



## IMPORTANT INFORMATION TO ALL APPLICANTS

Please ensure you read the information contained in this pack thoroughly.

Please tick the boxes in confirmation of completion. Failure to complete as required will result in your application form being rejected / not processes.

- ALL forms must be completed in **FULL**
- Witnesses cannot staff members of Gubbins Pulbrook Group or any associated businesses
- Trade references **MUST** be supplied
- Ensure **SIGNED** and **DATED** where applicable
- Mandatory to complete Personal/Directors Guarantee and Indemnity Form
- Mandatory to complete Credit Card Application. Please refer to Clause 2.5 of the Terms and Conditions of trade



## CREDIT ACCOUNT APPLICATION

**To Be Completed By Applicants** - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached

<b>Customer's Details:</b> <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:		
Full or Legal Name:		
Trading Name (if different from above):		
Physical Address:	State:	Postcode:
Billing Address:	State:	Postcode:
Email Address:		
Phone No:	Fax No:	Mobile No:
<b>Personal Details:</b> <i>(please complete if you are an Individual)</i>		
D.O.B.:	Driver's Licence No:	
<b>Business Details:</b> <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>		
ABN:	ACN:	Date Established <i>(current owners)</i> :
Nature of Business:		
Paid Up Capital: \$	Estimated Monthly Purchases: \$	Credit Limit Required: \$
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom)</i> :		
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>		
(1) Full Name:	D.O.B.:	
Private Address:	State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:
(2) Full Name:	D.O.B.:	
Private Address:	State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:
<b>Account Terms:</b> <input type="checkbox"/> 25 Days <input type="checkbox"/> COD <input type="checkbox"/> Other:		
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO	Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Accounts Email Address:		
Accounts Contact:	Phone No:	
Bank and Branch:	Account No:	
<b>Trade References:</b> <i>(please provide companies that are willing to do trade references)</i>		
Name:	Address:	Phone / Fax / Email:
1.		
2.		
3.		

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Gubbins Pulbrook Group Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.**

**SIGNED (CUSTOMER):** \_\_\_\_\_ **SIGNED (Gubbins Pulbrook Group P/L):** \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

**WITNESS TO CUSTOMER'S SIGNATURE:**

**Signed:** \_\_\_\_\_ **Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## Gubbins Pulbrook Group Pty Ltd– Terms & Conditions of Trade

Gubbins Pulbrook Trade Pty Ltd / Pulbrook Trade Pty Ltd / Gubbins HTH Pty Ltd / Gubbins Pulbrook Mittagong Pty Ltd / Pulbrook Trade Frame & Truss Pty Ltd

### 1. Definitions

- 1.1 "Gubbins Pulbrook Group Pty Ltd ACN 625 287 005 means its successors and assigns or any person acting on behalf of and with the authority of Gubbins Pulbrook Group Pty Ltd or any related party of Gubbins Pulbrook Group Pty Ltd.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally (where the context so permits, the term 'Customer' shall also mean the Customer's duly authorised representative).
- 1.3 "Credit Card Authorisation Form" means the form provided by Gubbins Pulbrook Group Pty Ltd to the Customer prior to the provision of Goods on Credit.
- 1.4 "Goods" means all Goods, parts of Goods or Services supplied by Gubbins Pulbrook Group Pty Ltd to the Customer at the Customer's request from time to time which form the transaction and the basis for this contract (where the context so permits the terms 'Goods' or 'Services' shall be used interchangeably).
- 1.5 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Gubbins Pulbrook Group Pty Ltd and the Customer in accordance with clause 5 below.
- 1.6 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth)

