in relation to the Security Interest, these Terms and Conditions and any other related document(s);
- w) **"Site"** means the Customer's premises or the location nominated by the Customer whereupon the Goods and/or Services, the subject of a Contract, are to be carried out or to be delivered to (as the case may be);
- x) **"Supplier"** means Innovative Mining and Engineering Solutions Pty Ltd (ACN 142 913 504) of PO Box 6416, Mackay Mail Centre, Queensland 4741 or any of its subsidiary or associated companies or their respective assigns;
- y) **"Terms and Conditions"** means these Terms and Conditions as annexed to the Customer's Application for an Account;
- z) The headings used do not form part of these Terms and Conditions and are for convenience only;
- aa) Where the context admits or requires words importing the singular number shall include the plural number, those denoting a given gender shall include all other genders and those denoting natural persons shall include corporations;

1300 551 344

sales@oneindustries.com.au
www.oneindustries.com.au

terms of trade one industries



- bb) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- cc) A reference to "dollars" or "\$" is to an amount in Australian currency;
- dd) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- ee) Where an expression is defined anywhere in these Terms and Conditions it has the same meaning throughout.

2. FORMATION OF CONTRACT

A contract may be formed in one of the following ways:

- a) *By Quotation*
 - i. The Customer may request the Supplier produce a Quotation for the supply of the Goods and/or Services.
 - ii. The Customer accepts a Quotation by written notice or an overt act of acceptance to the Supplier.
 - iii. Provided the Quotation has not expired, a Contract for Goods and/or Services shall be formed between the Supplier and the Customer on the terms of the Quotation at the same time as an Order by the Customer with the Supplier being created.
- b) *No Quotation*
 - i. If there is no Quotation requested by or otherwise issued to the Customer but there is some communication otherwise between the Supplier and Customer as to how the Customer will be charged (for example, by the issuing of a schedule of hourly rates for labour and prices for the Goods) or upon the Customer providing the Supplier with a purchase order (or some other form of overt acceptance and instructions as to work to be completed) or the Supplier provides goods or services to the Customer, then a Contract for Goods and/or Services shall be formed between the Supplier and the Customer on terms of the agreed method of calculating price (or the purchase order, as the case may be) at the same time as an Order by the Customer with the Supplier created.
- c) Any Contract formed shall be governed by these Terms and Conditions.

3. CREDIT LIMIT

- a) The Supplier is not obliged to supply Goods and/or Services to the Customer, the value of which exceeds the Credit Limit.
- b) The Customer's Credit Limit is subject to review at any time by the Supplier.
- c) The Supplier may, on request in writing by the Customer, agree in writing to increase or decrease the Credit Limit. The balance of the Account at any time must not exceed the Credit Limit.
- d) The Supplier is not responsible for any loss or damage whatsoever or howsoever caused or arising from the refusal by the Supplier to supply the Customer with any Goods and/or Services on credit because the Credit Limit has been exceeded.
- e) The Customer agrees to immediately pay the amounts charged to the Account for any Goods and/or Services supplied by the Supplier in excess of the Credit Limit, whether or not a demand for payment has been made by the Supplier.
- f) Notwithstanding any prior acknowledgment by the Supplier of the price of Goods and/or Services (in a Quotation or otherwise), the Price specified for Goods and/or Services may at the Supplier's option be subject to variation without notice to reflect the Supplier's prices and charges in effect at the time of delivery or provision to the Customer.
- g) Any variations to the Price as a consequence of currency fluctuations, taxes, customs duty, and increase in the costs of Goods and/or Services or other imposts shall be charged to the Customer's Account.
- h) Despite any other clause in these Terms and Conditions, the Supplier may withdraw the Customer's Account at any time without notice or at its discretion alter the Customer's Credit Limit for any reason (including to meet the Customer's then buying needs). The Supplier will endeavour to notify the Customer of any alteration in the Credit Limit by notice to that effect in the following monthly account statement.
- i) The Supplier takes no responsibility for any incorrect Orders by the Customer, whether in relation to quantity or specific items. Any Order submitted to the Supplier by the Customer will be charged to the Customer's Account.

