

**1. Interpretation: In these terms and conditions;**

- 1.1. 'Delivery Point' means the address, agreed by the Seller, to which the Goods are to be delivered or any other address notified by the Purchaser to the Seller on the order raised by the Purchaser;
- 1.2. 'Goods' means goods or products and, if any, services as specified on the order to the Seller raised by the Purchaser;
- 1.3. 'Purchaser' means the entity whose name or trading name is specified on the order received by the Seller, and which is the purchaser of the goods whether directly or indirectly through an agent or factor who is acting for or instructed by any person, firm or company or whose actions are subsequently to the contract ratified by the actual purchaser; which maybe any 'Sole Trader or Partnership or Company or Trust.
- 1.4. 'Seller' means Doorcraft Pty Ltd, a company that is trading on behalf of Audax International Pty Ltd, ABN 890 595 15347;
- 1.5. 'Sellers Premises' means the address from where the goods are to be despatched to the Purchaser, or such other address as is notified by the Seller to the Purchaser;
- 1.6. the singular includes the plural and vice versa;
- 1.7. a reference to a gender includes all genders; and
- 1.8. a reference to an individual includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa.

**2. Governing Terms and Conditions**

- 2.1. These terms and conditions apply to the sale of goods by the Seller to the Purchaser. These terms and conditions prevail over any terms in the Purchaser's documents and represent the entire agreement between the Seller and the Purchaser about its subject matter, unless otherwise expressly agreed in writing by the Seller.
- 2.2. When the Purchaser places an order for goods with the Seller, accepts delivery of goods, makes any payment or complies with these terms and conditions the Purchaser is taken to have accepted these terms and conditions.

**3. Seller's Quotations**

- 3.1. Quotations are only valid if in writing on official stationary of the Seller.
- 3.2. A quotation is not an offer by the Seller to sell and may be withdrawn or altered by the Seller without notice. The Seller reserves the right to refuse any order based on a quotation within seven (7) days after receipt of the order.
- 3.3. Unless previously withdrawn, quotations are valid for the period stated, or when no period is stated, for thirty (30) days after the date of the quotation.

**4. Descriptions & Specifications**

- 4.1. All specifications, drawings and particulars of weight and dimensions are approximate only and any deviation shall not be taken to vitiate any Contract with the Seller or form the grounds for any claim against the Seller.

**5. Delivery**

- 5.1. If a delivery point is in the order raised by the Purchaser or if sufficient delivery instructions are provided to the Purchaser within twenty-four (24) hours after notification to the Purchaser that the goods are ready for despatch, the goods are to be delivered to the delivery point and delivery will be effected when the goods are delivered to the delivery point.
- 5.2. If a delivery point is not specified in the order raised by the Purchaser and if sufficient delivery instructions are not provided by the Purchaser within twenty-four (24) hours after notification to the Purchaser that the goods are ready for despatch, the Purchaser shall be deemed to have taken delivery of the goods at the Seller's premises at 5.00pm (local time) on the second day after notification.
- 5.3. If a representative, agent or employee of the Purchaser is not present, available to take delivery of the goods at the specified delivery point, the goods shall, at the discretion of the representative, employee or agent of the Seller responsible for delivering the goods, be returned to the Seller's premises (in which case delivery shall be deemed to have occurred at the Seller's premises at 5.00 pm (local time) on the date of such attempted delivery or shall be deposited at the specified delivery point (in which case delivery will be effected at such time). The Seller shall not be liable for any loss or damage which may result directly or indirectly from goods left unattended at the specified delivery point.
- 5.4. Delivery dates and times made known to the Purchaser are estimates only. The Seller shall not be liable to the Purchaser for any loss or damage (including any consequential loss or damage) arising from late delivery.
- 5.5. The Purchaser shall not be relieved of any obligation to accept or pay for the goods by reason of late delivery.
- 5.6. Where the Seller quotes delivery within a particular period that period shall commence from the date of receipt by the Seller of the Purchaser's written order and all information and drawings necessary, in the Seller's opinion, to enable work to be commenced and proceed without interruption.
- 5.7. The Seller reserves the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure of the Seller to deliver any instalment shall not entitle the Purchaser to cancel the balance of the order. If the Purchaser defaults in payment on any instalment, the Seller may elect to treat the default as a breach of contract relating to each other instalment.