### 2. Acceptance

- 2.1 The Customer is taken to have accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 Gubbins Pulbrook Group Pty Ltd may at any time vary the terms and conditions of this agreement. Current terms and conditions are published on the Gubbins Pulbrook Group website and it is the Customer's responsibility to regularly check the website for updates. The Customer shall be bound to the current terms and conditions through the purchase of Goods notwithstanding any pre-existing terms and conditions.
- 2.3 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed the Credit Card Application Form and it has been approved with a credit limit established for the account.
- 2.4 In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, Gubbins Pulbrook Group Pty Ltd reserves the right to refuse delivery.
- 2.5 The Customer agrees to accurately complete and sign the Credit Card Authorisation Form, the contents of which shall form part of this agreement, thereby, consenting to Gubbins Pulbrook Group Pty Ltd, that in the event that the Customer becomes in default of payment for any reason, then Gubbins Pulbrook Group Pty Ltd reserves the right to automatically debit the Customer's credit card.
- 2.6 Gubbins Pulbrook Group Pty Ltd reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases Gubbins Pulbrook Group Pty Ltd will notify the Customer in advance of any such substitution.
- 2.7 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Gubbins Pulbrook Group Pty Ltd reserves the right to vary the Price with alternative Goods as per clause 5.2(c).
- 2.8 Notwithstanding clause 2.6 Gubbins Pulbrook Group Pty Ltd also reserves the right, at its discretion, and where necessary, to introduce additional new Goods as part of the Goods to be supplied.
- 2.9 The Customer acknowledges and accepts that all descriptions, characteristics and particulars provided by Gubbins Pulbrook Group Pty Ltd in respect of any Goods are approximate only.

2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Change in Control

3.1 The Customer shall give Gubbins Pulbrook Group Pty Ltd not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, business practice, legal status etc.). The Customer shall be liable for any loss incurred by Gubbins Pulbrook Group Pty Ltd as a result of the Customer's failure to comply with this clause.

### 4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2, the Customer agrees that should the Customer introduce any third party to Gubbins Pulbrook Group Pty Ltd as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods, and/or to request any variation thereto, on the Customer's behalf (such authority to continue until all requested Goods have been delivered, or the Customer otherwise notifies Gubbins Pulbrook Group Pty Ltd in writing that said person is no longer the Customer's duly authorised representative).
- 4.2 In the event that the Customer's duly authorised representative, as per clause 4.1, is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise Gubbins Pulbrook Group Pty Ltd in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Customer specifically acknowledges and accepts that they will be solely liable to Gubbins Pulbrook Group Pty Ltd for all additional costs incurred by Gubbins Pulbrook Group Pty Ltd (including Gubbins Pulbrook Group Pty Ltd's profit margin) in providing any Goods, or variation/s thereto, requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

### 5. Price and Payment

- 5.1 At Gubbins Pulbrook Group Pty Ltd's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Gubbins Pulbrook Group Pty Ltd to the Customer; or
- (b) the Price as at the date of delivery of the Goods according to Gubbins Pulbrook Group Pty Ltd's current price list; or
- (c) Gubbins Pulbrook Group Pty Ltd's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Gubbins Pulbrook Group Pty Ltd reserves the right to change the Price:
- (a) if a variation to Gubbins Pulbrook Group Pty Ltd's quotation is requested; or
- (b) if unforeseen circumstances or unidentifiable difficulties which are beyond Gubbins Pulbrook Group Pty Ltd's control occur (including, but not limited to, any specific special requirements requested by the Customer; variations in the scope of the work/design required); or
- (c) if the Goods cease to be available from Gubbins Pulbrook Group Pty Ltd's third party suppliers, then Gubbins Pulbrook Group Pty Ltd reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
- (d) in the event of increases to Gubbins Pulbrook Group Pty Ltd in the cost of Goods and/or Services (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges)

which are beyond Gubbins Pulbrook Group Pty Ltd's control.

