

1. INTERPRETATION

(a) Unless otherwise inconsistent with then context the word “person” shall also mean corporation. (b) “goods” shall include services. (c) ‘**FORMIT SERVICES PTY LTD**’ means Formit Services Pty Ltd ABN 36 144 623 370 its successors and assigns.

2. GENERAL

a) In making this Application the Customer acknowledges that:

(i) credit will not be provided to it by FORMIT SERVICES PTY LTD until the Application has been reviewed and accepted by FORMIT SERVICES PTY LTD and FORMIT SERVICES PTY LTD has notified the Customer that a credit account has been established; and

(ii) FORMIT SERVICES PTY LTD may accept the Application subject to the fulfillment of certain conditions such as the requirement that securities or guarantees be granted to FORMIT SERVICES PTY LTD in such form as FORMIT SERVICES PTY LTD may require and confirmation that the Customer will meet FORMIT SERVICES PTY LTD’s minimum order requirements for the opening of a credit account.

b) The Customer represents and warrants to FORMIT SERVICES PTY LTD that:

(i) it has taken all necessary action to authorise the execution of the Application and the performance of its obligations under the Application and the credit account will constitute legal, valid and binding obligations of the Customer;

(ii) all information provided to FORMIT SERVICES PTY LTD in the Application is true and correct; and

(iii) it is not insolvent and is able to pay its debts as and when they fall due.

c) The Customer acknowledges that FORMIT SERVICES PTY LTD will be relying on the warranties in reviewing, accepting or rejecting the Application and continuing to provide credit to the Customer.

d) The warranties will be treated as being repeated each time credit is extended to the Customer by FORMIT SERVICES PTY LTD.

e) The Customer undertakes to notify FORMIT SERVICES PTY LTD within 7 days of any change becoming effective which affects the information set out in the Application (including, trading address, legal entity or structure of management or control of the Customer) and acknowledges that NOTWITHSTANDING SUCH NOTIFICATION it will continue to be responsible to FORMIT SERVICES PTY LTD until FORMIT SERVICES PTY LTD both accepts a further Application and discharges the Customer from further liability under this Application (such notification to be in writing).

f) These terms and conditions shall be deemed to be incorporated into any agreement between FORMIT SERVICES PTY LTD and the Customer. Any terms and conditions contained in any order, offer, acceptance or other document of the Customer and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.

g) FORMIT SERVICES PTY LTD may WITHOUT NOTICE immediately suspend or cancel the credit account.

h) FORMIT SERVICES PTY LTD reserves the right to alter these terms and conditions. The Customer agrees that it will be bound by the altered terms and conditions seven (7) days after FORMIT SERVICES PTY LTD gives notice of such alterations which may be by a letter or facsimile attaching a copy of the altered terms and conditions, by issue of an invoice to the Customer on which the altered terms and conditions are printed or such other manner as FORMIT SERVICES PTY LTD in its absolute discretion thinks fit.

i) The Customer must pay to FORMIT SERVICES PTY LTD and indemnify FORMIT SERVICES PTY LTD against all costs and expenses (including legal costs on an indemnity basis) incurred by FORMIT SERVICES PTY LTD in connection with default by the Customer (or any other guarantor or indemnifier) under these terms and conditions or the enforcement of any security.

j) The Customer shall not be entitled to make any deduction from the price of the goods in respect to any off-set or counter claims.

3. TERMS OF PAYMENT

Net 30 days after End of Month. FORMIT SERVICES PTY LTD reserves the right to vary the terms of payment including requiring:

a) payment in cash in full prior to delivery should the creditworthiness of the Customer at any time become in FORMIT SERVICES PTY LTD's opinion unsatisfactory; or

b) Immediate payment of all outstanding invoices and statements if there is a change in the control of the Customer.

4. INTEREST ON OVERDUE ACCOUNTS AND STOP SUPPLY

If any payment is not made in full on the due date the Customer will be in default and, without limiting any other rights of FORMIT SERVICES PTY LTD (including to demand immediate payment), FORMIT SERVICES PTY LTD may:

a) Charge the Customer interest on the amount outstanding as compensation for the loss of its funds calculated from the due date of payment until payment is made in full. The rate of interest applicable is 12.5% per annum; and

b) Stop supply of the goods to the Customer until all outstanding amounts have been paid in full.