4. ACCOUNT TERMS

- a) The Customer agrees to pay the Supplier within **thirty (30) days** of receipt of a tax invoice.
- b) Tax invoices will be posted or emailed to the Customer's business address, as detailed in this Application (or to the address as otherwise notified to the Supplier). This constitutes sufficient notice of the amount due under the tax invoice.
- c) Unless otherwise agreed to by the Supplier, the only accepted means of paying accounts will be by cash, bank cheque or electronic funds transfer.
- d) Where payments are made which are not in accordance with those means of payment accepted (for example by credit card), the Customer will additionally pay the Supplier an administration fee of 2% of the amount so paid. That fee is agreed to be the liquidated cost of processing that abnormal payment. That fee is payable at the same time as the account to which it relates is due.
- e) Any amounts not paid when due by the Customer will incur interest at the rate of 14% per annum (accruing daily) until such time as full payment is received.
- f) The Customer and the Guarantor shall indemnify the Supplier for any legal costs (on a full indemnity basis), stamp duties, any bank charges or merchant fees or like charges levied on the Supplier by any banker or other credit provider whose banking or credit card facilities are utilised by the Customer for paying the Supplier any amounts on any Account and any other expenses payable of and incidental to the performance or enforcement of or any litigation on these Terms and Conditions or any Application or any security documents signed by the Customer or any Guarantor together with any other collection costs and dishonoured cheque fees.

1300 551 344

sales@oneindustries.com.au
www.oneindustries.com.au



- g) A statement setting out details of the amount owing and any other matters relating to the Account signed by an officer of the Supplier is sufficient evidence (in the absence of any manifest error) of the supply of Goods and/or Services by the Supplier to the Customer. This statement may be used in court proceedings.
- h) The Supplier will be entitled to set off against any money owing to the Customer amounts owed to the Supplier by the Customer on any account whatsoever. However, the Customer shall not set off any amounts allegedly owing by the Supplier to it against any amount due by it to the Supplier.

5. UNAUTHORISED TRANSACTIONS

The Customer is responsible for and indemnifies the Supplier against any unauthorised use of the Account. The Customer must notify the Supplier in writing of any unauthorised transactions on the Account immediately once the Customer becomes aware of them.

6. DIRECT DEBIT TERMS

Notwithstanding any clause of this Agreement, where the parties have agreed for Direct Debit terms to apply, then the terms of the Direct Debit Request annexed hereto shall apply to the direct debit arrangement.

7. PROPERTY AND RISK

- a) Risk of loss, damage or destruction to the Goods and/or Services or any part thereof shall pass to the Customer as and when each part thereof is completed or supplied.
- b) If any items, fixtures, fittings, or equipment are supplied by the Customer all care will be taken but items, fixtures, fittings and equipment so supplied will be stored, handled and installed at the Customer's risk.
- c) The Customer has no right or claim to any interest in the Goods and/or Services to secure any liquidated or unliquidated debt or obligation the Supplier owes to the Customer.
- d) The Customer cannot claim any lien over the Goods and/or Services.
- e) The Customer will not create any interest in the Goods and/or Services in relation to any third party except as may be authorised by the Supplier.
- f) Where the Customer is in actual or constructive possession of the Goods the Customer will not deliver them or any document of title to the Goods to any person except as directed by the Supplier and is in possession of the Goods as a bailee of those Goods and owes the Supplier the duties and liabilities of a bailee.
- g) The property of the Supplier in the Goods and/or Services remains with the Supplier until the Supplier has received payment of the Price as due and any other moneys owed to the Supplier under these Terms and Conditions or any Contract between the parties.
- h) The Customer is a bailee of the Goods until such time as property in them passes to the Customer and this bailment continues in relation to all of the Goods until the tax invoice relating to the Contract has been paid in full.
- i) Pending payment in full of the Price, the Customer must not allow any person to have or acquire any security interest in the Goods and/or Services.
- j) Despite clause 7(i), if the Customer supplies any of the Goods and/or Services to any person before all moneys payable by the Customer have been paid to the Supplier (and have not been claimed or clawed-back by any person standing in the place of or representing the Customer or third party), the Customer agrees that:
 - i. it holds the proceeds of re-supply of the Goods and/or Services on trust for and as agent for the Supplier immediately when they are receivable or received;
 - ii. it must either pay the amount of the proceeds of re-supply to the Supplier immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit-taking institution as trustee for the Supplier;
 - iii. any accessory or item which accedes to any of the Goods and/or Services by an act of the Customer or of any person at the direction or request of the Customer becomes and remains the property of the Supplier until the Supplier is paid in accordance with clause 7(g) when the property in the Goods and/or Services passes to the Customer;
 - iv. if the Customer fails to pay any amount due under these Terms and Conditions or any part thereof, at the time or times required in a Contract or is otherwise indebted to the Supplier, the Supplier may recover possession of the Goods and/or Services at any Site owned, possessed or controlled by the Customer and the Customer agrees that the Supplier has an irrevocable licence to do so and to dispose of the Goods and/or Services to recover costs.
- k) Any estimated date for supply/delivery or completion (as the case may be) of the Goods and/or Services stated in a Quotation or otherwise is an estimate only. The Supplier will not be liable for any delays in supply, completion or late delivery and will not be liable for any loss, damage or delay occasioned by the Customer or any other persons arising from the late supply, completion or delivery.