- 5.3 Variations to Goods will be charged for on the basis of Gubbins Pulbrook Group Pty Ltd's quotation, and will be detailed in writing, and shown as variations on Gubbins Pulbrook Group Pty Ltd's invoice. The Customer shall be required to respond to any variation submitted by Gubbins Pulbrook Group Pty Ltd within ten (10) working days. Failure to do so will entitle Gubbins Pulbrook Group Pty Ltd to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At Gubbins Pulbrook Group Pty Ltd's sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Gubbins Pulbrook Group Pty Ltd, which may be:
- (a) upon delivery of the Goods; or
- (b) by way of instalments/progress payments in accordance with Gubbins Pulbrook Group Pty Ltd's payment schedule;
- (c) ; or
- (d) The date specified on any invoice or other form as being the date for payment; or
- (e) As otherwise agreed between Gubbins Pulbrook Group Pty Ltd and the Customer.
- 5.6 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Gubbins Pulbrook Group Pty Ltd.
- 5.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Gubbins Pulbrook Group Pty Ltd nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Gubbins Pulbrook Group Pty Ltd an amount equal to any GST Gubbins Pulbrook Group Pty Ltd must pay for any supply by Gubbins Pulbrook Group Pty Ltd under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 6. Delivery of Goods

- 6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Gubbins Pulbrook Group Pty Ltd's address; or
- (b) Gubbins Pulbrook Group Pty Ltd (or Gubbins Pulbrook Group Pty Ltd's nominated carrier) delivers the Goods to the Customer's nominated address (even if the Customer is not present at the address).
- 6.2 At Gubbins Pulbrook Group Pty Ltd's sole discretion, the cost of delivery is either included or is in addition to the Price.
- 6.3 Gubbins Pulbrook Group Pty Ltd may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Any time specified by Gubbins Pulbrook Group Pty Ltd for delivery of the Services is an estimate only and Gubbins Pulbrook Group Pty Ltd will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that Gubbins Pulbrook Group Pty Ltd is unable to supply the Services as agreed solely due to any action or inaction of the Customer or any third party, then Gubbins Pulbrook Group Pty Ltd shall be entitled to charge a reasonable fee for re-supplying

