

## CREDIT ACCOUNT APPLICATION

Applicant checklist and credit account application for:

Checklist:

- Read and retain PERMAFORM International's Terms and Conditions of Trade (attached)
- Complete the attached Credit Account Application
- Complete attached Personal/Directors Guarantee and Indemnity. Include a copy of Photographic ID (drivers licence or passport)
- Scan in all documents and email a set to info@permaform.com.au

I hereby acknowledge and declare, that:

- i) The Applicant, its proprietors, directors, partners or trustees and if an individual, is above the age of 18 years.
- ii) I have read and understood and been advised to obtain and have had the opportunity to obtain legal advice upon this account application and the current standard Terms and Conditions of Trade of Permaform International Pty Ltd ("Permaform"), which form part of, and are intended to be read in conjunction with this Credit Account Application (copy attached).
- iii) The Applicant agrees that if the application is approved that the applicant will abide by Permaform's Terms and Conditions of Trade which may be varied from time to time by Permaform giving the applicant written notice of Permaform's amended Terms and Conditions of Trade, or by posting an amended copy on their internet and informing the Applicant by email that an updated version is posted on the internet web site [www.permaform.com.au](http://www.permaform.com.au). Unless the applicant notifies Permaform in writing within seven (7) days that it does not agree to the amended terms then the Applicant will be bound by any such amendments.
- iv) On the behalf of the Applicant identified above, I agree that the Applicant will abide by Permaform's Terms and Conditions of Trade it and unless advised otherwise in writing by the Applicant to Permaform within 7 days of despatch by Permaform to the Applicant of any proposed amendments to those terms and conditions, agree, that the Applicant will be bound by any such amendments.
- iv) This Credit Account Application and any acquisition of goods or services from Permaform by the Applicant are solely for commercial and not for personal, domestic or household purposes.
- v) The above information is true and correct and that I am the authorised representative of the Applicant named above, and that I have the authority to agree to these terms and conditions on its behalf and have the authority of the Applicant, its proprietors, directors, partners or trustees (as the case may be) to provide the information and acknowledgements in this application on their behalf.
- vi) Permaform may in accordance with the Privacy Act 1988 (Cth.) [the PA] and related or similar legislation provide to and seek from credit reporting bodies, other credit providers, prospective or current guarantors of the Applicant or debt collection agencies personal information (including the above information, identification, credit, credit eligibility, payment, default, court proceedings or personal insolvency information) about the Applicant and its proprietors, directors, partners or trustees and that information may be used for the purposes including:
  - a) assessing this Credit Account Application of the Applicant;
  - b) assessing whether to provide or continue to provide goods, services or credit to the Applicant;
  - c) for the purpose of a credit reporting body or another credit provider assessing any other application for credit or
- managing credit obtained by or concerning any of them;
- d) the internal management purposes of Permaform, that are directly related to the provision or management of consumer, commercial or other credit by Permaform;
- e) for a particular commercial credit related purpose of Permaform in relation to the Applicant or any Guarantor;
- f) a credit guarantee purpose of Permaform in relation to the Applicant or any Guarantor;
- g) assisting the Applicant or any Guarantor to avoid defaulting on his or her obligations in relation to consumer credit provided by Permaform to the Applicant or Guarantor;
- h) assessing an application for consumer credit or commercial credit made to the recipient;
- i) for the purpose of a prospective Guarantor of the Applicant considering whether to offer to act as a Guarantor in relation to the credit or to offer property as security for the credit;
- j) for a purpose related to the enforcement, or proposed enforcement, of any Guarantor's guarantee; or.
- k) for the purpose of collecting payments that are overdue in relation to consumer or commercial credit provided by Permaform to the Applicant or a Guarantor.
- vii) The Applicant, its proprietors, directors, partners or trustees is aware, that:
  - (a) Permaform's website at [www.permaform.com.au](http://www.permaform.com.au) includes a statement of information about credit

