



AURORA CONSTRUCTION MATERIALS

Mail: PO Box 656 Niddrie, VIC, 3042

Ph: (03) 9408 0666

TERMS OF CREDIT

The Customer applies to establish a credit account with the Supplier on the following terms:

1. Conditions of trade

Words appearing in this Credit Application have the meaning given to them in the Conditions of Sale and the Customer expressly acknowledges and agrees that:

- 1.1 it has been provided with a copy of the Conditions of Sale current as at the date of making this Credit Application;
- 1.2 the Conditions of Sale, together with any terms of credit between the Customer and the Supplier that are agreed upon in writing are incorporated into every supply of Goods and/or Services between the Supplier and the Customer;
- 1.3 the Conditions of Sale are incorporated into this Credit Application and apply as the binding terms upon which a credit account is opened in the Customer's name and credit is provided to the Customer;
- 1.4 for the avoidance of doubt, the Supplier includes such of the following entities that the Customer acquires Goods and or Services from,; AURORA CONSTRUCTION MATERIALS (Epping) PTY LTD ACN 605039254; AURORA CONSTRUCTION MATERIALS (Mount Cottrell) PTY LTD ACN 605039076 and such other entity that is within the Aurora Group Holdings Pty Ltd structure of entities from time to time and in respect of which the Supplier notifies the Customer that the Conditions of Sale and this Credit Application also apply to.

2. Privacy

2.1 For the purposes of the Supplier investigating the credit worthiness of the Customer from time to time, the Customer authorises the Supplier to make enquiries of, and obtain Credit Related Information from, (without limitation):

- 2.1.1 people nominated as trade referees in this Credit Application;
- 2.1.2 any other entities which, in the Supplier's opinion, the Customer has had dealings with; and
- 2.1.3 any Credit Provider or Credit Reporting Body.

2.2 The Customer acknowledges and agrees that the information, including any Credit Related Information, Sensitive Information and Personal Information provided in this Credit Application, or arising from any dealings between the Customer and the Supplier, may (subject to the requirements of the Privacy Act 1988 (Cth) and the Credit Reporting Privacy Code) be disclosed to a Credit Reporting Body.

3. Acknowledgements and representations

3.1 The Customer acknowledges and agrees that the Supplier may, at its sole discretion:

- 3.1.1 approve, refuse or approve subject to conditions, this Credit Application.
- 3.1.2 revoke or vary the terms of the Customer's credit account at any time with notice to the Customer.

3.2 The Customer acknowledges and represents to the Supplier that:

- 3.2.1 it is authorised to make this Credit Application.
- 3.2.2 where the Customer makes this Credit Application as trustee of a trust, the Customer will be personally liable to the Supplier for the obligations of the trust;
- 3.2.3 the information it has provided in this Credit Application is correct and is for the use of the Supplier in determining whether or not to open a credit account in the Customer's name and, if so, the amount of credit to be extended to the Customer and the terms of such credit;
- 3.2.4 it will notify the Supplier in writing of any changes to the trading address, legal entity, structure or management or control of the Customer to the Supplier within 7 days of the occurrence of such change; and
- 3.2.5 it will ensure that their credit account trades within its approved credit limit and any amount in excess of the approved credit limit will be repayable immediately by the Customer.

GUARANTEE

Guarantee, indemnity and charge

1. In consideration of the Supplier agreeing to provide goods and services to the Customer, the Guarantor personally guarantees:

- 1.1 the payment to the Supplier of all moneys due to the Supplier by the Customer in accordance with the Credit Application or otherwise; and
- 1.2 the performance by the Customer of any and all of its obligations under the Credit Application.

2. Without limiting clause 1 of this guarantee, the Guarantor:

2.1 **guarantees the due performance and observance** of all the terms, conditions, covenants and agreements contained or implied in the Credit Application;

2.2 **indemnifies the Supplier** against and in respect of any loss or damage suffered by the Supplier by reason or as a result of the default of the Customer under the Credit Application and also in respect of all costs charges and expenses whatsoever which the Supplier may incur by reason of the aforesaid or any default on the part of the Customer under or in relation to the Credit Application; and

2.3 **charges in the Supplier's favour** all of the Guarantor's right, title, estate and interest, in any real or Personal Property which the Guarantor now has or in which the Guarantor later acquires, with payment of all monies owed by the Customer and agrees upon request to execute any document requested by the Supplier to further secure the Customer's liabilities.

Personal Property

3. The Guarantor and the Seller agree that this guarantee constitutes a Security Agreement under the PPSA, and the charge referred to in clause

2.3 constitutes a Security Interest, insofar as it relates to the Guarantor's Personal Property, which may be registered by the Seller on the Register.

4. To the maximum extent permitted by law, the Guarantor and Seller contract out of sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.

5. Unless otherwise agreed to in writing by the Seller, the Guarantor waives its right to receive a verification statement in accordance with section 157 of the PPSA.

6. The Guarantor and the Seller agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.

General provisions

7. The Guarantor acknowledges that it has had the opportunity to obtain legal advice before signing this guarantee.

8. The Supplier shall have the fullest liberty without affecting this guarantee to postpone for any time and from time to time the exercise of all or any of the powers, rights authorities and discretions conferred by or arising by virtue of the Credit Application and to exercise the same at any time and in any manner and either to enforce or forebear to enforce:

8.1 the terms and conditions of the Credit Application; or

8.2 any other remedies or securities available to the Supplier, AND the Guarantor shall not be released by any exercise by the Supplier of its liberty with reference to the matters aforesaid or any of them or by any time being given to the Guarantor or by any other thing whatsoever which under the law would but for this provision have the effect of so releasing the Guarantor.

9. This guarantee shall not be terminated by the death of the Guarantor and shall bind their legal personal representative.

10. This guarantee shall not be affected or prejudiced by any variation or modification of the terms of the Credit Application.

11. This guarantee shall be a principal obligation and shall not be treated as ancillary or collateral to any other obligation whatsoever.

12. Any demand or notice to be made upon the Guarantor hereunder shall be deemed to be duly made if the same be in writing and the same may be left at or sent through the post in a prepaid registered letter addressed to the Guarantor at the address herein of the Guarantor or other address last known to the Supplier. Any demand so sent by post shall be deemed to have been duly served at the expiration of 48 hours from the time of its posting and notwithstanding that it may subsequently be returned through the post office unclaimed.

13. Words appearing in this Credit Application have the meaning given to them in the Conditions of Sale and the Customer expressly acknowledges and agrees that:

13.1 **Customer** means the Customer referred to in the Credit Application that has applied for a credit account with the Supplier;

13.2 **Credit Application** means the attached Credit Application; and

13.3 **Guarantor** means jointly and severally the person or people executing this guarantee and listed in this Part 5 as the Guarantors.



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CONDITIONS OF SALE

1. Definitions

In these Conditions: **Australian Privacy Principal, Credit Provider, Credit Reporting Body, Personal Information** and Sensitive Information have the meaning prescribed to them in the Privacy Act 1988 (Cth).

Conditions means the terms of these Conditions of Sale.

Customer means a person, firm or corporation seeking to acquire Goods or Services from the Supplier and where applicable includes the Applicant in the Commercial Credit Application and, if the Customer consists of more than one person, each of them jointly and severally.

Goods means all goods and or materials supplied by the Supplier to the Customer.

GST means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended.

Other Property means all present and after-acquired property of the Customer (except the Goods) whether acquired alone or jointly as a tenant in common or as a joint tenant.

PPSA means the Personal Property Securities Act 2009 (Cth) as amended.

Security Agreement, Security Interest and Register have the meaning ascribed to them in the PPSA.

Services means all services supplied by the Supplier to the Customer.

Supplier means severally such of the following entities that the Customer acquires

Goods and or Services from, AURORA CONSTRUCTION MATERIALS (Epping) PTY LTD

ACN 605039254; AURORA CONSTRUCTION MATERIALS (Mount Cottrell) PTY LTD

ACN 605039076 and such other entity that is within the Aurora Group Holdings

Pty Ltd structure of entities from time to time and in respect of which the Supplier notifies the Customer that these Conditions also apply to;

2. Application of the Conditions

2.1 Subject to clause 2.4, or unless otherwise agreed in writing, these Conditions will apply exclusively to every supply of Goods and or Services by the Supplier to the Customer and cannot be varied or replaced by any other conditions without the prior written consent of the Supplier.

2.2 Any written quotation provided by the Supplier to the Customer concerning the supply of Goods and or Services is valid for 30 days, unless otherwise stated in the quotation, and is an invitation only to the Customer to place an order based upon that quotation.

2.3 The Supplier will only be deemed to have accepted an order or an offer by the Customer if it has communicated acceptance to the Customer in writing or has delivered the Goods stated in the order.

2.4 The Supplier may vary these Conditions if it first gives 30 days written notice to the

Customer. Any order placed, or Goods or Services supplied at the request of the

Customer, after such 30 day period, will be deemed to be the Customer's acceptance of the varied Conditions.

2.5 The minimum order value is \$100.00 or as otherwise notified by the Supplier to the Customer from time to time.

2.6 The Supplier may terminate this agreement on 30 days written notice. Any termination is without prejudice to the rights of the Supplier accrued prior to such termination including the right to be paid or to recover the Goods.

2.7 The Customer and Supplier agree to keep confidential the terms of these Conditions, including the price of the Goods and or Services, except as required by law.

3. Payment

3.1 If Goods or Services are supplied on credit terms, payment for Goods and or Services must be made on or before the twenty first day of the month following the month in which the Goods are delivered and or the Services supplied.

3.2 If Goods or Services are not supplied on credit terms, payment for Goods and or Services must be made prior to delivery of goods (i.e. cash on delivery).

3.3 In the event that there are insufficient funds to meet any cheque drawn by the Customer in favour of the Supplier or any other form of payment by the Customer is dishonoured, an administration fee will be charged on each and every representation and or dishonour.

3.4 The Supplier may withdraw any credit terms or require the provision of security at any time in its absolute discretion and without notice to the Customer and may apply any payment by the Customer in any manner as the Supplier sees fit.

4. Payment Default

4.1 If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any accrued rights or other remedy available to it:

4.1.1 charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 plus 2 per cent for the period from the due date until the date of payment in full;

4.1.2 charge the Customer for all expenses and costs (including legal costs on a solicitor/own client basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;

4.1.3 cease or suspend for such period as the Supplier thinks fit, supply of any further Goods, Services or credit to the Customer; and

4.1.4 by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by the Supplier.

4.2 Clause 4.1 may also be relied upon, at the option of the Supplier:

4.2.1 where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of any creditors; or

4.2.2 where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of any creditors or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

4.2.3 In the event of a dispute, the Customer will not be entitled to withhold payment of any undisputed amount due to the Supplier.

5. Passing of Property in Goods

5.1 The Customer agrees:

5.1.1 that these Conditions constitute a Security Agreement for the purposes of the PPSA;

5.1.2 that these Conditions create a Security Interest in all Goods (and the proceeds of the Goods) in favour of the Supplier to secure the purchase price for the Goods;

5.1.3 that the following sections of the PPSA do not apply: 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, and, to the extent section 115(7) applies, each section of Part 4.3 of the PPSA is excluded unless the Supplier elects in writing to retain Part 4.3 (which the Supplier may elect to do either in whole or in part); and

5.1.4 to waive its right to receive notice of a verification statement in relation to registration of a Security Interest.

5.2 The Customer:

5.2.1 further agrees that these Conditions also create a Security Interest in all of the Customer's Other Property, although such Security Interest is not intended to prevent the Customer from transferring such Other Property in the ordinary course of the Customer's business; and

5.2.2 separately charges all land owned now and in the future by the Customer whether owned alone or jointly as a tenant in common or as a joint tenant,

5.2.3 in favour of the Supplier to secure payment and performance of all the Customer's obligations under these Conditions.

5.3 The Customer agrees:

5.3.1 title and property in all Goods remain vested in the Supplier and do not pass to the Customer;

5.3.2 the Customer must hold the Goods as fiduciary bailee and agent for the Supplier;

5.3.3 the Customer must keep the Goods separate from its own goods and maintain the labelling and packaging of the Supplier;

5.3.4 the Customer is required to hold the proceeds of any sale of the Goods on trust for the Supplier in a separate account;

5.3.5 the Customer must deliver up all Goods to the Supplier immediately upon service of a written demand; and

5.3.6 the Supplier may without notice, enter any premises where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other Goods not the property of the Supplier, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action, until full payment in

cleared funds is received by the Supplier for all Goods supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer.

5.4 The Customer may resell the Goods in the ordinary course of its business (but may not otherwise sell or encumber the Goods) and if it does so shall receive the proceeds of resale as trustee of the Supplier, to be held on trust for the Supplier. The Supplier shall be entitled to trace the proceeds of resale.

5.5 To assure performance of its obligations under these Conditions, the Customer hereby grants the Supplier an irrevocable power of attorney to do anything the Supplier considers should be done by the Customer pursuant to these Conditions. The Supplier may recover from the Customer the cost of doing anything under this clause 5, including registration fees.

6. GST and Duties

6.1 Prices for the supply of Goods and or Services exclude sales tax, consumption or goods and services tax, and any other taxes, duties or imposts imposed on or in relation to the Goods and or Services.

6.2 If prices for Goods and or Services provided by the Supplier do not expressly indicate that the prices include GST then the Customer will pay the Supplier the price for the Goods and or Services plus GST.

7. Delivery of the Goods

7.1 Any period or date for delivery of Goods and or Services stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier may deliver the Customer's orders in part or in whole.

7.2 All costs of freight, insurance and other charges associated with the delivery of the Goods to the agreed delivery address shall be borne by the Customer.

7.3 If the Customer is unable or fails to accept delivery of the Goods, the Customer will be liable for all costs incurred by the Supplier due to storage, detention, double cartage, travel expenses or similar causes.

8. Risk and Insurance

All risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods will pass to the Customer immediately upon delivery of the Goods to the Customer.

9.1 Liability

9.1 Except as specifically set out herein, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods and or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

9.2 The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused arising from the supply of the Goods and or Services, including but not limited to loss of turnover, profits, business or goodwill.

9.3 The Supplier will not be liable for any loss, damage or claim suffered by the Customer where the Supplier has failed to meet any delivery date or cancels or suspends the supply of Goods or for any Goods that display a "use-by" date that are sold or distributed by the Customer after that date.

9.4 Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods and or Services which cannot be excluded, restricted or modified. If any of these Conditions is inconsistent with State or Federal legislation, such Conditions must be read down only to the extent necessary to comply with such legislation and will otherwise apply to the fullest extent legally possible.

9.5 If the Customer is a "consumer" within the meaning of Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for a breach of a condition, warranty or guarantee (whether express or implied) is limited to any one of the following as determined by the Supplier:

9.51 the replacement of the Goods or the supply of equivalent Goods; or in the case of Services, supply the Services again or pay the costs of having the Services supplied again

9.52 the payment of the cost or replacement of the Goods or of acquiring equivalent Goods.

10. Cancellation

No purported cancellation or suspension of an order or contract for Goods and or Services by the Customer will be binding on the Supplier after that order has been accepted by the Supplier.

11. Goods Returned

11.1 All Goods are sold on a non-returnable, non-refundable basis and, subject to clause



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11.3, may only be returned if the Goods are damaged by the Supplier upon delivery or are incorrectly supplied by the Supplier.

11.2 Any claim by the Customer that the Goods are damaged or incorrectly supplied must be made in writing to the Supplier within 5 business days of receipt of the Goods by the Customer and the Customer must provide a reasonable opportunity for the Supplier to inspect the Goods. The Supplier's only liability (if any) is limited to the resupply of the Goods.

11.3 The Supplier may, in its sole and absolute discretion, agree to accept a return of some or all of the Goods but all such Goods returned will be subject to a minimum 25% handling fee.

12. Privacy

12.1 The Supplier complies with the Privacy Act 1988 (Cth) and is bound by the Australian Privacy Principles and Credit Reporting Privacy Code dealing with the collection, use and storage of Personal Information, Sensitive Information and Credit Related Information.

12.2 A copy of the Supplier's Privacy Policy and Credit Reporting Policy can be found on the Supplier's website or a hard copy can be provided on request.

13. Applicable law

The Conditions shall be governed by the laws of the State of Victoria and the Supplier and the Customer hereby agree to submit to the jurisdiction of the Courts in the State of Victoria in relation to any question or dispute that may arise hereunder.