- the Services at a later time and date, and/or for storage of the Goods.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Gubbins Pulbrook Group Pty Ltd is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Gubbins Pulbrook Group Pty Ltd is sufficient evidence of Gubbins Pulbrook Group Pty Ltd's rights to receive the insurance proceeds without the need for any person dealing with Gubbins Pulbrook Group Pty Ltd to make further enquiries.
- 7.3 If the Customer requests Gubbins Pulbrook Group Pty Ltd to leave Goods outside Gubbins Pulbrook Group Pty Ltd's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 7.4 Gubbins Pulbrook Group Pty Ltd shall be entitled to rely on the accuracy of any designs, plans, measurements, specifications, quantities, and/or other information provided (in relation to the Goods and/or Services) by the Customer. The Customer acknowledges and agrees that in the event that any of that information provided by the Customer is inaccurate, Gubbins Pulbrook Group Pty Ltd accepts no responsibility for any loss, damages, or costs howsoever resulting from these inaccurate plans, measurements, specifications, quantities or other information.
- 7.5 The Customer acknowledges that variations of colour and texture may be inherent in the Goods. Gubbins Pulbrook Group Pty Ltd shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between surfaces, the different areas treated and/or batches supplied.
- 7.6 Gubbins Pulbrook Group Pty Ltd accepts no liability:
- as to the fitness for purpose of any Goods supplied under this agreement; this is solely the responsibility of the Customer;
  - for any defect in the Goods if the Customer does not follow Gubbins Pulbrook Group Pty Ltd's recommendations;
  - where the Goods are not handled, installed, erected, stored, etc. properly.
- 8. Compliance with Laws**
- 8.1 The Customer and Gubbins Pulbrook Group Pty Ltd shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods and/or Services subject to this agreement.
- 8.2 The Customer shall obtain (at the expense of the Customer) all licenses, permits, approvals that may be required in relation to the Goods and/or Services supplied under this agreement.
- 9. Title**
- 9.1 Gubbins Pulbrook Group Pty Ltd and the Customer agree that ownership of the Goods shall not pass until:
- The Customer has paid Gubbins Pulbrook Group Pty Ltd all amounts owing to Gubbins Pulbrook Group Pty Ltd; and
  - The Customer has met all of its other obligations to Gubbins Pulbrook Group Pty Ltd.
- 9.2 Receipt by Gubbins Pulbrook Group Pty Ltd of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:
- The Customer is only a bailee of the Goods and must return the Goods to Gubbins Pulbrook Group Pty Ltd on request.
  - The Customer holds the benefit of the Customer's insurance of the Goods on trust for Gubbins Pulbrook Group Pty Ltd and must pay to Gubbins Pulbrook Group Pty Ltd the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - The Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Gubbins Pulbrook Group Pty Ltd and must pay or deliver the proceeds to Gubbins Pulbrook Group Pty Ltd on demand.
- (d) The Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Gubbins Pulbrook Group Pty Ltd and must sell, dispose of or return the resulting product to Gubbins Pulbrook Group Pty Ltd as it so directs.
- (e) The Customer irrevocably authorises Gubbins Pulbrook Group Pty Ltd to enter any premises where Gubbins Pulbrook Group Pty Ltd believes the Goods are kept and recover possession of the Goods.
- (f) Gubbins Pulbrook Group Pty Ltd may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) The Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Gubbins Pulbrook Group Pty Ltd.
- (h) Gubbins Pulbrook Group Pty Ltd may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 10. Personal Property Securities Act 2009 ("PPSA")**
- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Gubbins Pulbrook Group Pty Ltd for Services – that have previously been supplied and that will be supplied in the future by Gubbins Pulbrook Group Pty Ltd to the Customer.
- 10.3 The Customer undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Gubbins Pulbrook Group Pty Ltd may reasonably require to;
    - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - register any other document required to be registered by the PPSA; or
    - correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
  - indemnify, and upon demand reimburse, Gubbins Pulbrook Group Pty Ltd for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - not register a financing change statement in respect of a security interest without the prior written consent of Gubbins Pulbrook Group Pty Ltd;
  - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Gubbins Pulbrook Group Pty Ltd;
  - Immediately advise Gubbins Pulbrook Group Pty Ltd of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 Gubbins Pulbrook Group Pty Ltd and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Gubbins Pulbrook Group Pty Ltd, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by Gubbins Pulbrook Group Pty Ltd under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 11. Security and Charge**
- 11.1 In consideration of Gubbins Pulbrook Group Pty Ltd agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies Gubbins Pulbrook Group Pty Ltd from and against all Gubbins Pulbrook Group Pty Ltd's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Gubbins Pulbrook Group Pty Ltd's rights under this clause.
- 11.3 The Customer irrevocably, for consideration, appoints Gubbins Pulbrook Group Pty Ltd and each director of Gubbins Pulbrook Group Pty Ltd as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.
- 12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 12.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify Gubbins Pulbrook Group Pty Ltd in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow Gubbins Pulbrook Group Pty Ltd to inspect the Goods.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.3 Gubbins Pulbrook Group Pty Ltd acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Gubbins Pulbrook Group Pty Ltd makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Gubbins Pulbrook Group Pty Ltd's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, Gubbins Pulbrook Group Pty Ltd's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Gubbins Pulbrook Group Pty Ltd is required to replace the Goods under this clause or the CCA, but is unable to do so, Gubbins Pulbrook Group Pty Ltd may refund any money the Customer has paid for the Goods.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, Gubbins Pulbrook Group Pty Ltd's liability for any defect or damage in the Goods is:
- limited to the value of any express warranty or warranty card provided to the Customer by Gubbins Pulbrook Group Pty Ltd at Gubbins Pulbrook Group Pty Ltd's sole discretion;
  - limited to any warranty to which Gubbins Pulbrook Group Pty Ltd is entitled, if Gubbins Pulbrook Group Pty Ltd did not manufacture the Goods;
  - Otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 12.1; and
- (b) Gubbins Pulbrook Group Pty Ltd has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (d) The Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Gubbins Pulbrook Group Pty Ltd shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by Gubbins Pulbrook Group Pty Ltd;
- (e) Fair wear and tear, any accident, or act of God.
- 12.10 Notwithstanding anything contained in this clause if Gubbins Pulbrook Group Pty Ltd is required by a law to accept a return then Gubbins Pulbrook Group Pty Ltd will only accept a return on the conditions imposed by that law.
- 13. Intellectual Property**
- 13.1 Where Gubbins Pulbrook Group Pty Ltd has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Gubbins Pulbrook Group Pty Ltd. Under no circumstances may such designs, drawings and documents be used without the express written approval of Gubbins Pulbrook Group Pty Ltd.
- 13.2 The Customer warrants that all designs, specifications or instructions given to Gubbins Pulbrook Group Pty Ltd will not cause Gubbins Pulbrook Group Pty Ltd to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Gubbins Pulbrook Group Pty Ltd against any action taken by a third party against Gubbins Pulbrook Group Pty Ltd in respect of any such infringement.
- 13.3 The Customer agrees that Gubbins Pulbrook Group Pty Ltd may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Gubbins Pulbrook Group Pty Ltd has created for the Customer.
- 14. Default and Consequences of Default**
- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Gubbins Pulbrook Group Pty Ltd's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes Gubbins Pulbrook Group Pty Ltd any money the Customer shall indemnify Gubbins Pulbrook Group Pty Ltd from and against all costs and disbursements incurred by Gubbins Pulbrook Group Pty Ltd in recovering the debt (including but not limited to, internal administration fee of one hundred and ten dollars (\$110.00 incl GST) per calendar month on all overdue accounts), legal costs on a solicitor and own client basis, Gubbins Pulbrook Group Pty Ltd's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies Gubbins Pulbrook Group Pty Ltd may have under this contract, if a Customer has made payment to Gubbins Pulbrook Group Pty Ltd, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Gubbins Pulbrook Group Pty Ltd under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 14.4 Without prejudice to Gubbins Pulbrook Group Pty Ltd's other remedies at law Gubbins Pulbrook Group Pty Ltd shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Gubbins Pulbrook Group Pty Ltd shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Gubbins Pulbrook Group Pty Ltd becomes overdue, or in Gubbins Pulbrook Group Pty Ltd's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by Gubbins Pulbrook Group Pty Ltd;
- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 15. Cancellation**
- 15.1 Without prejudice to any other remedies Gubbins Pulbrook Group Pty Ltd may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Gubbins Pulbrook Group Pty Ltd may suspend or terminate the supply of Goods to the Customer. Gubbins Pulbrook Group Pty Ltd will not be liable to the Customer for any loss or damage the Customer suffers because Gubbins Pulbrook Group Pty Ltd has exercised its rights under this clause.
- 15.2 Gubbins Pulbrook Group Pty Ltd may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Gubbins Pulbrook Group Pty Ltd shall repay to the Customer any money paid by the Customer for the Goods. Gubbins Pulbrook Group Pty Ltd shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Gubbins Pulbrook Group Pty Ltd as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 16. Privacy Act 1988**
- 16.1 The Customer agrees for Gubbins Pulbrook Group Pty Ltd to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Gubbins Pulbrook Group Pty Ltd.
- 16.2 The Customer agrees that Gubbins Pulbrook Group Pty Ltd may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) To assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 16.3 The Customer consents to Gubbins Pulbrook Group Pty Ltd being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Customer agrees that personal credit information provided may be used and retained by Gubbins Pulbrook Group Pty Ltd for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
- (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) Enabling the collection of amounts outstanding in relation to the Goods.
- 16.5 Gubbins Pulbrook Group Pty Ltd may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) Allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 16.6 The information given to the CRB may include:
- (a) personal information as outlined in 16.1 above;
- (b) name of the credit provider and that Gubbins Pulbrook Group Pty Ltd is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Gubbins Pulbrook Group Pty Ltd has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of Gubbins Pulbrook Group Pty Ltd, the Customer has committed a serious credit infringement;
- (h) Advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.7 The Customer shall have the right to request (by e-mail) from Gubbins Pulbrook Group Pty Ltd:
- (a) a copy of the information about the Customer retained by Gubbins Pulbrook Group Pty Ltd and the right to request that Gubbins Pulbrook Group Pty Ltd correct any incorrect information; and
- (b) That Gubbins Pulbrook Group Pty Ltd does not disclose any personal information about the Customer for the purpose of direct marketing.
- 16.8 Gubbins Pulbrook Group Pty Ltd will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 16.9 The Customer can make a privacy complaint by contacting Gubbins Pulbrook Group Pty Ltd via e-mail. Gubbins Pulbrook Group Pty Ltd will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 17. Building and Construction Industry Security of Payments Act 1999**
- 17.1 At Gubbins Pulbrook Group Pty Ltd's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 17.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
- 18. General**
- 18.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which Gubbins Pulbrook Group Pty Ltd has its principal place of

