



## CREDIT ACCOUNT APPLICATION

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

<b>Client'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"/> 30 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 Eureka Sustainability Group Pty Ltd T/A Eureka Insulation 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 Client I shall be personally liable for the performance of the Client's obligations under this contract.***

**SIGNED (CLIENT):** \_\_\_\_\_ **SIGNED (EUREKA):** \_\_\_\_\_

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

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

**WITNESS TO CLIENT'S SIGNATURE:**

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

### OFFICE USE ONLY

Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

# Personal/Directors Guarantee and Indemnity

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

("the Client") *[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 Eureka of all monies which are now owing to Eureka by the Client and all further sums of money from time to time owing to Eureka by the Client in respect of goods and services supplied or to be supplied by Eureka to the Client or any other liability of the Client to Eureka, and the due observance and performance by the Client of all its obligations contained or implied in any contract with Eureka, including but not limited to the Terms & Conditions of Trade signed by the Client and annexed to this Guarantee and Indemnity. If for any reason the Client does not pay any amount owing to Eureka the Guarantor will immediately on demand pay the relevant amount to Eureka. In consideration of Eureka agreeing to supply the goods to the Client, 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 Eureka registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints Eureka and each director of Eureka 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 Eureka 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** Eureka 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, Eureka in connection with:
  - (a) the supply of goods and/or services to the Client; or
  - (b) the recovery of monies owing to Eureka by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to Eureka's nominees contract default fee and legal costs; or
  - (c) monies paid by Eureka with the Client's consent in settlement of a dispute that arises or results from a dispute between, Eureka, the Client, and a third party or any combination thereof, over the supply of goods and/or services by Eureka to the Client.

## **I/WE FURTHER ACKNOWLEDGE AND AGREE THAT**

- 3. I/We have received, read and understood Eureka'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 Eureka by the Client 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 Eureka's part (whether in respect of the Client 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 Client's obligations to Eureka, each Guarantor shall be a principal debtor and liable to Eureka accordingly.
- 6.** If any payment received or recovered by Eureka is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and Eureka 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 and shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) 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 Client to Eureka.**
- 9.** I/we irrevocably authorise Eureka to obtain from any person or company any information which Eureka may require for credit reference purposes. I/We further irrevocably authorise Eureka 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 Eureka as a result of this Guarantee and Indemnity being actioned by Eureka.
- 10.** The above information is to be used by Eureka for all purposes in connection with Eureka considering this Guarantee and Indemnity and the subsequent enforcement of the same.

<b>GUARANTOR-1</b> SIGNED: _____  FULL NAME: _____  HOME ADDRESS: _____  DATE OF BIRTH: _____  SIGNATURE OF WITNESS: _____
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<b>GUARANTOR-2</b> SIGNED: _____  FULL NAME: _____  HOME ADDRESS: _____  DATE OF BIRTH: _____  SIGNATURE OF WITNESS: _____
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Note: 1. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).

2. If the Client 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**

## Eureka Insulation – Terms & Conditions of Trade

### 1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Eureka" means Eureka Sustainability Group Pty Ltd T/A Eureka Insulation, its successors and assigns or any person acting on behalf of and with the authority of Eureka Sustainability Group Pty Ltd T/A Eureka Insulation.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Eureka to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by Eureka to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Eureka and the Client in accordance with clause 5 below.
- 1.8 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Eureka and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, Eureka reserves the right to refuse Delivery.
- 2.6 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.
- 2.7 Any advice, recommendation, information, assistance or service provided by Eureka in relation to Goods and/or Services supplied is given in good faith, is based on Eureka's own knowledge and experience and shall be accepted without liability on the part of Eureka and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods and/or Services.

### 3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Eureka shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Eureka in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Eureka in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Eureka; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

### 4. Change in Control

- 4.1 The Client shall give Eureka not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Eureka as a result of the Client's failure to comply with this clause.

### 5. Price and Payment

- 5.1 At Eureka's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Eureka to the Client; or
  - (b) the Price as at the date of Delivery of the Goods according to Eureka's current price list; or
  - (c) Eureka'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 Eureka reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to site accessibility, safety considerations and/or health hazards (such as the discovery of asbestos), specialist tools required for completion of the Services, changes to site and/or Client's requirements, incorrect or inaccurate information supplied by the Client, prerequisite work by any third party not being completed or hidden services etc.) which are only discovered on commencement of the Services; or
  - (d) in the event of increases to Eureka in the cost of labour or materials which are beyond Eureka's control.