**6. Invoices**

- 6.1. Immediately upon the goods being ready for delivery the Seller may invoice the Purchaser for the goods in accordance with the quotation and clause 10.

**7. Subcontracting**

- 7.1. The Seller reserves the right to subcontract the production, manufacture or supply of the whole or any part of the goods.

**8. Performance**

- 8.1. Any performance figures given by the Seller are estimates only. The Seller shall not be liable to the Purchaser for any loss or damage for failure to attain such figures unless specifically guaranteed in writing. Any such guarantee shall be subject to the recognised tolerances applicable to such figures.
- 8.2. The Purchaser assumes responsibility for the capacity and performance of goods and materials specified by it being sufficient and suitable for its purpose.
- 8.3. Any testing and/or inspection of the goods required by the Purchaser for the purpose of verifying performance estimates is to be conducted at the Seller's premises or at such other location agreed by the Seller.
- 8.4. All costs and expenses incurred in connection with the testing and inspection other than those specifically included in the Seller's quotation shall be borne by the Purchaser.
- 8.5. Only performance figures obtained pursuant to testing under this clause will be accepted by the Purchaser and the Seller for the purposes of any warranty or other claim by the Purchaser.

**9. Storage**

- 9.1. The Seller reserves the right to charge for storage payable daily at commercial rates. If a delivery point is not in the order raised by the Purchaser and if sufficient delivery instructions are not provided by the Purchaser within twenty-four (24) hours after notification to the Purchaser that the goods are ready for

despatch or if goods are returned to Despatch Premises in accordance with clause 5.3 then storage charges will commence accruing. If a Purchaser requests the Seller to store the goods then the goods will be deemed to be delivered upon the Purchaser making the request and storage charges will commence accruing. Storage of the goods in such circumstances should be the Purchaser's risk.

#### **10. Prices**

10.1. Unless otherwise stated, all prices quoted by the Seller are exclusive of GST.

10.2. Unless otherwise stated, all prices quoted are ex works. An additional charge will be included if the Purchaser requires the Seller to arrange transport to a delivery point.

10.3. Prices quoted are those ruling at the date of issue of quotation and are subject to adjustment by reason of:

10.3.1. any variation in the cost of labour, material and transport;

10.3.2. any variation in exchange rates, customs duty, freight, insurance, shipping expenses and cartage;

10.3.3. any variation in the amount of work required to produce the goods due to a variation in specification approved by the parties;

10.3.4. any other charges affecting the cost of production; and

10.3.5. the goods being delivered to premises other than the delivery point originally specified in the order raised by the Purchaser.

10.4. If work is suspended on any order due to the Purchaser's instructions or lack of instructions, the contract price shall be increased to cover any extra expense incurred.

10.5. Any prices quoted apply only if all of the goods included in the quotation are purchased. Should the Purchaser require part only, the Seller reserves the right to submit a revised quotation.

#### **11. Payment**

11.1. A 50% deposit shall be paid to the Seller by the Purchaser on all COD transactions in cash, or by bank cheque or electronic funds transfer prior to commencement of work detailed on the Purchaser's order. The balance will be paid by the Purchaser to the Seller prior to delivery of the goods.

11.2. Payment of all monies due on Account or COD, are required to be made by the Purchaser to the Seller's business address at 44 Bassendean Road, Bayswater, WA or by electronic funds transfer directly to the Seller's nominated bank account.

11.3. It is understood by the Purchaser that, if this application for a credit facility is successful, all amounts due for payment will be paid to the Seller on 30 day terms from the date of the invoice.

11.4. Time is of the essence and continuation of credit facilities is conditional on payment of the account being received by the Seller within the agreed credit terms.

#### **12. Discount**

12.1. All discounts applied to the Purchaser's invoices are conditional on payment being received by the Seller within the agreed credit terms. In the event of a default by the Purchaser, all discounts may be reversed and the additional charges payable by the Purchaser.

#### **13. Default**

13.1. If any amount is not paid by the due date, the Seller may without notice to the Purchaser, suspend the credit facility or where the Purchaser has a number of accounts, suspend all credit facilities, and all amounts owing (whether due and payable or not) will become immediately due and payable.

#### **14. Interest**

14.1. Interest charged at the rate of 1.5% per month (calculated on daily balances) may be applied to all overdue balances.