8. FITNESS FOR PURPOSE AND WARRANTY

- a) The Customer agrees that it does not rely on the skill or judgement of the Supplier in relation to the suitability of any Goods and/or Services for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever.
- b) The warranties and remedies in Supplier's Warranty Statement (either attached hereto and/or included in the Supplier's Quotation) shall apply with regard to the Goods and/or Services supplied under the Contract

9. EXCEPTED RISKS

The Supplier shall not be liable for any failure to perform its obligations under these Terms and Conditions or any Contract between the parties if such failure or delay results directly or indirectly from any cause, matter or thing beyond the reasonable control of the Supplier, including but not limited to:

- a) any act, default or omission on the part of the Customer, its employees and or agents or any third party carrying out work on the Site;
- b) the timing of work performed or not performed on the Site by other contractors;
- c) damage by fire, explosion, earthquake, lightning, storm, flood, acts of God, civil or military authority, public enemy, war, civil commotion, strikes, labour disputes or industrial conditions;
- d) electric power supply failure;

1300 551 344

sales@oneindustries.com.au
www.oneindustries.com.au



- e) inclement weather;
- f) unavailability of suitable materials to complete the Services;
- g) failure of transportation affecting the Supplier, its supplier or any other person, company or firm;
- h) variations directed by the Customer or required to supply the Goods and/or complete the Services safely and effectively;
- i) changes in the law; or
- j) directions or delays by municipal, public or statutory authorities.

10. CLAIMS UPON SUPPLIER

- a) Any complaint made by the Customer that a transaction recorded on the Customer's tax invoice is incorrect (whether due to shortfall, incorrect delivery or otherwise) must be advised to the Supplier in writing within seven days of the issue of the tax invoice. If this does not occur, the transactions recorded on the tax invoice are taken to be correct. If part of the amount set out in the tax invoice is in dispute, the Customer agrees to pay the undisputed amount within the time period referred to in clause 4.
- b) These conditions shall not exclude, or limit the application of any provision of any statute including any implied condition or warranty the exclusion of which would contravene any statute (including the Competition and Consumer Act 2010) or cause any part of this clause to be void. To the extent permitted by law all conditions, warranties and undertakings are expressly excluded.
- c) The Supplier's liability under sub-clause (b) above for breach of a non-excludable condition or warranty is limited, at the Supplier's option, to any one of the following:
 - i. the replacement of the Goods and/or Services or the supply of equivalent Goods and/or Services;
 - ii. the repair of the Goods and/or Services;
 - iii. the payment of the cost of providing replacement Goods and/or Services or of acquiring equivalent Goods and/or Services; or
 - iv. the payment of the cost of having the Goods and/or Services repaired.
- d) The Supplier shall not be liable for any direct or indirect loss whatsoever, including consequential loss, loss of profits, loss of opportunity or loss of use.

11. GST

- a) Any expression used in this clause and which is defined in the "A New Tax System, (Goods and Service Tax) Act 1999" has the same meaning in this clause.
- b) With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable by the Customer are exclusive of GST.
- c) If GST is imposed on any supply made under or in accordance with these Terms and Conditions, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice by the supplier to the recipient.

