

TQ Products PTY LTD

46 Westchester Road,
Malaga, WA 6090
ABN 83 149 668 342



CREDIT ACCOUNT APPLICATION & TERMS OF TRADE AGREEMENT

BETWEEN:

TQ PRODUCTS PTY LTD

(Supplier)

AND

(Customer)

CREDIT APPLICATION

All sections (if applicable) and three trade references must be supplied before your credit application can be processed.

TQ PRODUCTS PTY LTD

SUPPLIER – _____

A / P / E /

15 Weedon Road, Forrestdale WA 6112 1300 075 678 accounts@tqstoneproducts.com.au

CUSTOMER DETAILS

Entity (Tick one): Company Partnership / Sole Trader

Company Name: ABN/ACN:

Business Address: Suburb: Postcode: Postal Address: Suburb: Postcode: Accounts Payable

Ph:

Contact:

Email: Fax: Does Company Act as Trustee? Yes* No *(If Yes, please complete below) Name of Trust: ABN:

Trading Name: _____

CUSTOMER DIRECTOR DETAILS

1. Name: Address:

DOB: Driver's Licence No: Ph: 2. Name: Address:

DOB: Driver's Licence No: Ph: 3. Name: Address:

DOB: Driver's Licence No: Ph:

Has the Customer or any director been registered under any part of the *Bankruptcy Act*? Yes No Has the Company ever been in administration under the *Corporations Act 2001*? Yes No Are Business Premises Owned, Leased, Mortgaged? Owned Leased Mortgaged

TRADE REFERENCES

1. Name: Email: Ph: 2. Name: Email: Ph: 3. Name: Email: Ph:

CREDIT FACILITY REQUEST

Estimated amount of monthly purchases and/or credit facility requested:

\$

Bank & Branch:

AGREEMENT TERMS – This becomes a legally binding agreement once it is signed below

- (a) The Customer has provided the Supplier the information in this Credit Application for the purpose of establishing a credit account with the Supplier.
- (b) The Supplier agrees to consider the Customer's application and to advise the Customer whether or not credit will be extended. (c) The parties agree that if the Supplier grants the Customer credit facilities then such credit facilities shall be on the Terms and Conditions of Trading attached.
- (d) The Customer agrees to be bound by the Terms and Conditions of Trading attached for every supply of goods and services by the Supplier.

SIGNED ON BEHALF OF THE CUSTOMER: (in the case of a trading Company to be signed by two

Directors) Name:

Position: Director/Secretary

Date:

Signature

Name:

Position: Director

Date: Signature

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TERMS AND CONDITIONS OF TRADING

1. Definitions and interpretation

1.1 Definitions

In these Terms:

Additional Charge means:

(a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices

(b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Cash on Delivery means payment by the Customer in full, in the Supplier's absolute discretion, either before the Goods or Services are delivered to the Customer's nominated address or upon delivery of the Goods or Services to the Customer's nominated address.

Customer means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.

Goods means any goods supplied by the Supplier including those supplied in the course of providing Services.

Loss includes, but is not limited to, costs (including, but not limited to, party to party legal costs and the Supplier's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Order means a purchase order for Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.

Quote means a written description of the Goods or Services to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

Services means the services to be provided by the Supplier to the Customer in accordance with a Quote and these Terms.

Supplier means the entity specified as the supplier of Goods or Services on the Quote and includes the Supplier's agents and permitted assigns.

2. General

2.1 Engagement of the Writer

(a) These Terms apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services, including all quotations, contracts and variations. These Terms take precedence over Terms contained in any document of the Customer or elsewhere.

(b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.

3. Quotes

(a) The Supplier may provide the Customer a Quote which is valid for 30 days from the date of issue.

(b) Unless otherwise agreed in writing, a Quote does not include delivery and/or installation of the Goods.

(c) The Supplier is not obliged to commence work until the Customer accepts the Quote.

(d) The Supplier reserves the right to amend any Quote before the Order has been completed.

(e) All descriptions, photographs, drawings, illustrations, weights, dimensions, performance data and all other particulars relating to Goods or Services that are provided in any Quote, catalogue, price list or other advertising material is only an approximation and are subject to alteration without notice.

4. Orders

(a) Every Customer Order for the provision of Goods or Services must be submitted in writing on the Supplier's standard Order form (unless otherwise agreed).

(b) The Order must clearly identify the Goods or Services ordered and the Supplier's Quote. An Order placed by the Customer signifies acceptance by the Customer of these Terms and the most recent

Quote.

(c) Orders must be signed by the Customer's authorised representative and specify the required date of delivery.

(d) The Supplier may in its absolute discretion refuse to provide Goods or Services where:

(i) Goods are unavailable for any reason whatsoever;

(ii) credit limits cannot be agreed upon or have been exceeded; or

(iii) payment for Goods or Services previously provided to the Customer or any related corporation of the Customer, has not been received by the Supplier.