#### **15. Costs**

15.1. The Purchaser will pay to the Seller all collection expenses, legal and other costs on an indemnity basis and outlays incurred as a result of 1. the failure by the Purchaser to pay their account by the due date or 2. due to any breach of the Seller's terms and conditions of sale.

#### **16. Dishonoured Cheques**

16.1. The Purchaser agrees to pay a dishonour fee of \$50.00 in respect of each presentation of a cheque received from the Purchaser which is not honoured upon its presentation.

#### **17. Ramalpo Clause**

17.1. Property and title to the goods will not pass to the Purchaser until those goods and all other amounts owed to the Seller by the Purchaser have been paid for in full and until then:

17.1.1. The Purchaser will hold the goods as a fiduciary and bailee for the Seller;

17.1.2. The goods must be stored separately and in a manner enabling them to be identified as goods of the Seller and cross-referenced to particular invoices and the Purchaser acknowledges that if it should process or mix the goods with other products or items such that the goods are no longer separately identifiable then the Purchaser and Seller will be owners in common of the new product;

17.1.3. The Purchaser may sell the goods in the ordinary course of its business as bailee for the Seller and will hold the proceeds of sale in a separate account on trust for the Seller and account to the Seller for those proceeds; and

17.1.4. The Seller may require the Purchaser to return the goods to it on demand and may enter upon the premises of the Purchaser to inspect or repossess the goods.

17.1.5. Despite clause 17.1 the Seller will be entitled to maintain an action against the Purchaser for the purchase price of the goods.

#### **18. Returns and Claims related to delivery**

18.1. Returned goods will only be accepted for credit by the Seller if returned for credit by the Purchaser within 5 days from the date of the relevant invoice.

18.2. Returned goods, if accepted by the Seller, may attract a restocking fee on the goods returned by the Purchaser.

18.3. Claims related to delivery including but not limited to short delivery and damaged goods must be received in writing within 2 days of delivery for consideration.

#### **19. Lien**

19.1. The Seller shall have a General Lien in respect of all sums due from the Purchaser upon all goods to be supplied to the Purchaser or upon which work has been done or is being done on the customer's behalf and, if the Purchaser is in breach of the agreed terms and conditions, upon expiry of seven (7) days written notice to the Purchaser, the Seller may sell such goods by auction or private treaty and apply the proceeds towards the satisfaction of any sums due to the Seller, including all costs incurred in exercising the Lien and right of sale, including storage and selling costs.

#### **20. Change of Ownership**

20.1. The Purchaser undertakes to notify the Seller, in writing within seven (7) days, of any change in the constitution or ownership of the Purchaser's business, at the time when such change occurs and if the Purchaser fails to notify the Seller of such change, agrees to remain liable for all transactions charged to the existing account until new credit facilities have been approved for the new applicant. The Purchaser further agrees to immediately finalise the entire balance owing, whether due or not, and whether the new credit facility has been approved or not for the new applicant.

#### **21. Applicable Law**

21.1. This contract shall be subject to and interpreted in accordance with the laws in the State of Western Australia. In the event that legal proceedings are commenced, the parties agree to these proceedings being heard in a court of competent jurisdiction in the locality in which the head office of the Seller conducts its business.

## **22. Cancellation**

22.1. No order may be cancelled except with the consent in writing of the Seller and on terms which indemnify the Seller against losses arising from the cancellation.

22.2. The Seller reserves the right to cancel any order in whole or in part and resell the goods by notice to the Purchaser upon the happening of any one or more of the following events:

22.2.1. an order is made, or an effective resolution is passed for the winding up of the Purchaser or a meeting is summoned or convened for the purpose of considering such a resolution otherwise than for the purpose of amalgamation or reconstitution or a provisional liquidator is appointed;

22.2.2. any person appoints a receiver or receiver and manager over the whole or any part of the undertakings or assets of the Purchaser;

22.2.3. the Purchaser enters any arrangement or composition with any of its creditors;

22.2.4. the Purchaser is placed under administration or a meeting is summoned or other step is taken for the purpose of placing the Purchaser under administration and appointing an administrator;

22.2.5. the Purchaser is unable to pay its debts as they fall due or otherwise commits any act of bankruptcy within the meaning of the Bankruptcy Act;

22.2.6. the Purchaser fails to comply with any of its obligations under these conditions of sale;

22.2.7. the Seller considers that it is, or maybe, unable to satisfy the order within a reasonable time or at all; or

22.2.8. goods stored pursuant to clause 9 remain uncollected or the Purchaser fails to give satisfactory instructions for the dispatch of the goods after a period of forty-eight (48) hours from notification to the Purchaser that they are ready for collection.