7. DELIVERY

a) Orders - FORMIT SERVICES PTY LTD reserves the right to accept or decline orders in whole or in part.

b) Any date quoted for delivery is an estimate only unless a guarantee shall have been given by FORMIT SERVICES PTY LTD in writing.

c) If the payment terms of the customer's account are POD/COD and the customer is unable to pay at the point of delivery, then the goods will not be delivered.

d) The Customer shall accept and pay for goods if and when tendered notwithstanding any failure by FORMIT SERVICES PTY LTD to deliver by the quoted date. Written advice to the Customer that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.

e) FORMIT SERVICES PTY LTD shall not be liable to any Customer or any other party for any loss or damage including direct or indirect or consequential injury loss or damage whatsoever by reason of any

delay in delivery whether the same is due to the negligence of FORMIT SERVICES PTY LTD or any other party, actions constituting fundamental breach of contract, strike or any other industrial action, or any other cause whatsoever.

f) FORMIT SERVICES PTY LTD reserves the right to deliver by instalments and if delivery is made by instalments the Customer shall not be entitled to terminate or cancel the contract.

8. CLAIMS

a) FORMIT SERVICES PTY LTD shall not be liable for any loss or damage whatsoever and howsoever arising whether direct indirect or consequential or in respect of any claim whenever and however made for any loss or damage deterioration deficiency or other fault or harm in the goods manufactured, work executed or services provided by or on behalf of or in any arrangement with FORMIT SERVICES PTY LTD or occasioned to the Customer or any third or other party or to his or their property or interest and whether or not due to the negligence of FORMIT SERVICES PTY LTD its servants or agents.

b) As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the Customer, the Customer shall within fourteen days notify FORMIT SERVICES PTY LTD in writing of the same.

c) FORMIT SERVICES PTY LTD shall not be liable in any circumstances for any;

(i) defects or damages caused in whole or in part by misuse, abuse, neglect, electrical or other overload, non-suitable lubricant, improper installation repair or alteration (other than by) or accident.

(ii) any transport freight charges installation removal labour or other costs;

(iii) defects in goods not manufactured by it but will endeavour to pass on to the Customer the benefit of any claim made by FORMIT SERVICES PTY LTD and accepted by the manufacturer of such goods under a warranty given by the manufacturer of such goods provided that nothing contained in this subparagraph shall limit the rights of the Customer to proceed against FORMIT SERVICES PTY LTD pursuant to the Trade Practices Act 1974.

(iv) technical advice or assistance given or rendered by it to the Customer or not in connection with the manufacture construction or supply of goods for or to the Customer provided always that FORMIT SERVICES PTY LTD has rendered such services with due care and skill and that any material supplied in connection with those services are reasonably fit for the purpose for which they are supplied.

d) The exemptions, limitations, terms and conditions in these terms and conditions shall apply whether or not the loss or damage is caused by negligence or actions constituting fundamental breach of contract.

9. PROPERTY

a) Notwithstanding the delivery of the goods or part thereof the goods remain the sole and absolute property of FORMIT SERVICES PTY LTD as full legal and equitable owner until such time as the Customer shall have paid FORMIT SERVICES PTY LTD the full purchase price together with the full price of any other goods the subject of any other contract with FORMIT SERVICES PTY LTD.

b) The Customer acknowledges that he receives possession of and holds goods delivered by FORMIT SERVICES PTY LTD solely as bailee for FORMIT SERVICES PTY LTD until such time as the full price thereof is paid to FORMIT SERVICES PTY LTD together with the full price of any other goods then the subject of any other contract with FORMIT SERVICES PTY LTD.

- c) Until such time as the Customer becomes the owner of the goods, he will;
- (i) store them on the premises separately;
 - (ii) ensure that the goods are kept in good and serviceable condition;
 - (iii) secure the goods from risk, damage and theft; and
 - (iv) keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Customer.
- d) Until the goods are paid for in full, FORMIT SERVICES PTY LTD authorises the Customer to sell the goods as it's agent. However, the Customer shall not represent to any third parties that it is acting in any way FORMIT SERVICES PTY LTD. FORMIT SERVICES PTY LTD will not be bound by any contracts with third parties to which the Customer is a party.
- e) Records shall be kept by the Customer of any goods owned by FORMIT SERVICES PTY LTD.
- f) The proceeds of any sale of the goods shall be paid into a separate account and held in trust for FORMIT SERVICES PTY LTD. The Customer shall account to FORMIT SERVICES PTY LTD from this fund for the full price of the goods.
- g) The Customer is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale received the Customer shall account forthwith to FORMIT SERVICES PTY LTD for the price of the goods.
- h) Should the Customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws or being a company calls a meeting for the purpose of or to go into liquidation or has a winding-up petition presented against it or has a receiver or administrator appointed, FORMIT SERVICES PTY LTD may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this contract suspend or cancel this contract or require payment in cash before or on delivery or tender of goods or documents notwithstanding terms of payment previously specified or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.
- i) In the event that the Customer uses the goods/product in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for the FORMIT SERVICES PTY LTD. Such part shall be deemed to equal in dollar terms to the amount owing by the Customer to FORMIT SERVICES PTY LTD at the time of the receipt of such proceeds.
- j) If the Customer does not pay for any goods on the due date then FORMIT SERVICES PTY LTD is hereby irrevocably authorised by the Customer to enter the Customer's premises or any premises under the control of the Customer as agent of the Customer and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever. On retaking possession of the goods FORMIT SERVICES PTY LTD may elect to refund to the Customer any part payment that may have been made and to credit the Customer's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.