(e) An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred.

5. Variations

(a) The Customer may request that its Order be varied by providing a request in writing. A request for a variation must be agreed to in writing by the Supplier.

(b) If the Customer wishes to vary its requirements after a Quote has been prepared or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods and/or Services.

6. Invoicing and payment

(a) Where the Supplier has granted the Customer credit, the Customer will ensure payment for the Goods or Services is made in accordance with the Terms of Credit and within 30 days of the last day of the month in which the Goods or Services were supplied to the Customer.

(b) Where the Supplier has not granted the Customer credit, the Supplier may in its absolute discretion require payment to be Cash on Delivery or issue an invoice to the Customer:

(i) prior to commencing the provision of the Goods or Services, for an amount equal to the Quote and Additional Charges where the Supplier has not previously carried out work for the Customer or where the Supplier chooses to do so;

(ii) at the end of each week before the Order is completed, the Supplier may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at the Supplier's discretion) and require that proportion of the Quote be paid in advance of any further Goods or Services being provided; or

(iii) upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Order and for any Additional Charges.

(c) The Customer must pay an invoice issued by the Supplier to the Supplier within 14 days of a valid tax invoice being issued to the Customer.

7. Overdue and/or Unpaid Accounts

(a) If any invoice is due but unpaid, the Supplier may withhold the provision of further Goods or Services until the Customer pays all overdue amounts in full.

(b) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.

(c) The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these Terms. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

(d) The Customer is to pay the Supplier on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to the Supplier, calculated daily.

- (e) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses

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8. Additional Charges

- (a) The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier resulting from reliance on inadequate or incorrect information or material provided by the Customer.
- (b) Additional Charges may also be imposed as a result of cancellation by the Customer of an Order where cancellation results in Loss of the Supplier, storage costs for goods not collected from the Supplier within 2 weeks of the date on which the Goods are manufactured, fabricated, created or formed at the rate set out in the Quote, photocopying, communication costs, couriers, packing and handling, Government or council taxes or charges, additional work required by the Customer or any other occurrence which causes the Supplier to incur additional costs in respect of the Customer's Order.

9. Acceptance of Goods

- (a) If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 48 hours of delivery, the Customer is deemed to have accepted the Goods and to have accepted the Goods are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

10. Title and risk

- (a) Risk in Goods passes to the Customer immediately upon delivery.
- (b) Delivery of the Goods occurs:
- (i) When the Customer collects the Goods from the Supplier's premises; or
 - (ii) If the Supplier has agreed to deliver the Goods to the Customer, then delivery is when the Supplier or its agent delivers the Goods to the Customer's designated place.
- (c) Property and title in Goods supplied to the Customer pursuant to these Terms does not pass to the Customer until all money due and payable to the Supplier by the Customer have been fully paid.
- (d) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer:
- (i) is a bailee of the Goods until property in them passes to the Customer;
 - (ii) irrevocably appoints the Supplier its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
 - (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;
 - (iv) must not allow any person to have or acquire any security interest in the Goods;
 - (v) agrees that the Supplier may repossess the Goods if payment is not made within 14 days (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and
 - (vi) the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies the Supplier in respect of any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises.

11. Default by Customer

- (a) The following constitutes an event of default:
- (i) the Customer breaches these Terms for any reason and fails to remedy that breach within 14 days of being given notice by the Supplier to do so;
 - (ii) the Customer, being a natural person, commits an act of bankruptcy;
 - (iii) the Customer, being a corporation, is subject to:
 - (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the

of the Supplier, are to be paid by the Customer as a debt due and payable under the Terms.

Customer to be wound up, deregistered or dissolved;

- (B) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
 - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring);
 - (D) any assignment for the benefit of creditors;
- (iv) the Customer purports to assign its rights under these Terms without the Supplier's prior written consent;
- (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, the Supplier may:
- (i) terminate these Terms;
 - (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
 - (iii) refuse to deliver Goods or provide further Services;
 - (iv) pursuant to clause 10(d), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
 - (v) retain (where applicable) all money paid on account of Goods or Services or otherwise.
- (c) On an event of default all invoices will become immediately due and payable.

12. Termination

In addition to the express rights of termination provided in these Terms, a party may terminate these Terms by giving 30 days written notice to the other party. Upon termination by the Customer, all invoices will become immediately due and payable.

13. Exclusions and limitation of liability

- (a) The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these Terms by any law is excluded.
- (b) The Supplier gives no warranty in relation to the Services provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services including in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
- (i) any Goods or Services supplied to the Customer;
 - (ii) any delay in supply of the Goods or Services; or
 - (iii) any failure to supply the Goods or Services.
- (c) The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on any advice, recommendation, information, assistance or service reasonably provided by the Supplier.
- (d) To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on Terms, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- (e) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

14. Indemnity

- (a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in

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connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these Terms including, but not limited to any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand. This provision remains in force after the termination of these Terms.

15. Miscellaneous

- (a) These Terms are governed by the laws of the State in which the Supplier's registered office is located and the parties agree to submit to the non-exclusive jurisdiction of the Court's located there.
- (b) These Terms and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms. These Terms supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (c) In entering into these Terms, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents.
- (d) If any provision of these Terms is or becomes void, voidable or unenforceable, the remaining provisions continue in force.

16. Personal Property Securities Act

16.1 Definitions

In clause this clause 16:

- (a) **PPSA** means the Personal Property Securities Act 2009 (Cth);
- (b) words and phrases that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context indicates otherwise.

16.2 Consent to registration

The Customer consents to the Supplier perfecting any security interest that it considers these Terms provides for by registration under the PPSA. The Customer agrees to do anything the Supplier reasonably asks to ensure that the security interest:

- (a) is enforceable, perfected and otherwise effective; and
- (b) has priority over all other security interests.

16.3 Waiver of notices and information requests

- (a) To the extent the law permits, the Customer waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA. However, this does not prevent the Supplier from giving a notice under the PPSA.
- (b) The Customer agrees not to exercise its rights to make any request of the Supplier under section 275 of the PPSA. However this does not limit the Customer's rights to request information other than under section 275.

16.4 Enforcement of security interest

- (a) To the extent the law permits, the Supplier need not comply with, and the Customer may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of.
- (b) if the Supplier exercises a right, power or remedy in connection with this document or a security interest that it provides for, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Supplier states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

16.5 Changes in Customer's details

- (a) The Customer must notify the Supplier at least 14 days before it does any of the following:
 - (i) changes its name;
 - (ii) changes its place of registration or incorporation;
 - (iii) changes or applies for an ACN, ABN, ARBN or ARSN under which an interest in any of the Goods is or will be held.
- (b) The Customer must notify the Supplier if anything mentioned in clause 16.5 (a) occurs immediately upon becoming aware of it.

PERSONAL GUARANTEE

1. I/We, _____ [name/names of director/directors], being the directors of _____ [company name] (ACN _____) **(the Customer)** unconditionally guarantee the performance of the Customer in relation to the repayments of its debt to _____ **(the Supplier)** pursuant to the Credit Account Application and Terms of Trade Agreement between them **(the Agreement)**.
2. If the Customer fails to make any payment to the Supplier or fails to perform any of its obligations under the Agreement, I/we will make all payments to the Supplier as if I/we were the principals of the Agreement and the Supplier is not obliged to first make demand to, or take action against, the Customer.
3. As security for the Guarantor's obligations under this deed, each Guarantor grants to the Supplier a security interest in relation to:
 - (a) All present and after-acquired personal property of the Guarantor; and
 - (b) All presently owned and future acquired real property of the Guarantor.
4. I/We will do all things reasonably necessary, sign all necessary documents and provide the Supplier with all such information and all such other reasonable assistance as is necessary to assist the Supplier to register a security interest by way of mortgage, caveat or PPSR registration.
5. This guarantee is a continuing guarantee to the Supplier for all debts whatsoever and whensoever contracted by the Customer with the supplier in respect of goods or credit supplied to it.
6. I/We consent, and authorise the Supplier, to:
 - (a) obtain information about my/our personal or commercial credit worthiness and my/our bank or any trade referee disclosed at the application for credit and any credit provider and credit reporting agency for the purpose of assessing the application for credit, or in connection with any guarantee;
 - (b) use, disclose, or exchange with other credit providers information about my/our personal or commercial credit arrangements in order to assess the application for credit (including whether to accept as guarantor or any person signing), monitor credit worthiness and collect overdue accounts; and
 - (c) disclose the contents of a credit report by a credit reporting agency to the Lender solicitors or mercantile agents.
7. I/We confirm that I/We have had the full opportunity prior to signing this Personal Guarantee to obtain independent legal advice as to the extent and implications of this Personal Guarantee.

SIGNED AS A DEED on the _____ day of _____ 201_____

SIGNED by _____

SIGNED by _____

as

_____ as

Guarantor:

Guarantor:

In the presence of: In the presence of:

Witness Signature Witness Signature

Witness Name: Witness Name:

Witness Address: Witness Address:

Witness Occupation: Witness Occupation: **ALL GUARANTORS SHOULD SEEK THEIR OWN INDEPENDENT LEGAL ADVICE PRIOR TO SIGNING THE PERSONAL GUARANTEE**