22.3. In the event of cancellation the Purchaser shall be liable to indemnify the Seller for any costs and expenses incurred prior to cancellation and for reasonable cancellation charges to be fixed by the seller and shall have no claim against the Seller for any damages, loss, costs or expenses whatsoever.

## **23. Hazards**

23.1. When work of any kind is carried out by the Seller or contractor of the Seller on the premises of the Purchaser or its agents or customers unless the Purchaser notifies the Seller in writing prior to commencement of such work of any hazards or perils attaching to or imported into such premises, or to the buildings, machinery, plant or materials thereon or the nature or methods of the work being done or from any other cause whatsoever the Seller shall not be liable for any loss or damage occasioned to the Purchaser, its directors, employees or agents arising from any cause connected in any way with any such hazards or perils.

## **24. Testing and Inspection**

24.1. Testing and inspection by the Purchaser or its employees or agents must be conducted at the Seller's premises or other premises agreed to by the Seller. All costs and fees incurred by the Seller in connection with such testing and inspection (other than those specifically included in a quotation) will be an extra charge payable by the Purchaser. No claim for defective workmanship, material or design can be made by the Purchaser after approved testing and inspection by or on behalf of the Purchaser.

## **25. Products and Services**

25.1. It is the Purchaser's responsibility to furnish the Seller with clear written instructions as to the product specifications, including but not limited to, material, colour, size, weights etc., together with clearances required. Failure on the part of the Purchaser to furnish this information will absolve the Seller from any responsibility whatsoever for rectification to products and the costs of any such rectification shall be payable by the Purchaser. The Purchaser warrants that the information provided is correct and the Seller will not be held responsible for relying on the information provided by the Purchaser. Any period specified for delivery will not start to run until this information is received.

25.2. Unless otherwise stated, in the Seller's quotation, supply is for the provision of goods only and excludes any engineering design and calculations, foundations, installation and maintenance services and ancillary items, including but not limited to attachments, vents, fixings, furnishings etc.

25.3. Unless otherwise stated in the Seller's quotation, goods will not be supplied assembled or with ancillary items or fittings attached

25.4. The Seller accepts no responsibility or liability for the incorrect assembly by the Purchaser (or its subcontractors) of the Goods and attachments supplied by the Seller to the Purchaser.

25.5. The Seller accepts no responsibility or liability for the installation by the Purchaser (or its subcontractors) of Goods and/or hardware supplied by the Seller to the Purchaser.

25.6. The Seller does not warrant the suitability or adequacy of Goods ordered by the Purchaser unless otherwise agreed in writing.

25.7. If the Seller has contracted to provide installation services, the Purchaser must supply at its own cost, suitable hardware, supports and / or Positioning members in those locations to enable installation of Goods.

25.8. When the Seller is involved in on-site work, the manner in which such work is carried out shall be at the sole discretion of the Seller. Subject to Clause 23, the Purchaser will indemnify the Seller against any claims, liabilities or actions for loss or damage by or against the Seller, its directors, employees or agents arising from any cause connected in any way to the Seller's activities on the site.

## **26. Site Conditions**

26.1. All quotes are given on the basis that:

26.1.1. the site conditions are suitable for a full delivery truck to be driven to and located adjacent to any site position;

26.1.2. the Seller will not be responsible for or liable for the cost of, the removal of any obstructions, and or other materials from the site or area or preparation at the site unless otherwise agreed in writing; and

26.1.3. there are no cables, pipes, rock, high water table or other obstructions to such area or access restrictions.

## **27. Force Majeure**

27.1. The Seller shall be entitled to delay or cancel delivery or to reduce the amount delivered if it is prevented from or hindered in, or delayed in manufacturing, obtaining or delivering the goods by normal route or means or delivery through any circumstances beyond its reasonable control, including, but not limited to, strikes, lock-outs, accidents, war, fire, flood, explosion, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery, shortage or unavailability of raw materials from normal source of supply, act of God or any order or direction of any local, State or Federal Government, Government authority or instrumentality.