10. APPLICATION OF PPSA

- a) In this clause 9, PPSA means the Personal Property Securities Act 2009. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.

- b) This clause 9 applies to the extent that FORMIT SERVICES PTY LTD interest in any Goods is a security interest
- c) The Goods are defined as plastic moulded, thermoformed and assembled products.
- d) The Purchaser acknowledges and agrees that FORMIT SERVICES PTY LTD may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Purchaser waives its right under s157 of the PPSA to receive notice of any verification of the registration.
- e) FORMIT SERVICES PTY LTD can apply amounts it receives from the Purchase towards amounts owing to it in such order as FORMIT SERVICES PTY LTD chooses.
- f) If the Purchaser defaults in the performance of any obligations owed to FORMIT SERVICES PTY LTD under these conditions or any other agreement for FORMIT SERVICES PTY LTD to supply goods to the Purchaser, FORMIT SERVICES PTY LTD may enforce its security interest in any Goods by exercising all of any of its rights under these conditions or the PPSA. To the maximum extent permitted by law, the Purchaser and FORMIT SERVICES PTY LTD agree that the following provisions of the PPSA do not apply to the enforcement by FORMIT SERVICES PTY LTD of its security interest in the goods: sections 95, 118, 121(4), 125, 130 ,132(3)(d), 132(4), 135, 142, and 143.
- g) The Purchaser and FORMIT SERVICES PTY LTD agree not to disclose information of the kind mentioned in s275(1) of the PPSA, except in circumstances required by sections 275(7)(b) – (e) of the PPSA.
- h) The Purchaser must promptly do anything required by FORMIT SERVICES PTY LTD to ensure that FORMIT SERVICES PTY LTD's security interest is a perfected security interest and has priority over all other security interests in the Goods.
- i) Nothing in this clause 9 is limited by any other provision of these Conditions or any other agreement between the parties.

11. GOVERNING LAW

The parties agree that the terms and conditions applying to any credit account opened in the name of the applicant and any other contract between FORMIT SERVICES PTY LTD and the Customer shall be governed by the laws of the State of New South Wales in force for the time being and from time to time, and the parties irrevocably submit generally and unconditionally to the jurisdiction of the Courts of New South Wales in respect of claims, proceedings and matters arising out of or in respect of the said credit account or any said contract.

12. CHARGE

The Customer hereby charges with payment of any indebtedness to FORMIT SERVICES PTY LTD all beneficial interest (freehold and leasehold) in land and personal property held now or in the future by the Customer. The Customer agrees that if demand is made by FORMIT SERVICES PTY LTD, the Customer receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required, and against the event that the Customer fails to do so within a reasonable time of being so requested, the Customer hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by FORMIT SERVICES PTY LTD to be its true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto FORMIT SERVICES PTY LTD may lodge a caveat noting the interest given by this charge on the title of any property of the Customer whenever it so wishes.

13. SERVICE

The parties agree that service of any notices, demands, proceedings summons suits or actions (process) upon the Customer may be effected by FORMIT SERVICES PTY LTD or its solicitors sending such process by prepaid

post to the address given in the Credit Application as the address of the Customer. Service shall be deemed to have been effected two business days after the posting of the process.

14. RISK

Unless otherwise agreed in writing, risk in the goods shall pass to the Customer at the time when the goods have been placed on the vehicle which is to effect delivery from FORMIT SERVICES PTY LTD's store or warehouse or delivery to the Customer whichever is the sooner. The goods shall remain at the Customer's risk at all times unless and until FORMIT SERVICES PTY LTD retakes possession of the goods pursuant to these terms and conditions.