12. DEFAULT

- a) In the event of:
 - i. any default or failure by the Customer of payment of any money to the Supplier when due; or
 - ii. the Customer committing an Event of Default.
- b) Then:
 - i. all monies payable by the Customer to the Supplier shall (at the Supplier's election) become immediately due and payable notwithstanding the due date for payment shall not have expired; and
 - ii. the Supplier may without prejudice to any other rights it may have, do any or all of the following:
 - 1. withdraw any credit facilities which may have been extended to the Customer;
 - 2. withhold any further supply/deliveries of Goods and/or Services;
 - 3. in respect of Goods and/or Services already delivered, enter onto the Customer's premises to recover and resell the Goods for its own benefit; and
 - 4. recover from the Customer the cost of the Goods and/or Services acquired for the purpose of future deliveries of Goods and/or Services or for use in the future provision of Goods and/or Services.

13. SUB-CONTRACTING

The Supplier reserves the right to sub-contract the supply of the Goods and/or Services or any part thereof to a third party.

14. INSURANCE

- a) Where the Services are to be carried out on a Site nominated by the Customer, the Customer shall effect and maintain whilst these Terms and Conditions remain in force and whilst any Services are being carried out by the Supplier, public liability insurance covering any loss, damage, injury sustained by the Supplier or any of its servants or subcontractors including as a consequence of any defect with the Site to a value of not less than \$10,000,000 per claim and workers' compensation insurance in accordance with the requirements of the applicable law.
- b) The Customer shall immediately provide the Supplier with, if requested, evidence of the existence of such insurance policies.

15. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- a) The Customer acknowledges that the Confidential Information is to be treated and respected as confidential and that it is for the use of the Customer only. The Customer shall not disclose the Confidential Information or suffer or permit it to be disclosed to any person whatsoever except with the prior written consent of the Supplier and then only on the basis that it is respected in the same manner as herein provided.

1300 551 344

sales@oneindustries.com.au
www.oneindustries.com.au



- b) Without limiting the generality of the preceding sub-clause the Customer shall not:
 - i. take any action or use any process based on the Confidential Information without the consent in writing of the Supplier; or
 - ii. use or disclose to a third party any aspect of the Confidential Information for any purpose whatsoever.
- c) The obligations of the Customer under this clause shall survive the finalisation or discontinuance by the Supplier of all dealings and negotiations with the Customer in respect to any Quotation or Contract and shall continue for so long as the Confidential Information remains as Confidential Information.
- d) The Customer must not (without the Supplier's consent):
 - i. use the Supplier's Intellectual Property for any purpose other than as outlined in these Terms and Conditions;
 - ii. do anything concerning the Supplier's Intellectual Property which might lead to its dilution or which might cause confusion or deception to the public concerning the origin of the rights which are the subject of the Supplier's Intellectual Property;
 - iii. de-compile, disassemble or otherwise reverse engineer the Intellectual Property or permit any third party to do so;
 - iv. reproduce, make error corrections to or otherwise modify or adapt the Intellectual Property or create any derivative works based upon the Intellectual Property;
 - v. use the Intellectual Property in any way that could damage the reputation of the Supplier or the goodwill or other rights associated with the Intellectual Property;
 - vi. otherwise infringe the Supplier's Intellectual Property in any way;

16. CREDIT ENQUIRIES

The Customer and the Guarantor each acknowledge receiving a copy of the Credit Information Management Policy ("Policy"), further copy of which is available from the Supplier. The Customer and the Guarantor hereby consent to the Supplier using and disclosing the Customer's or the Guarantor's personal and credit related personal information in accordance with the Policy.

17. PRIVACY LAWS

The Customer consents to the Supplier's Privacy Policy available on request from the Supplier.

18. PPSA

- a) This clause applies to the extent that these Terms and Conditions provide for a Security Interest for the purposes of the PPSA.
- b) The rights of the Supplier under this document are in addition to and not in substitution for the Supplier's rights under other law (including the PPSA) and the Supplier may choose whether to exercise rights under these Terms and Conditions, and/or under other law, as it sees fit.
- c) The Customer acknowledges that if the Supplier's interest under these Terms and Conditions, and any other related document(s), is a Security Interest for the purposes of the PPSA then that Security Interest relates to the Personal Property and all Proceeds of any kind and these Terms and Conditions are a security agreement for the purposes of the PPSA.
- d) The Supplier may register its Security Interest on the PPSR (including, without limitation, as a PMSI). The Customer must do anything (such as obtaining consents and signing documents) which the Supplier requires for the purposes of:
 - i. ensuring that the Supplier's Security Interest is enforceable, perfected and otherwise effective under the PPSA;
 - ii. enabling the Supplier to gain first priority (or any other priority agreed to by the Supplier in writing) for its security interest; and
 - iii. enabling the Supplier to exercise rights in connection with the Security Interest.
- e) The Customer must pay on demand to the Supplier the Documentation Costs.
- f) If Chapter 4 of the PPSA does apply to the enforcement of a Security Interest arising under or in connection with these Terms and Conditions and to the maximum extent permitted by law, the Customer agrees that sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1); 135, 142 and 143 and Division 6 of Part 4.3 of the PPSA will not apply to the enforcement of that Security Interest.
- g) Where a person is a Controller in relation to the Personal Property, the parties agree, to the maximum extent permitted by law that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Personal Property by that Controller.
- h) The Customer waives its right (including, without limitation, under s 275) to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- i) The Customer must not assign or grant a Security Interest in these Terms and Conditions or any of its rights or obligations under these Terms and Conditions without the prior written consent of the Supplier.
- j) The Customer must not create, purport to create or permit to be created any Security Interest in the Goods and/or Services or lease, hire, bail, sell or give possession of the Goods and/or Services to anyone else other than with the express written consent of the Supplier.

19. CHARGE AND MORTGAGE

The Customer and each Guarantor hereby charges all of their respective real and Personal Property wheresoever situated with the amount of moneys owed by the Customer to the Supplier under these Terms and Conditions or otherwise. As further and better security for the payment of all money from time to time owing by the Customer to the Supplier, the Customer and each Guarantor mortgage and charge to and in favour of the Supplier all right, title, estate and interest which it owns, holds or may hold hereafter in any real or personal property in Australia. The Customer and each Guarantor shall, at the request of the Supplier, sign execute and deliver in favour of the Supplier such mortgage, charge and/or Security Interest over the Customer's real or Personal Property in such form as the Supplier may require, such document or documents incorporating such terms as determined by the Supplier's solicitors, to protect the interest of the Supplier herein, within 10 days of the Supplier requesting the same of the Customer and/or the Guarantor. For the avoidance of any doubt, the Customer and each Guarantor confirms that the Supplier has a caveatable interest in any land of which they are the registered proprietor for the purposes of the Land

1300 551 344

sales@oneindustries.com.au
www.oneindustries.com.au

terms of trade one industries



Title Act 1994 and its equivalent in another jurisdiction.

20. DIRECTORS' GUARANTEES (if Customer is a company)

In consideration of the Supplier agreeing to supply the Customer with credit (pursuant to these Terms and Conditions), the Guarantor hereby jointly and severally agrees (if more than one) as follows:

- a) to guarantee to the Supplier the due performance by the Customer of these Terms and Conditions and the payment of any monies payable for the Goods and/or Services provided on the Account by the Supplier to the Customer or to other persons at the Customer's request (even should the value of same exceed the starting Credit Limit shown above) and all interest thereon.
- b) to indemnify and keep indemnified the Supplier against any default by the Customer of these Terms and Conditions or the failure to make any payment due to the Supplier.
- c) this Guarantee shall be a continuing guarantee.
- d) the Supplier shall be at liberty without notice to the Guarantor at any time and without in any way discharging the Guarantor from any liability hereunder grant to the Guarantor or the Customer any indulgence, time or concession and to accept payment in cash or other means of negotiable instruments and to treat the Guarantor in all respects as though the Guarantor were (if more than one jointly and severally) liable with the Customer instead of merely a surety for the Customer.
- e) this guarantee shall be fully effective notwithstanding that for any reason action cannot be taken or enforced against the Customer or it being found that this guarantee is invalid or unenforceable so far as any other Guarantor is concerned.
- f) the obligations of the Guarantor hereunder shall not merge or deemed to have merged in any judgement or security obtained by the Supplier against the Customer.
- g) each of the signatories hereto shall be bound thereby notwithstanding that one or more of the persons named herein as Guarantor may never execute this guarantee or that the execution hereof by one or more of such persons is or may become void or voidable.

21. ATTORNEY

For the purpose of giving full effect to these Terms and Conditions, and the powers hereby conferred, whilst any moneys now or from time to time are owing by the Customer to the Supplier, the Customer appoints the Supplier and any of its authorised officers, jointly and each of them severally, the true and lawful attorney of the Customer, to do anything in the name of the Customer, as the case may be, or of the Supplier, which the Customer, should do or should have done hereunder and to do all such acts, matters and things (including the execution of any deed, mortgage, bill of sale, charge, share transfer, transfer of land, any document in relation to any financing statement or financing charge statement under the PPSA, or any document in relation to any Security Interest, or any security agreement and other documents whatsoever) as such attorney may deem expedient for carrying out, or in connection with the exercise of all or any of the rights or powers herein contained or implied, to give effect to these Terms and Conditions.

22. LAWS TO GOVERN PROVISIONS OF TERMS AND CONDITIONS

These Terms and Conditions and any Contract made between the parties shall be governed by and construed in accordance with the laws of the State of Queensland and the parties agree to submit to the jurisdiction of the Courts of that State in all matters arising out of these Terms and Conditions and any Contract made between the parties.

23. NOTICE

With respect to notices under these Terms and Conditions (sent by either the Customer or the Supplier) and invoices and statements sent by the Supplier to the Customer:

- a) These must be given in writing, except as otherwise provided herein;
- b) These may be sent through recognised electronic means (including email and facsimile), or personally delivered or posted to the address stated in the Application or to such other address which the party to whom the notice is addressed may have notified;
- c) If sent by prepaid post then they are deemed to have been received two (2) business days after the date of posting.

24. GENERAL

- a) The Supplier may vary these Terms and Conditions by notice in writing to the Customer. The Customer agrees that the placing of an Order for Goods and/or Services after the date of a notice of variation to its terms will be deemed to be an acceptance of such varied terms and conditions.
- b) The Customer and Guarantor warrant that:
 - i. all details contained in the attached Application are correct; and
 - ii. the provision of this Account is for commercial use only and is not to be used for personal, domestic or household use.
- c) If the above warranties are found to be incorrect, the Supplier may, without notice to the Customer, revoke the Customer's Account with the Supplier.
- d) Should there be any variation to any of the information supplied by the Customer to the Supplier or in the structure or nature of the Customer's business the Customer shall notify the Supplier within seven (7) days in writing.
- e) These Terms and Conditions and all obligations hereunder shall be binding on the Customer's personal representatives, successors and permitted assigns and shall be for the benefit of the Supplier's successors and assigns.
- f) Whether or not credit facilities are approved, future supply of Goods and/or Services to the Customer shall be on these Terms and Conditions or as varied in the future by the Supplier. If credit is refused or withdrawn, then payment shall be in accordance with Supplier's requirements (for supply to the Customer) from time to time instead of any credit period which may otherwise have applied.
- g) If a provision of these Terms and Conditions is or becomes void, voidable, unenforceable or illegal but would not be if it was read down, it shall be read down and if it would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words are severed, but should the provision nevertheless be void,

1300 551 344

sales@oneindustries.com.au
www.oneindustries.com.au



voidable, unenforceable or illegal, it shall be severed yet the remainder of the relevant these Terms and Conditions will remain in full force and effect.

- h) Where the Customer is a trustee:
- i) The Customer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Supplier.
- j) The Customer warrants that it has full power and authority to enter into these Terms and Conditions on behalf of the trust and that it (and the trust and all the trust's real and personal property) shall be bound by these Terms and Conditions and that it enters into these Terms and Conditions both personally and as trustee, irrespective of whether or not it discloses to the Supplier that it is a trustee at the time of entering into this or any other credit agreement with the Supplier.

1300 551 344

sales@oneindustries.com.au

www.oneindustries.com.au