business, and are subject to the jurisdiction of the courts in that state.

- 18.3 Subject to clause 12, Gubbins Pulbrook Group Pty Ltd shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Gubbins Pulbrook Group Pty Ltd of these terms and conditions (alternatively Gubbins Pulbrook Group Pty Ltd's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 18.4 Gubbins Pulbrook Group Pty Ltd may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 18.5 The Customer cannot licence or assign without the written approval of Gubbins Pulbrook Group Pty Ltd.
- 18.6 Gubbins Pulbrook Group Pty Ltd may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Gubbins Pulbrook Group Pty Ltd's sub-contractors without the authority of Gubbins Pulbrook Group Pty Ltd.
- 18.7 The Customer agrees that Gubbins Pulbrook Group Pty Ltd may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Gubbins Pulbrook Group Pty Ltd to provide Goods to the Customer.
- 18.8 Gubbins Pulbrook Group Pty Ltd shall not be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 18.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.



## CREDIT CARD AUTHORISATION FORM

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf

DATE:		REF. No.	
Customer's Details: <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:			
Full or Legal Name:			
Trading Name:			
Physical Address:		State:	Postcode:
Billing Address:		State:	Postcode:
Email Address:			
Phone No:	Fax No:	Mobile No:	
Credit Card Authorisation:			
<input type="checkbox"/> Visa		<input type="checkbox"/> MasterCard	
<input type="checkbox"/> Amex		<input type="checkbox"/> Diners	
Card Number:			Expiry Date:
CVC – 3 Digit Number on Back		CREDIT CARD DETAILS WILL BE DESTROYED AFTER PROCESSING.	
<p>I authorise Gubbins Pulbrook Group Pty Ltd to arrange payment of my account as per details above, by debiting my credit card account as specified above.</p> <p>I acknowledge that Gubbins Pulbrook Group Pty Ltd may terminate this request at any time by written or verbal notice and I must adopt an alternative method of payment.</p> <p>A surcharge per transaction may apply.</p> <p>I have read and understand the GENERAL TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Gubbins Pulbrook Group Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Card Authorisation Form and agree to be bound by these conditions. Furthermore, subject to clause 2.5 of the Terms of Trade in signing and accepting payment shall be by way of this Credit Card Authorisation Form, I consent to Gubbins Pulbrook Group Pty Ltd, that in the event that my credit account becomes in default of payment for any reason, will be entitled to automatically debit this credit card for all monies owed (including but not limited to, default interest and/or administration fees, as per clause 14).</p>			
Cardholders Name:			
Cardholder's Signature:			Date:



Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Gubbins Pulbrook Group Pty Ltd and its successors and assigns ("Gubbins Pulbrook Group Pty Ltd") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

("the Customer") [Insert Company Name In Box Provided]