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- 5.3 Variations will be charged for on the basis of Eureka's quotation, and will be detailed in writing, and shown as variations on Eureka's invoice. The Client shall be required to respond to any variation submitted by Eureka within ten (10) working days. Failure to do so will entitle Eureka 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 Eureka's sole discretion, a deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Eureka, which may be:
- (a) thirty (30) days following the end of the month in which a statement is delivered to the Client's address or address for notices;
  - (b) the date specified on any invoice or other form as being the date for payment; or
  - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Eureka.
- 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 Client and Eureka.
- 5.7 Eureka may in its discretion allocate any payment received from the Client towards any invoice that Eureka determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Eureka may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Eureka, payment will be deemed to be allocated in such manner as preserves the maximum value of Eureka's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Eureka nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Eureka an amount equal to any GST Eureka must pay for any supply by Eureka under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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**
- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at Eureka's address; or
  - (b) Eureka (or Eureka's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 Subject to clause 6.3 it is Eureka's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.3 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Eureka claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Eureka's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify Eureka that the site is ready.
- 6.4 At Eureka's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 6.5 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 6.6 Eureka 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.
- 6.7 Any time specified by Eureka for Delivery of the Goods is an estimate only and Eureka will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Eureka is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then Eureka shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client 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 Client, Eureka is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Eureka is sufficient evidence of Eureka's rights to receive the insurance proceeds without the need for any person dealing with Eureka to make further enquiries.
- 7.3 If the Client requests Eureka to leave Goods outside Eureka's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.
- 7.4 All literature, samples, specifications, submitted with this quotation is expressly illustrative and is by way of a general description of Goods only in accordance with industry standards. Any descriptions, dimensions or specifications contained in catalogues and other advertising material while being as accurate as possible but may not necessarily be identical with products and Services Eureka is to supply. Eureka will not accept liability to the Client for quality of Goods which comply with accepted industry standards.
- 7.5 The Client agrees to indemnify Eureka from any loss or damage caused by any other tradesmen (including but not limited to, incorrect or faulty installation carried out by any other third party) during and after the completion of the Services.
- 8. Installation of the Goods**
- 8.1 Where Eureka is required to install the Goods the Client:
- (a) warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Eureka shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto; and
  - (b) where the worksite is considered by Eureka to be unsafe (in accordance with NSW WorkCover's stipulated guidelines), which inhibits the Services from being carried out, Eureka will accept no liability for any loss or damaged suffered by the Client, or any third party); and
  - (c) acknowledges that they shall:
    - (i) ensure that Eureka has clear and free access to the work site at all times to enable them to undertake the Services. Eureka shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Eureka; and

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- (ii) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and
  - (iii) fully disclose any information that may affect Eureka's installation procedures; and
  - (iv) provide and have erected scaffolding, safety railing / fencing and harnesses, to enable the Services to be undertaken (where in Eureka's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed; and
  - (v) remove any furniture, furnishings or personal goods from the vicinity of the Services and agrees that Eureka shall not be liable for any damage caused to those items through the Client's failure to comply with this clause; and
  - (vi) supply Eureka with a suitable free power source, temporary lighting, toilet and first aid facilities, if so required.
- 8.2 Any change to the arranged instalment date and/or time must be notified to Eureka at least twenty-four (24) hours prior to the original date and/or time. At Eureka's sole discretion, a fee will be charged to the Client for any late notice or unproductive visits (e.g. where the site is 'not ready').
- 8.3 In respect of any Services performed at the Client's premises, or elsewhere other than at Eureka's premises shall, subject to any written agreement to the contrary, be the duty of the Client to ensure that the conditions under which the Services have to be performed (including, but not limited to, the layout, means of access, accessibility to the different areas (the subject of the Services), and other material circumstances) are suitable to Eureka, failing which Eureka shall be entitled to treat any additional expense incurred as a variation to the Price in accordance with clause 5.2.
- 8.4 In the event asbestos or any other toxic substances are discovered at the worksite that it is their responsibility to ensure the safe removal of the same. The Client further agrees to indemnify Eureka against any costs incurred by Eureka as a consequence of such discovery. Under no circumstances will Eureka handle removal of asbestos product.
- 8.5 Where the Client has supplied materials for Eureka to complete the Services, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials. Eureka shall not be responsible for any defects in the Goods, any loss or damage howsoever arising from the use of materials supplied by the Client.

### 9. Accuracy of Client's Plans and Measurements

- 9.1 Eureka shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Eureka accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2 In the event the Client gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Eureka places an order based on these measurements and quantities. Eureka accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

### 10. Hidden Services

- 10.1 Prior to Eureka commencing any work the Client must advise Eureka of the precise location of all hidden services on the site and clearly mark the same. The mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst Eureka will take all care to avoid damage to any hidden services the Client agrees to indemnify Eureka in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.

### 11. Compliance with Laws

- 11.1 The Client and Eureka shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

### 12. Title

- 12.1 Eureka and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Eureka all amounts owing to Eureka; and
  - (b) the Client has met all of its other obligations to Eureka.
- 12.2 Receipt by Eureka 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.
- 12.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 12.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Eureka on request;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Eureka and must pay to Eureka the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Eureka and must pay or deliver the proceeds to Eureka on demand;
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Eureka and must sell, dispose of or return the resulting product to Eureka as it so directs;
  - (e) the Client irrevocably authorises Eureka to enter any premises where Eureka believes the Goods are kept (as the invitee of the Client) and recover possession of the Goods;
  - (f) Eureka may recover possession of any Goods in transit whether or not Delivery has occurred;
  - (g) the Client 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 Eureka;
  - (h) Eureka may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 13. Personal Property Securities Act 2009 ("PPSA")

- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

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- 13.2 Upon assenting to these terms and conditions in writing the Client 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 Client to Eureka for Services – that have previously been supplied and that will be supplied in the future by Eureka to the Client.
- 13.3 The Client undertakes to:
- (a) 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 Eureka may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Eureka 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;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Eureka;
  - (d) 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 Eureka;
  - (e) immediately advise Eureka 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.
- 13.4 Eureka and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by Eureka, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by Eureka under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 14. Security and Charge

- 14.1 In consideration of Eureka agreeing to supply the Goods, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies Eureka from and against all Eureka's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Eureka's rights under this clause.
- 14.3 The Client irrevocably appoints Eureka and each director of Eureka as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

### 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 15.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify Eureka in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Eureka to inspect the Goods.
- 15.2 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**).
- 15.3 Eureka acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Eureka makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Eureka's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, Eureka's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If Eureka is required to replace the Goods under this clause or the CCA, but is unable to do so, Eureka may refund any money the Client has paid for the Goods.
- 15.7 If the Client is not a consumer within the meaning of the CCA, Eureka's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Eureka at Eureka's sole discretion;
  - (b) limited to any warranty to which Eureka is entitled, if Eureka did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
  - (b) Eureka has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client'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.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, Eureka 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 Client failing to properly maintain or store any Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;
  - (c) the Client 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 Client failing to follow any instructions or guidelines provided by Eureka;
  - (e) fair wear and tear, any accident, or act of God.
- 15.10 Eureka may in its absolute discretion accept non-defective Goods for return in which case Eureka may require the Client to pay handling fees of twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 15.11 Notwithstanding anything contained in this clause if Eureka is required by a law to accept a return then Eureka will only accept a return on the conditions imposed by that law.
- 15.12 Subject to clause 15.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

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### 16. Intellectual Property

- 16.1 The Client warrants that all designs, specifications or instructions given to Eureka will not cause Eureka to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Eureka against any action taken by a third party against Eureka in respect of any such infringement.

### 17. Default and Consequences of Default

- 17.1 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 Eureka's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes Eureka any money the Client shall indemnify Eureka from and against all costs and disbursements incurred by Eureka in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Eureka's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies Eureka may have under this Contract, if a Client has made payment to Eureka, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Eureka under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 17.4 Without prejudice to Eureka's other remedies at law Eureka shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Eureka shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Eureka becomes overdue, or in Eureka's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by Eureka;
  - (c) the Client 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 Client or any asset of the Client.

### 18. Cancellation

- 18.1 Without prejudice to any other remedies Eureka may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Eureka may suspend or terminate the supply of Goods to the Client. Eureka will not be liable to the Client for any loss or damage the Client suffers because Eureka has exercised its rights under this clause.
- 18.2 Eureka 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 Client. On giving such notice Eureka shall repay to the Client any money paid by the Client for the Goods. Eureka shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Eureka as a direct result of the cancellation (including, but not limited to, any loss of profits).

### 19. Privacy Policy

- 19.1 All emails, documents, images or other recorded information held or used by Eureka is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. Eureka acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part III C of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Eureka acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Eureka that may result in serious harm to the Client, Eureka will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to Eureka in respect of Cookies where transactions for purchases/orders transpire directly from Eureka's website. Eureka agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to Eureka when Eureka sends an email to the Client, so Eureka may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Eureka's website.
- 19.3 The Client agrees for Eureka to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by Eureka.
- 19.4 The Client agrees that Eureka may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 19.5 The Client consents to Eureka being given a consumer credit report to collect overdue payment on commercial credit.
- 19.6 The Client agrees that personal credit information provided may be used and retained by Eureka 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 Client'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 Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 19.7 Eureka may give information about the Client 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 Client including credit history.
- 19.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 19.3 above;
  - (b) name of the credit provider and that Eureka is a current credit provider to the Client;

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- (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client'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 Client no longer has any overdue accounts and Eureka has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Eureka, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.9 The Client shall have the right to request (by e-mail) from Eureka:
- (a) a copy of the Personal Information about the Client retained by Eureka and the right to request that Eureka correct any incorrect Personal Information; and
  - (b) that Eureka does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 19.10 Eureka will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 19.11 The Client can make a privacy complaint by contacting Eureka via e-mail. Eureka 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 20. Building and Construction Industry Security of Payments Act 1999**
- 20.1 At Eureka'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.
- 20.2 Nothing in this Contract 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.
- 21. Trusts**
- 21.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Eureka may have notice of the Trust, the Client covenants with Eureka as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - (c) the Client will not without consent in writing of Eureka (Eureka will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.
- 22. General**
- 22.1 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.
- 22.2 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 Eureka has its principal place of business, and are subject to the jurisdiction of the courts of Sydney, New South Wales.
- 22.3 Subject to clause 15, Eureka shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Eureka of these terms and conditions (alternatively Eureka's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 Eureka may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 22.5 The Client cannot licence or assign without the written approval of Eureka.
- 22.6 Eureka 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 Client agrees and understands that they have no authority to give any instruction to any of Eureka's sub-contractors without the authority of Eureka.
- 22.7 The Client agrees that Eureka may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Eureka to provide Goods to the Client.
- 22.8 Neither party shall 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.
- 22.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.