## **28. Waiver**

28.1. Failure by the Seller to insist upon strict performance of any term, warranty or condition of these conditions of sale shall not be deemed a waiver of any rights the Seller may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

## **29. Notices**

29.1. Any notices required or authorised to be given or served upon a party pursuant to these conditions of sale shall be in writing and shall be delivered personally or sent by email, facsimile or post to the relevant party at its address as appearing in the quotation (in the case of the Seller) or in the Purchaser's order or last known address.

29.2. A notice given or served in accordance with clause 29.1 shall be deemed to have been received:

- 29.2.1. in the case of a notice delivered personally at the time of delivery;
- 29.2.2. in the case of a notice sent by facsimile transmission, at the time of receipt or subsequent delivery, whichever is the earlier; and
- 29.2.3. in the case of a notice sent by post to an address within Australia, on the second business day following the day of posting.
- 29.2.4. in the case of a notice sent by email at the time of email transmission.

## **30. Severability**

30.1. Any provision in this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purpose of the jurisdiction, if possible, so as to be valid and enforceable as is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

## **31. Seller's Rights**

31.1. The rights and remedies of the Seller under these conditions of sale shall be in addition to, and shall not derogate from any other rights or remedies to which it may be entitled.

## **32. Intellectual Property Rights**

32.1. The Purchaser warrants that any designer instruction furnished to the Seller shall not be such as will cause the Seller to infringe any patent, registered design, trademark or copyright or involve the unauthorised disclosure of confidential information in the execution of the Purchaser's order. The Purchaser agrees to indemnify and hold harmless the Seller and each of its directors, employees and agents against any infringement or threatened infringement or allegation of unauthorised use of patents, trademarks, registered designs, copyright or confidential information arising out of the manufacture or use of the goods.

32.2. Copies of drawings, plans, specifications and any other written or printed matter submitted to the Purchaser shall remain the property of the Seller and the information contained in such documents shall be treated as strictly confidential and shall not be used to the advantage of the Purchaser or the detriment of the Seller. The sale and purchase of the goods does not confer on the Purchaser any licence or rights under any patents, registered designs, trademarks, copyright or confidential information which is the property of the Seller. The Seller shall be under no obligation to disclose the methods or techniques used in production.

## **33. GST and Other Taxes**

33.1. The Purchaser must pay or reimburse the company for any GST (as defined in the "A New Tax System" (Goods and Services Tax) Act 1999) that the company must pay on any supply made at the time when the Purchaser is required to pay any amount in respect of that under this contract or upon demand by the Company. Any other tax, duty, impost or excise imposed in respect of the sale of the goods under this contract is to be paid in addition to and with the purchase price.

## **34. Limitation of Liability and Indemnity**

34.1. All warranties, conditions, liabilities or representations as to the quality or fitness of the goods or the correctness of information, advice or other services concerning the goods or otherwise (other than any rights which by law cannot be excluded, restricted or modified) are expressly excluded.

34.2. To the fullest extent permitted by law, the liability of the Seller, its directors, employees or agents for breach of any of the non-excludable rights referred to in clause 34.1 or any express warranty is limited at the Seller's option to:

- 34.2.1. In the case of goods, any one or more of the following:
  - 34.2.1.1. the replacement of the goods or the supply of equivalent goods;
  - 34.2.1.2. the repair of the goods
  - 34.2.1.3. the payment of the costs of replacing the goods or of acquiring equivalent goods; or
  - 34.2.1.4. the payment of the cost of having the goods repaired; and
- 34.2.2. In the case of services:
  - 34.2.2.1. the supplying of the services again; or
  - 34.2.2.2. the payment of the cost of having the services supplied again

34.3. The Seller shall not be liable for any loss or damage (including any consequential loss or damage) of any kind howsoever arising even if due to the negligence of the Seller, its directors, employees or agents.

34.4. Without limitation to the generality of any other clause in these Terms and Conditions and notwithstanding any inconsistent Term and Condition or any Term or Condition to the contrary contained in any documentation of the Purchaser relating to the supply of the goods (including an order), the Seller shall not be liable to the Purchaser for any loss or damage of any kind whatsoever (including without limitation, any liquidated damages) in relation to the Seller ceasing work on orders of the Purchaser or holding the work of the Purchaser until payment is made pursuant to clause 19.