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

- 1. GUARANTEE the due and punctual payment to Gubbins Pulbrook Group Pty Ltd of all monies which are now owing to Gubbins Pulbrook Group Pty Ltd by the Customer and all further sums of money from time to time owing to Gubbins Pulbrook Group Pty Ltd by the Customer in respect of goods and/or services supplied or to be supplied by Gubbins Pulbrook Group Pty Ltd to the Customer or any other liability of the Customer to Gubbins Pulbrook Group Pty Ltd, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with Gubbins Pulbrook Group Pty Ltd, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to Gubbins Pulbrook Group Pty Ltd the Guarantor will immediately on demand pay the relevant amount to Gubbins Pulbrook Group Pty Ltd. In consideration of Gubbins Pulbrook Group Pty Ltd agreeing to supply the goods and/or services to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to Gubbins Pulbrook Group Pty Ltd registering any interest so charged. The Guarantor irrevocably appoints Gubbins Pulbrook Group Pty Ltd and each director of Gubbins Pulbrook Group Pty Ltd as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which Gubbins Pulbrook Group Pty Ltd may reasonably require to:
(a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
(b) register any other document required to be registered by the PPSA or any other law; or
(c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. HOLD HARMLESS AND INDEMNIFY Gubbins Pulbrook Group Pty Ltd on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, Gubbins Pulbrook Group Pty Ltd in connection with:
(a) the supply of goods and/or services to the Customer; or
(b) the recovery of monies owing to Gubbins Pulbrook Group Pty Ltd by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to Gubbins Pulbrook Group Pty Ltd's nominees contract default fee and legal costs; or
(c) monies paid by Gubbins Pulbrook Group Pty Ltd with the Customer's consent in settlement of a dispute that arises or results from a dispute between, Gubbins Pulbrook Group Pty Ltd, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by Gubbins Pulbrook Group Pty Ltd to the Customer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- 3. I/We have received, read and understood Gubbins Pulbrook Group Pty Ltd's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to Gubbins Pulbrook Group Pty Ltd by the Customer and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on Gubbins Pulbrook Group Pty Ltd's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to Gubbins Pulbrook Group Pty Ltd, each Guarantor shall be a principal debtor and liable to Gubbins Pulbrook Group Pty Ltd accordingly.
6. If any payment received or recovered by Gubbins Pulbrook Group Pty Ltd is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and Gubbins Pulbrook Group Pty Ltd shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to Gubbins Pulbrook Group Pty Ltd.
9. I/we irrevocably authorise Gubbins Pulbrook Group Pty Ltd to obtain from any person or company any information which Gubbins Pulbrook Group Pty Ltd may require for credit reference purposes. I/We further irrevocably authorise Gubbins Pulbrook Group Pty Ltd to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with Gubbins Pulbrook Group Pty Ltd as a result of this Guarantee and Indemnity being actioned by Gubbins Pulbrook Group Pty Ltd.
10. The above information is to be used by Gubbins Pulbrook Group Pty Ltd for all purposes in connection with Gubbins Pulbrook Group Pty Ltd considering this Guarantee and Indemnity and the subsequent enforcement of the same.

GUARANTOR-1
SIGNED: \_\_\_\_\_
FULL NAME: \_\_\_\_\_
HOME ADDRESS: \_\_\_\_\_
DATE OF BIRTH: \_\_\_\_\_
SIGNATURE OF WITNESS: \_\_\_\_\_
NAME OF WITNESS: \_\_\_\_\_
OCCUPATION: \_\_\_\_\_
PRESENT ADDRESS: \_\_\_\_\_
EXECUTED as a Deed this day of 20\_\_

GUARANTOR-2
SIGNED: \_\_\_\_\_
FULL NAME: \_\_\_\_\_
HOME ADDRESS: \_\_\_\_\_
DATE OF BIRTH: \_\_\_\_\_
SIGNATURE OF WITNESS: \_\_\_\_\_
NAME OF WITNESS: \_\_\_\_\_
OCCUPATION: \_\_\_\_\_
PRESENT ADDRESS: \_\_\_\_\_
EXECUTED as a Deed this day of 20\_\_

Note: 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT