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MJB Industries Pty Ltd

## APPLICATION FOR A 30 DAY COMMERCIAL CREDIT ACCOUNT

PART 1: FOR SOLE TRADERS/PARTNERSHIPS (Parts 1,3,4 & 5 to be completed)		
PRINCIPALS NAME(S)	ADDRESS	DATE OF BIRTH
1.		
2.		
3.		
4.		
<b>TRADING AS:</b>		
BUSINESS ADDRESS:		
POSTAL ADDRESS:		
PHONE:	MOB:	FAX:
EMAIL:	ABN:	

PART 2: FOR COMPANIES/TRUSTS (Parts 2,3,4,5 & 7 to be completed)			
COMPANY NAME:		ACN:	
<b>TRADING AS:</b>		<b>ABN:</b>	
BUSINESS ADDRESS:			
POSTAL ADDRESS:			
PHONE:	MOB:	FAX:	
EMAIL:	WEB:		
DIRECTORS NAME(S)	ADDRESS	DATE OF BIRTH	
1.			
2.			
3.			
4.			

PART 3: TRADE REFERENCES	
1.	PH:
YEAR ACCOUNT OPENED:	FAX:
2.	PH:
YEAR ACCOUNT OPENED:	FAX:
3.	PH:
YEAR ACCOUNT OPENED:	FAX:

<b>PART 4: BUSINESS</b>			
NATURE OF BUSINESS:			
DATE BUSINESS COMMENCED:			
PREMISES:	<input type="checkbox"/> OWNED	<input type="checkbox"/> RENTED	<input type="checkbox"/> LEASED
MONTHLY CREDIT REQUIRED:			
PAYMENT METHOD:	<input type="checkbox"/> DIRECT DEBIT	<input type="checkbox"/> CHEQUE	<input type="checkbox"/> OTHER:
BANK:	BRANCH:		

<b>PART 5: CONTACTS</b>	
PURCHASING CONTACT:	
PHONE:	MOBILE:
FAX:	EMAIL:
ACCOUNTS CONTACT:	
PHONE:	MOBILE:
FAX:	EMAIL:

<b>PART 6: TO BE SIGNED BY PRINCIPAL(S)/DIRECTOR(S)</b>		
<p>1. In this application the term "Customer" means:</p> <p>(a) any "Sole Trader or Partnership or Company or Trust" referred to in Part 1 or Part 2 of this Application.</p> <p>2. Should this application be successful and an account be granted, the Customer agrees with MJB Industries as follows:</p> <p>(a) to pay any amount due within the month following the month of invoice;</p> <p>(b) if any amount is not paid by the due date all amounts owing by the Customer to MJB Industries become immediately due &amp; payable;</p> <p>(c) to pay to MJB Industries all expenses of collection by MJB Industries of overdue monies and enforcement of the contract on a solicitor and client basis.</p> <p>3.1 The Customer agrees that MJB Industries' General Terms and Conditions of Sale form part of the contract between the Customer and the contract does not include any terms or conditions varying or in addition to those General Terms and Conditions of Sale unless such terms and conditions have been expressly agreed in writing by MJB Industries.</p> <p>3.2 Where any of the General Terms and Conditions of Sale are inconsistent with the terms and conditions contained in this application, then the terms and conditions of this application shall prevail to the extent of any inconsistency.</p> <p>4.1 To secure its obligation under this contract the Customer hereby charges with payment of any monies owed by it to MJB Industries pursuant to this contract all the right, title, estate and interest which it now has or may in the future acquire in any freehold or leasehold property.</p> <p>4.2 The Customer further agrees that if demand is made on it by MJB Industries the Customer will immediately execute a mortgage in registerable form or other instrument of security, as required by MJB Industries, and if the Customer fails to do so within a reasonable time of being so requested, the Customer irrevocably and by way of security appoints any secretary, director, manager, attorney or credit manager engaged by MJB Industries from time to time to be its true and lawful attorney to execute and register such instruments.</p> <p>5. The signatories to the application certify that they are an Authorised Representative to sign this application on behalf of the Customer.</p> <p>6. The Customer declares that if this application is successful and credit is granted then the credit is to be applied wholly or predominately for business or investment purposes.</p> <p>7. The Customer acknowledges that it has received, read, understood and accepted MJB Industries' General Terms and Conditions of Sale.</p> <p>8. To comply with the Privacy Act 1988 (As Amended) the Customer acknowledges that MJB Industries has informed it, in accordance with s.18E(8)(c) of the Privacy Act 1988, that certain items of personal information about the Customer contained in/or relating to this application and permitted to be kept on a credit information file might be disclosed to a credit reporting agency. Furthermore, the Customer agrees, in accordance with the following sections: s.18H(3), s.18K(1)(b), s.18K(1)(c), s.18K(1)(h), s.18N(1)(b) that use by MJB Industries of the relevant information referred to in those sections may occur for the purpose of assessing this application.</p>		
SIGN	NAME	DATE
1.		
2.		
3.		
4.		

## ***MJB INDUSTRIES GENERAL TERMS AND CONDITIONS OF SALE***

### **1. CONTRACT**

These general terms and conditions of sale form the contract between the Customer and MJB Industries Pty Ltd (hereinafter referred to as "MJB Industries") and the contract does not include any terms or conditions varying or in addition to these general terms and conditions of sale unless such terms and conditions have been expressly agreed in writing by MJB Industries.

### **2. CANCELLATION**

- (1) The Customer can only cancel this contract with MJB Industries on the basis that the Customer meets all costs and expenses incurred by MJB Industries if there are any.
- (2) MJB Industries may suspend delivery, cease manufacture or cancel the contract if the Customer at any time:
  - (a) breaches any terms of the contract; or
  - (b) commits an act of bankruptcy, resolves to or goes into liquidation, enters into voluntary administration or otherwise becomes insolvent and unable to pay its debts.

### **3. PRICE VARIATION**

- (1) Unless otherwise stated in this contract MJB Industries may vary the price stated in the contract to reflect any change in costs, taxes or duties incurred by MJB Industries after the date of this contract.
- (2) Where a list price applies to products supplied by MJB Industries under this contract all prices listed:
  - (a) are subject to alteration without notice;
  - (b) are applicable to all deliveries on or after the effective date of any alteration;
  - (c) do not include tax or other government impost unless specifically stated.

### **4. VARIATIONS TO SCOPE OF CONTRACT**

The price is based upon:

- (a) the scope of work as detailed by the Customer to MJB Industries;
- (b) delivery arrangements in accordance with clause 7 and any variations to the scope of the work or delivery arrangements shall be a variation of the contract entitling MJB Industries to vary the price stated.

### **5. SPECIFICATIONS**

- (1) Where MJB Industries manufactures or supplies products according to the Customer's specifications:
  - (a) MJB Industries does not warrant the suitability or performance of the product; and
  - (b) the Customer shall provide MJB Industries accurate information sufficient to enable MJB Industries to provide the products specified and the Customer warrants to MJB Industries that the information and any products to be manufactured by MJB Industries under the contract do not breach any copyright, registered design, patent or other right of any third party and the Customer shall indemnify MJB Industries in relation to any such breach.
- (2) Unless otherwise stated in this contract the products shall be in conformity with a standard determined by MJB Industries.

### **6. PAYMENT**

- (1) Time for payment of the amount due to MJB Industries shall be of the essence in this contract and the amount due shall include the price, any variations to the price and any additional charges which MJB Industries is entitled to make.
- (2) Subject to sub-clauses (3) and (4) the Customer shall pay the amount due in accordance with the credit arrangements as agreed by MJB Industries.
- (3) Where no credit arrangements have been previously agreed by MJB Industries, but credit has been agreed by MJB Industries as a condition of this particular contract, the Customer shall pay the amount due within the month following the month of invoice.
- (4) Where no credit arrangements have been agreed by MJB Industries, the Customer shall pay the amount due before the first delivery of the products.

### **7. DELIVERY**

- (1) Delivery shall be on reasonable notice from the Customer to MJB Industries and the Customer shall not be relieved from any obligation to accept or pay for products by reason of any delay in delivery.
- (2) MJB Industries shall not be liable for delay in delivery arising from any cause whatsoever.
- (3) Where the customer refuses or denies delivery, the Customer's obligation to pay for products, as set out in clause 6, remains unchanged. The customer shall also pay any additional storage, freight, holding or handling charges incurred by MJB Industries.
- (4) MJB Industries reserves the right to deliver by instalments and failure to deliver any instalment shall not entitle the customer to terminate the contract.
- (5) Deliveries are subject to suitable access, firm standing, storage, unloading and maneuvering space, as determined by MJB Industries. MJB Industries shall not be liable for, and the Customer shall indemnify MJB Industries against any claims for damage caused to access ways, storage areas, plant, equipment or works during delivery.
- (6) Additional costs incurred by MJB Industries in delivering or unloading the products:
  - (a) due to delays at the site or an unsuitable site; or
  - (b) where less than full truckloads are required, shall be at the Customer's expense.
- (7) The customer warrants that its receivable facilities and equipment are suitable for deliveries and meet all relevant standards, laws and regulations. The Customer hereby indemnifies MJB Industries against any breach of such standards, laws or regulations during delivery, and against any damage or loss caused by leakage, spillage, breakage or contamination during or caused by delivery.

### **8. TITLE**

- (1) Title in the products shall not pass to the Customer until payment in full for the products has been received by MJB Industries.
- (2) If payment is overdue in whole or part, MJB Industries may (without prejudice to any of its other rights) recover or recall the products and may enter upon any premises where they are stored or where they are reasonably thought to be stored.
- (3) The Customer's right to possession of the products shall cease if MJB Industries at its discretion recalls or recovers the products or if the Customer, not being a company, commits an act of bankruptcy or if it, being a company:
  - (a) does anything which would entitle a receiver to take possession of any assets;
  - (b) does anything which would entitle any person to present a petition for winding up; or

(c) enters into voluntary administration.

MJB Industries may for the purpose of recovery of its products enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the products.

#### **9. DEFECTS**

(1) The Customer shall ensure it has an authorised representative at the delivery site who shall check prior to unloading that the information shown on the delivery docket corresponds with the Customer's order.

(2) Notice of any defects shall be given to MJB Industries in writing within 24 hours from the time of delivery or collection and prior to installation.

(3) If notice in accordance with sub-clauses (1) and (2) is not given, the products shall be deemed to be in good order and condition and in accordance with the contract and the Customer shall accept the products accordingly.

(4) MJB Industries shall have the right to inspect on site any products notified by the Customer as being defective and until such inspection is completed the product shall not be installed.

#### **10. TESTING AND REPORTING**

(1) Where the Customer requires the products to be subjected to special testing the Customer shall pay all costs of and associated with such testing or inspection.

(2) Any inspector or other person attending MJB Industries premises on behalf of the Customer shall be authorised in writing by the Customer.

(3) The Customer shall provide MJB Industries with copies of all authorisations, test results, measurements and reports prepared by the Customer in relation to MJB Industries products.

#### **11. LIMITATION OF LIABILITY**

(1) If a product is defective and the Customer advises MJB Industries of that defect in accordance with clause 9 MJB Industries shall repair or resupply the product, but MJB Industries shall not be liable for the removal of any defective products or for the re-installation of any products or for any consequential losses or loss of profits.

(2) MJB Industries shall not be liable for any defect, loss, damage or injury howsoever arising by reason of:

(a) a failure to use the products in a manner other than what is normally expected to be done with or in relation to the products;

(b) any delay in delivery

(c) a failure to comply with any instructions or warnings with respect to doing anything with or in relation to the products.

(3) Any design or description of use, capacity, durability, colour, manner of installation, information, details contained in drawings, data sheets, technical brochures or other documents provided by MJB Industries are given as a general purpose guide only and the Customer hereby acknowledges that it has satisfied itself as to the suitability of the products for the Customer's particular purpose, use or application and MJB Industries shall not be liable in these respects.

(4) Other than expressly provided in this contract MJB Industries provides no other warranty to the Customer in relation to the products and this contract comprises of the whole agreement between the parties.

(5) Section 68A of the Trade Practices Act, 1974 ("the Act") enables MJB Industries to limit its liability for breach of certain conditions and warranties implied by the Act. To the fullest extent permitted by that section and other similar legislation the liability of MJB Industries for a breach of a condition or warranty is limited to one of the following (selected at the option of MJB Industries):

(a) the replacement of the products; or

(b) the repair of the products,

Unless the Customer is able to establish the matters set forth in sub-section 68A(2) of the Act.

#### **12. RISK**

Risk in the products shall pass to the Customer upon delivery or collection.

#### **13. AMENDMENTS AND WAIVER**

MJB Industries shall not be taken to have agreed to any amendment or waiver of any provision of these terms and conditions or of the contract unless the amendment or waiver shall be in writing signed by MJB Industries. No terms or conditions referred by the Customer after the date of this contract shall form part of this contract unless expressly agreed in writing by MJB Industries.

#### **14. NOTICES**

All notices given under or in connection with this contract shall be in writing and given or delivered to the recipient at its address specified in this contract or at its registered office or principal place of business.

#### **15. CONFIDENTIAL INFORMATION**

If at any time MJB Industries discloses to the Customer or the Customer becomes aware of confidential information of MJB Industries including confidential information relating to products, material, procedures, tests or equipment, the Customer shall not use the information for any purpose not approved by MJB Industries and shall not disclose that confidential information to any other person unless expressly agreed in writing by MJB Industries.

#### **16. RETURNABLE PACKAGING**

Unless otherwise stated, all pallets, timbers, formers or similar packaging delivered with the products remain the property of MJB Industries and shall be returned in good order and condition to MJB Industries within 30 days of the date of delivery. Any such packaging not returned by the due date shall be paid for by the Customer at a price determined by MJB Industries.

#### **17. NON-CONFORMING PRODUCT**

Where a product is supplied by MJB Industries on the basis of a description or marking such as "non-conforming", "second", "reject", "regrade" or similar, no warranty or undertaking (express or implied) whatsoever is given by MJB Industries. Notwithstanding the preceding terms and conditions, MJB Industries shall not be liable in any way for the performance or use of, or any defect in, such a product.