34.5. The Purchaser indemnifies the Seller from and holds it harmless against all liabilities, losses, damages, costs or expenses directly or indirectly incurred or suffered by the Seller as a result of compliance or adherence by the Seller with any instructions of the Purchaser. In relation to the goods and from and against all actions, proceedings, claim or demands made against the Seller as a result of such compliance or adherence, or arising from any of the following:

- 34.5.1. as a result of the Purchaser's failure to:
  - 34.5.1.1. take reasonable precaution either to bring to the attention of any potential users of the goods any dangers associated with goods, or to detect any matters in relation to which the seller may become liable; or
  - 34.5.1.2. otherwise comply with any laws, rules, standards or regulations applicable in relation to the goods or the installation or use of the goods;
- 34.5.2. as a result of any other negligence or other breach of duty by the Purchaser; or
- 34.5.3. as a result of any compliance or adherence by the Seller with any instruction of the Purchaser in relation to the goods or their use or manner of fabrication, installation, maintenance or servicing.

## **35. Risk**

35.1. Risk in the goods shall pass to the Purchaser when property in the goods passes to the Purchaser or when goods are despatched from the Seller's premises or when delivery is effected or deemed to have been effected under clause 5.1, 5.2, 5.3 or 9, whichever shall occur first.

35.2. The Seller shall not be liable for any loss or deterioration of, or damage to, the goods from the time when the goods are put on the vehicle of a Carrier notwithstanding that freight may be arranged or the carrier engaged by the seller.

35.3. The Purchaser must effect and maintain adequate insurance of the goods in the name of the Purchaser and the Seller for their respective rights and interests.

### **36. Charging Clause**

36.1. To secure payment of all monies which are or may become payable by the Purchaser to the Seller under this Agreement the Purchaser (or where the Purchaser is comprised of two or more persons then each person jointly and severally) hereby charges with the due payment of all of those monies all of the Purchaser's interest in real property wherever located both present and future and the Purchaser consents to the Seller lodging a caveat or caveats over such property to protect its interest.

36.2. Upon demand by the Seller, the Purchaser agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Seller to further secure the Purchaser's indebtedness to the Seller.

36.3. Should the Purchaser fail within a reasonable time of such demand to execute such mortgage or other instrument then the Purchaser appoints irrevocably the credit manager or a duly authorised officer of the Seller to be the Purchaser's lawful attorney to execute any such mortgage or other instrument.

### **37. Credit Limit**

37.1. Any credit limit is solely for the benefit of Seller.

37.2. The obligations of the Purchaser under this Agreement remain unchanged if the credit limit is exceeded or not specified at any time.

### **38. Consent**

38.1. The Purchaser and its guarantors, if any, understands that the personal information given herein is to be used by the Seller for the purposes of assessing the Purchaser's credit worthiness. The Purchaser and its guarantors, if any, confirms that the information given by the Purchaser is accurate and complete. Furthermore, the Purchaser and its guarantors, if any, agrees to provide updated information, as and when further information is requested by the Seller for the purpose of reviewing the credit history of the account, updating the Seller's credit file on the Purchaser and its guarantors, if any, and/or reviewing credit limits.

38.2. The Seller has the consent and authority of the Purchaser and its guarantor's, if any, at all times to:

38.2.1. contact and obtain both commercial and consumer information (if applicable) from a credit bureau;

38.2.2. contact and exchange information about credit arrangements (including information about the credit worthiness, credit history, credit standing or credit capacity) with credit providers named in this Credit Application Form; and

38.2.3. contact any other persons or businesses that may be providing goods and/or services to the Purchaser and its guarantors, if any, to obtain any information relevant to the assessment of the credit worthiness of the Purchaser and its guarantors, if any, in this Credit Application Form.

38.3. The Purchaser and its guarantors, if any, agrees that information given in confidence to the Seller by a third party concerning the Purchaser and its guarantors, if any, will not be disclosed to the Purchaser or its guarantors, if any.

38.4. The Purchaser and its guarantors, if any, hereby consents to and authorises the Seller at all times to furnish personal and credit information concerning the dealings between the Purchaser, its guarantors, if any, and the Seller, to a credit bureau and to any third party seeking a trade reference regarding the Purchaser in its dealings with the Seller.

### **39. General**

39.1. This contract contains the entire agreement between the parties and any other terms, whether express or implied, are excluded here from and any variations, cancellations or additions to this contract shall not be of any force or effect unless expressly agreed to in writing and signed by the parties or their duly authorised signatories. Accordingly, the terms and conditions of this Credit Application Form, in its entirety, shall not be capable of being altered, amended or modified in any respect whatsoever unless signed by an authorised officer of the Seller and by an authorised officer of the Purchaser (as well as any guarantors). No prior correspondence, discussion or other terms and conditions form part of this contract unless stated in this contract.

39.2. The signatories to this credit application form certify that they are authorised to sign this application on behalf of the Purchaser and acknowledge and affirm that they have read these terms and conditions and fully understand and comprehend the terms and conditions and certify the information supplied as the basis of the Seller's decision to grant credit is true and correct.

39.3. It is acknowledged and declared that the credit to be provided by the Seller to the Purchaser (and any goods and services provided by the Seller under these terms and conditions) are for the purposes of and will be used wholly or predominately for business and commercial purposes of the Purchaser. (Warning: If the credit for the goods and/or services is not wholly for business and commercial purposes then this declaration should not be signed).

Dated this                      day of                      20

Signature of Applicant or Authorised Representative:

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Full Name of Applicant or Authorised Representative:

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Position Held by Applicant or Authorised Representative:

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## Guarantee & Indemnity

To: Audax International Pty Ltd Trading as Doorcraft Pty Ltd ABN 890 595 15347

IN CONSIDERATION of Industrial Galvanizers Corporation Pty Ltd t/as INGAL EPS ABN 40 000 545 415 ("the Seller") agreeing to supply (either now or at some future time) or to continue to supply or to cause to be supplied at the Seller's cost to the Purchaser (being the Purchaser identified in the accompanying Credit Account Application) goods and services on credit the person identified below as guarantor ("the Guarantor") HEREBY GUARANTEES the due payment by the Purchaser of all moneys now due and owing or which become due and owing by the Purchaser on any account whatsoever (including on account of goods sold and services supplied and work done) to the Seller AND the Guarantor agrees:

1. That in this Guarantee, unless a contrary intention appears from the context, persons is defined to include but not limited to a company, trust, partnership or incorporated association and the singular number shall include the plural and vice versa.
2. That this Guarantee:
  - 2.1. will be a continuing Guarantee;
  - 2.2. will be irrevocable irrespective of any amount or amounts which may be paid to the Seller by or on behalf of or for the credit of the Purchaser at any time during the continuance of any credit which may be given by the Seller to the Purchaser;
  - 2.3. shall not be determined or affected by the death, bankruptcy, liquidation, official management, administration, control or receivership (as the case may be) of the Purchaser;
  - 2.4. shall remain in full force and effect until all moneys owing to the Seller from time to time by the Purchaser have been paid or satisfied and this Guarantee has been discharged in writing by the Seller;
  - 2.5. shall be a principal obligation and shall not be treated as ancillary to or collateral with any other obligation however created and in particular shall be independent of any other security which the Seller may hold now or in the future in respect of the moneys intended to be secured by this Guarantee to the effect that this Guarantee shall be enforceable without first having recourse to any such security and without taking any steps or proceedings against the Purchaser regardless of whether any other security shall be in whole or in part unenforceable by reason of any rule of law or equity and notwithstanding the loss by the Seller of any other security through acts or omissions on the Seller's part;
  - 2.6. shall be governed by the laws of the State of Queensland and each party submits to the exclusive jurisdiction of the Courts in Brisbane for any claim or matter arising under this Guarantee.
3. The Guarantor will not, while any moneys are owing to the Seller by the Purchaser, claim or receive the benefit of any dividend or payment in a winding up/bankruptcy of the Purchaser and will not prove or claim in a winding up/bankruptcy of the Purchaser nor in any arrangement relating to the Purchaser in competition with the Seller so as to diminish any dividend or payment which but for such proof or claim the Seller would be entitled to receive and that the receipt of any payment by the Seller out of a winding up/bankruptcy of the Purchaser or any arrangement relating to the Purchaser shall not affect the Seller's right to recover from the Guarantor under this Guarantee.
4. Any settlement, discharge or release between the Guarantor and the Seller will be conditional upon no security or payment to the Seller by the Purchaser or any other person being voided or reduced by virtue of any provisions or enactments relating to insolvency or bankruptcy, and the Seller may recover the value or amount of any such security or payment so voided or reduced from the Guarantor subsequently as if that settlement, discharge or release had not occurred.
5. That the liability of the Guarantor under this Guarantee will not be impaired or discharged:
  - 5.1. by any reason of any time or other indulgence granted by the Seller to the Purchaser or by any arrangement entered into whereby the Seller's rights are in any way modified or abrogated and that no notice of the granting of any time or indulgence or of the entering into of any arrangement need be given to the Guarantor;
  - 5.2. if any amounts owed by the Purchaser may be unrecoverable (temporarily or permanently) for any reason at all;
  - 5.3. if any change in the status or structure of the Purchaser occurs;
  - 5.4. by any release or compromise with the Purchaser or any one or more Guarantors by operation of law or otherwise;
  - 5.5. by the omission of any name or address of any Guarantor.
6. That the liability of the Guarantors (if more than one):
  - 6.1. is joint and several and every reference to the Guarantor in this Guarantee will bind each of those persons;
  - 6.2. will be effective even if any of the intended co-Guarantors have not executed the Guarantee or that the Guarantee has been held to be ineffective or unenforceable against one or more of the Guarantors.
7. The Guarantor:
  - 7.1. will pay the Seller for any and all of the Seller's expenses including but not limited to any legal costs (on an indemnity basis), stamp duties and other expenses payable under this Guarantee together with any collection costs or dishonoured cheque fees incurred in connection with the enforcement of, or the preservation of any rights under this Guarantee. Such costs, duties and other expenses may be recovered as a liquidated debt.
  - 7.2. has made independent investigations and enquires and has not entered into this Guarantee nor executed this instrument as a result of or by reason of any promise, information, representation or statement of any kind whatsoever given by or on behalf of the Seller.
8. In the event that the whole or any part or parts of any clause in this Guarantee is judged to be unenforceable by a court of competent jurisdiction then such clause or part thereof shall be to that extent severed from this Guarantee without effect to the validity and enforceability of the remainder of these clauses.
9. To secure payment of all moneys which are or may become payable by the Guarantor to the Seller under this Guarantee the Guarantor hereby charges with the due payment of all of those moneys all of the Guarantor's interests in real property wherever located both present and future and the Guarantor consents to the Seller lodging a caveat or caveats to protect its interests.
  - 9.1. Upon demand by the Seller, the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Seller to further secure the Guarantor's indebtedness to the Seller.
  - 9.2. Should the Guarantor fail within a reasonable time of such demand to execute such mortgage or other instrument then the Guarantor appoints irrevocably the credit manager or a duly authorised officer of the Seller to be the Guarantor's lawful attorney to execute any such mortgage or other instrument.
10. If the whole or any part of the monies hereby secured are or may be irrecoverable from the Purchaser by the Seller for any reason whatever whereby the amount thereof or resulting therefrom is not recoverable from the Guarantor as a surety, then and in each such case:
  - 10.1. the Guarantor as a separate and additional liability under this Guarantee indemnifies the Seller in respect of the monies secured by this Guarantee;
  - 10.2. the Guarantor as a principal debtor agrees to pay to the Seller a sum equal to the amount of the monies secured by this Guarantee; and
  - 10.3. for the purposes of this indemnity, this clause shall be construed as if the monies secured by this Guarantee were recoverable and the terms of this Guarantee will apply as far as possible, with any necessary changes being made.
11. It is acknowledged and declared that the credit to be provided by the Seller to the Purchaser (and any goods and services provided by the Seller under these terms and conditions) are for the purposes of and will be used wholly or predominately for business and commercial purposes of the Purchaser.

I acknowledge and declare that I enter into the Guarantee with the Seller for my own commercial and business purposes. (Warning: If the credit for the goods and/or services is not wholly for business and commercial purposes then this declaration should not be signed).

Dated this                      day of                      20

Signature of Guarantor

Full Name of Guarantor

Witness

Signature of Guarantor

Full Name of Guarantor

Witness