## CREDIT ACCOUNT APPLICATION



- reporting under clause 4.1 of the Privacy (Credit Reporting) Code 2014 [the Code], including the names and contact details of the Credit Reporting Bodies (CRB), to which it is likely to disclose credit information;
- (b) the key issues contained in the statement under the Code are:
- A. that the CRB, to whom the credit information is provided, may include the information in reports provided to other credit providers to assist them to assess the credit worthiness of the Applicant, its proprietors, directors, partners or trustees;
- B. that if the Applicant fails to meet its payment obligations in relation to consumer credit or commits a serious credit infringement, Permaform may be entitled to disclose this to the CRB;
- C. how the Applicant, its proprietors, directors, partners or trustees may obtain Permaform's policy about the management of credit-related personal information required by section 21B of the PA and the CRB's policy about the management of credit-related personal information required by Section 20B;
- D. the right to access the information from Permaform, to request it to correct the information and to make a complaint to Permaform;
- E. the right to request CRBs not to use their credit reporting information for the purposes of pre-screening of direct marketing by a Credit Provider; and
- F. the right to request the CRB not to use or disclose credit reporting information about an individual, if the individual believes on reasonable grounds that the individual has been, or is likely to be, a victim of fraud.
- (c) a statement of these matters (available on the website) may be obtained in hard copy upon request.
- (d) The Applicant, its proprietors, directors, partners or trustees is further aware:
- A. that the policy (the credit reporting policy) of Permaform contains information about how an individual may access the credit eligibility information about the individual that is held by Permaform ;
- B. that the policy contains information about how an individual may seek the correction of credit information or credit eligibility information about the individual that is held by Permaform;
- C. that the policy contains information about how an individual may complain about a failure of Permaform to comply with Division 3, Part IIIA of the PA or the Code;
- D. that the policy contains information about how Permaform will deal with such a complaint;
- E. that Permaform is unlikely to disclose credit information or credit eligibility information to entities that do not have an Australian link; but if it were likely and practicable, the countries in which those entities are likely to be located would be specified in the policy.
- The Applicant and the signatories below acknowledge receipt of a copy of this application. Also, the Applicant and the signatories below acknowledge they have READ and are bound to the Terms and Conditions of Trade in this Agreement. Furthermore the Applicant and the signatories below agree that they are a director/shareholder (owning at least 15% of the shares) of the Applicant that they shall be personally liable for the performance of the Applicant's obligations under this application.**

# CREDIT ACCOUNT APPLICATION



To be completed by credit applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Type of business	Sole trader	Trust	Partnership	Company
Company name				ABN
Trading name (if different)				ACN
Physical address				State P/code
Billing address				State P/Code
Email address				Alternative email address
<b>Directors / Owners / Trustee (if more than two, please attach a separate sheet)</b>				
Full name				DOB
Private address				State Pcode
Driver's License No				Mobile
Full name				DOB
Private address				State Pcode
Driver's License No				Mobile
Date business established (current owners)				Credit limit required \$
Nature of business				Estimated monthly purchases
Principle place of business is	Rented	Owned	Mortgaged (to whom)	
Purchase order required	YES	NO	Email address for accounts	
Accounts contact				Accounts phone number
Main bank and branch				BSB Account No
Account terms requested	7 days	COD	Other	
<b>Trade references: (please provide companies that are willing to provide you trade references)</b>				
Company / contact				Phone
1.				
2.				
3.				
Email address for service of notices				
Signed by credit applicant (Usually 1 <sup>st</sup> director)				Signed by credit applicant (2 <sup>nd</sup> director)
Name				Name
Position				Position
Date				Date
Witness to credit applicants' signature				
Name				
Position				
Date				

ATTACH A COPY OF PHOTOGRAPHIC ID OF CREDIT APPLICANT(S)  
EG DRIVER'S LICENSE OR PASSPORT

NOTE: THIS IS AN IMPORTANT DOCUMENT. IF YOU DO NOT UNDERSTAND THIS DOCUMENT YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE

A. DETAILS OF GUARANTORS			
Full name		Full name	
Private address		Private address	
B. IN CONSIDERATION			
of Permaform (hereafter called "the Credit Provider") agreeing to provide goods, services or credit or actually providing or continuing to provide goods, services or credit, including any time or indulgence, to:			
Customer name		ABN	
Trading name (if different)		ACN	
Trading address		State	P/code

The Guarantor (or if more than one, each of the Guarantors jointly and severally) detailed above, who has signed this document below, agrees to guarantee to the Credit Provider the due and punctual performance by the Customer of all its obligations under the Credit Provider's Terms and Conditions of Trade (including any variation of them), as if the Guarantor(s) were the Customer, and to indemnify the Credit Provider against loss or damage in the event of default of the Customer in compliance with those Terms and Conditions of Trade. The Guarantor(s) acknowledge receipt of the Credit Provider's current Terms and Conditions of Trade.

And it is further agreed by each Guarantor (whether one or more), that:

1. If more than one Guarantor is named, this Guarantee and Indemnity is not conditional upon its execution by more than one of the named guarantors and may be enforced against any of them, who has signed or otherwise executed it, jointly or severally as if that or those guarantor(s) were the only guarantor(s).
 

from and against all loss and damage, including consequential loss or damage, claims, costs (including legal costs), charges, disbursements and expenses whatsoever that the Credit Provider may incur by reason of the inability or failure of the Customer to so pay or comply.
  2. In the event, that the Customer is unable or fails to pay any monies to the Credit Provider as and when they fall due for payment or otherwise fails to comply with the Credit Provider's Terms and Conditions
 

3. This is a continuing Guarantee and Indemnity and applies to all moneys and obligations which are now or may from time to time be owing or unpaid or unperformed by the Customer to the benefit of the Credit Provider. It may be revoked as to future transactions of the Customer by any Guarantor (without affecting the obligations of any other Guarantor) by at least one calendar month's written notice to the Credit Provider given at any time by the Guarantor or the legal representative of the Guarantor. The receipt by the Credit Provider of a written notice revoking the Guarantee and Indemnity by any Guarantor will be acknowledged in writing to confirm that the notice has been received by the Credit Provider
  4. This Guarantee and Indemnity shall not otherwise be determined or discharged by reason of the Permaform International Pty Ltd- Deed of Guarantee and Indemnify 9 Aug Page 2 of 4 liquidation (voluntary or otherwise), reconstruction, reconstitution, amalgamation with any other entity, death or bankruptcy of the Credit Provider, Customer or Guarantor(s) and shall continue to apply in relation to the rights and obligations under the Credit Provider's Terms and Conditions of Supply of Goods and/or Services of their successors or assigns (to the extent law allows).
  5. All rights and remedies of the Credit Provider under this guarantee and indemnity shall be unaffected and not released or waived by any postponement, forbearance, indulgence, compromise, waiver or release extended to the Customer or any Guarantor(s) by the Credit Provider nor by any failure by the Credit Provider to enforce, register or otherwise perfect any right of the Credit Provider under the Credit Provider's Terms and Conditions of Trade or any security nor by any proposal or agreement by the Credit Provider to vary the Credit Provider's Terms and Conditions of Trade (to which once varied this Guarantee and Indemnity shall equally apply) nor by any other thing whatsoever which under the law relating to sureties would but for this provision
- a) Each Guarantor agrees to pay those monies to the Credit Provider and make good any default of the Customer without the need for any demand by the Credit Provider and the Credit Provider may enforce the obligation to pay those monies and all other obligations owed by the Customer under the Credit Provider's Terms and Conditions of Trade against the Guarantor, as if the Guarantor were the Customer and a principal debtor (without need of any prior default by the Customer).
- b) Each Guarantor agrees on demand by the Credit Provider to indemnify and keep indemnified the Credit Provider

have the effect of releasing the Guarantor(s).

6. Each Guarantor shall not take any steps to recover or enforce a right or claim against the Customer or apply rights over property of the Customer to the satisfaction of its obligations to the Credit Provider and shall not prove in any insolvency administration, bankruptcy or liquidation of the Customer unless or until all debts and obligations of the Customer to the Credit Provider have been satisfied in full and shall in any such case exercise any voting rights held as directed by the Credit Provider until it has been so satisfied.

7. If any payment made by or on behalf of the Customer is alleged to be void or voidable by any liquidator or like officer of the Customer under any law related to insolvency each Guarantor indemnifies the Credit Provider against any costs or losses it may incur in connection with such claim.

8. If the Guarantor is a trustee of a trust, the Guarantor enters into this Agreement in both the Guarantor's personal capacity and as trustee of that trust.

9. The Credit Provider may assign the benefit of this Guarantee and Indemnity at any time without the consent of or notice to the Customer or any guarantor.

10.1 The Guarantor agrees that nothing in sections 125, 132(3)(d), 132(4), 135, 142 or 143 of the Personal Property Securities Act 2009 (Cth) ("the Act") will apply to the guarantee between the Guarantor and the Credit Provider, or the security under this guarantee.

10.2 The Guarantor agrees to waive its right to do any of the following or to receive any of the following notices or for the Credit Provider to carry out the following obligations under the following provisions of the Act:

- a) Receive notice of removal of an accession under section 95
- b) Receive notice of a decision, under paragraph 117(2)(b), to enforce the security interest in the personal property in the same way as the interest in the land may be enforced under the land law under section 118;
- c) Receive notice of any action to be taken in accordance with subsection 120(2) under section 121(4)

- d) Receive notice of intention to seize collateral under section 123
- e) Receive notice of disposal of collateral under section 130;
- f) Receive a statement of account if there is disposal of collateral under section 132(3)(d);
- g) Receive every six months statements of account until there is disposal of collateral under section 132(4);
- h) Receive notice of retention of collateral under section 135;
- i) Receive notice to receive a verification statement in relation to registration events under section 157.

10.3 The Guarantor and the Credit Provider also contract out of each other provision of Part 4.3 of the Act, under sections 115(7) and 116(2), but only to the extent that the provision impose obligations on the Supplier.

10.4 The Guarantor and the Credit Provider agree that neither the Guarantor nor the Credit Provider will disclose information of the kind mentioned in section 275(1).

11.1 The Guarantor hereby charges with payment of any indebtedness to the Credit Provider all legal and beneficial interest (freehold or leasehold) in land and property, other than Personal Property to which the Personal Property Securities Act 2009 applies, held now or in the future by the Guarantor and upon non-payment of any monies due to the Credit Provider pursuant to this guarantee the Credit Provider may take possession of such land or property and exercise and do all or any acts, powers and authorities vested in or given to mortgagees by any statutory provision or at common law or in equity. The Guarantor agrees that if demand is made by the Credit Provider, the Guarantor receiving such a demand will immediately execute a mortgage (incorporating the covenants contained in Memorandum No.Q860000 registered at the Land Titles Office in Sydney) or other instrument of security, or consent to a caveat, as required, and against the event that the Guarantor fails to do so within a reasonable time of being so requested, the Guarantor hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by the Credit Provider to be its true and lawful attorney to execute and register such

instruments. Notwithstanding any other provision in this clause and in addition thereto the Credit Provider may lodge a caveat noting the interest given by this charge on the title of any property of the Guarantor whenever it so wishes.

11.2 The Guarantor grants a security interest to the Credit Provider in all of its present and after acquired property and in all of its present and future rights in relation to any Permaform International Pty Ltd- Deed of Guarantee and Indemnify 9 Aug Page 3 of 4 personal property as defined in the Personal Property Securities Act 2009.

12. Any notice or demand for the purposes of this Guarantee and Indemnity shall be deemed to be duly made and given:

- a) to a guarantor, if it is forwarded in writing by ordinary pre-paid post to the Guarantor to be bound by it at the address of the Guarantor shown above or any other address given by the Guarantor to the Credit Provider, in which case it shall be deemed received by the Guarantor on the business day after posting, and
- b) to the Credit Provider, if it is delivered to the Credit Provider at its registered office and receipted in writing by a duly authorised officer of the Credit Provider.

13. Each Guarantor acknowledges and agrees, that:

- a) He or she, if an individual, is above the age of 18 years.
- b) The Credit Provider may in accordance with the Privacy Act 1988 (Cth.)[the PA] and related or similar legislation provide to and seek from credit reporting bodies, other credit providers, other prospective or current guarantors of the Customer or debt collection agencies personal information (including the above information, identification, credit, credit eligibility, payment, default, court proceedings or personal insolvency information) about the Guarantor and that information may be used for purposes including:
  - i) assessing the Account Application of the Customer and this Guarantee and Indemnity,
  - ii) assessing whether to provide or continue to provide goods, services or credit to the Customer,

- iii) a credit reporting body or another credit provider assessing any other application for credit or managing any credit obtained by or concerning the Guarantor.
  - iv) the internal management purposes of the Credit Provider that are directly related to the provision or management of consumer, commercial or other credit by the Credit Provider
  - v) for a particular commercial credit related purpose of the Credit Provider in relation to the Customer or Guarantor.
  - vi) a credit guarantee purpose of the Credit Provider in relation to the Customer or Guarantor,
  - vii) assisting the Customer or Guarantor to avoid defaulting on his or her obligations in relation to consumer credit provided by the provider to the Customer or Guarantor.
  - viii) assessing an application for consumer credit or commercial credit made to the recipient.
  - ix) for the purpose of a prospective Guarantor of the Customer considering whether to offer to act as a Guarantor in relation to the credit or to offer property as security for the credit,
  - x) for a purpose related to the enforcement, or proposed enforcement, of any Guarantor's guarantee, including this guarantee.
  - xi) for the purpose of collecting payments that are overdue in relation to consumer or commercial credit provided by the Credit Provider to the Customer or Guarantor.
- c) The Guarantor is aware:
- (i) The Credit Provider's website at [www.permaform.com.au](http://www.permaform.com.au) there is a statement of information about credit reporting under clause 4.1 of the Privacy (Credit Reporting) Code 2014 [the Code], including the names and contact details of the Credit Reporting Bodies (CRB), to which it is likely to disclose credit information;
  - (ii) the key issues contained in the statement under the Code are:
    - A. that the CRB, to whom the credit information is provided, may include the information in reports provided to other credit providers to assist them to assess the credit worthiness of the Customer, its proprietors, directors, partners or trustees and the Guarantor;
    - B. that if the Customer or any of its Guarantors fails to meet its payment obligations in relation to consumer credit or commits a serious credit infringement, the Credit Provider may be entitled to disclose this to the CRB;
    - C. how the Customer, its proprietors, directors, partners, trustees or guarantors may obtain the Credit Provider's policy about the management of credit-related personal information required by section 21B of the PA and the CRB's policy about the management of credit-related personal information required by Section 20B;
    - D. the right to access the information from the Credit Provider to request it to correct the information and to make a complaint to the Credit Provider;
    - E. the right to request CRBs not to use their credit reporting information for the purposes of prescreening of direct marketing by a Credit Provider;
- F. the right to request the CRB not to use or disclose credit reporting information about an individual, if the individual believes on reasonable grounds that the individual has been, or is likely to be, a victim of fraud.
- (iii) a statement of these matters (available on the website) may be obtained in hard copy upon request.
- d) The Guarantor is further aware:
- A. that the policy (the credit reporting policy) of the Credit Provider contains information about how an individual may access the credit eligibility information about the individual that is held by the Credit Provider;
  - B. that the policy contains information about how an individual may seek the correction of credit information or credit eligibility information about the individual that is held by the Credit Provider;
  - C. that the policy contains information about how an individual may complain about a failure of the Credit Provider to comply with Division 3, Part IIIA of the PA or the Code;
  - D. that the policy contains information about how the Credit Provider will deal with such a complaint;
  - E. that the Credit Provider is unlikely to disclose credit information or credit eligibility information to entities that do not have an Australian link; but if it were likely and practicable, the countries in which those entities are likely to be located would be specified in the policy

EXECUTED AS A DEED BY THE GUARANTOR OF THE CUSTOMER ON THIS DAY      OF 20

SIGNED, SEALED AND DELIVERED BY:      IN THE PRESENCE OF:

SIGNATURE OF FIRST  
GUARANTOR

SIGNATURE  
OF WITNESS

NAME OF GUARANTOR

NAME OF WITNESS

ADDRESS OF WITNESS

SIGNATURE OF SECOND  
GUARANTOR

SIGNATURE OF  
WITNESS

NAME OF GUARANTOR

NAME OF WITNESS

ADDRESS OF WITNESS



1800 PERMAFORM

ABN 70 609 958 527

WWW.PERMAFORM.COM.AU

ORDERS@PERMAFORM.COM.AU

PERMAFORM INTERNATIONAL Pty Ltd

## TERMS & CONDITIONS OF TRADE

### 1. Definitions

- 1.1 "Permaform" means Permaform International P/L ABN: 70 609 958 527.
- 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.
- 1.3 "Agreement" refers to any agreement between Permaform and the customer whereby Permaform supplies the goods and services to the customer.
- 1.4 "Goods" means all Goods or Services supplied by Permaform to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Price" means the Price payable for the Goods as agreed between Permaform and the Customer in accordance with clause 5 below.
- 1.6 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.7 "Default" means an invoice not paid by the due date on the Permaform invoice to the Customer.
- 1.8 "Deposit Payment" refers to the payments following the orders to confirm Permaform's product supply in cleared funds for each order or project or customer.

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively 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 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Permaform.

### 3. Electronic Transactions Act 2001

- 3.1 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 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 4. Change in Control

- 4.1 The Customer shall give Permaform 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, or business practice). The Customer shall be liable for any loss incurred by Permaform as a result of the Customer's failure to comply with this clause.

### 5. Price and Payment

- 5.1 At Permaform's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Permaform to the Customer; or
- (b) the Price as at the date of delivery of the Goods according to Permaform's current price list; or
- (c) Permaform'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 Permaform reserves the right to change the Price if a variation to Permaform's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as a result of any increase to Permaform in the cost of materials and labour) will be charged for on the basis of Permaform's quotation and will be shown as variations on the invoice.
- 5.3 An invoice or Quote/Proforma Invoice for deposit purposes may be issued by Permaform to the Customer on placement of an order. Any applicable payment schedule will be duly noted on the documentation.
- 5.4 At Permaform's sole discretion a deposit may be required which:
- (a) shall be assigned to the amount of the invoice if the order proceeds; or
- (b) becomes non-refundable if the order does not proceed or is cancelled as per clause 14.2.
- 5.5 If any part of an invoice is in dispute then the Customer shall notify Permaform in writing within ten (10) business days once in receipt of the invoice, then the Customer may only withhold payment for that part of the invoice that is in dispute and shall pay the balance of the invoice when due.
- 5.6 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Permaform, which may be:
- (a) available for delivery defined as available for collection or delivery ex warehouse;
- (b) by way of instalments/progress payments in accordance with Permaform's payment schedule;
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) business days following the date of any invoice given to the Customer by Permaform.

- 5.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Customer and Permaform.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Permaform an amount equal to any GST Permaform must pay for any supply by Permaform 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.
- 5.9 The price quoted may be subject to change due to but not limited to change in supplier's costs, change in the cost of material and the currency fluctuations of the Australian Dollar. The price charged will be the price set by Permaform in accordance with Permaform's pricing policies and charges occurring prior to or at the date of collection/delivery. The project under construction may consist of a number of orders. The prices between these orders may vary.
- 5.10 Where Permaform has offered credit by way of an account with Permaform then Permaform, at its' sole and absolute discretion, may alter any offered Credit Limit to any amount including zero without notice and will confirm this in writing within 5 business days of the decision. Furthermore, Permaform will be entitled to demand immediate payment in full of any unpaid monies. If any invoice remains unpaid 7 days after such demand, then the Customer is in default and Permaform is entitled to commence all legal actions required to recover unpaid amounts.
- 5.11 Permaform may extend credit, to approved Customers, on a strict thirty (30) day basis from the end of the month in which the invoice is dated. Statements may be issued on the last day of each month. The customer must pay all amounts on all of the invoices within the payment terms.
- 5.12 Should any invoice due to be paid but remaining unpaid seven (7) calendar days after due date the account may be placed on "STOP CREDIT/TRADING" without notice to the Customer until the account is full. Future Credit may be withdrawn at Permaform's unfettered discretion. Permaform reserves the right to report any default to its' Credit Reporting partners and Trade Credit partners.
- 5.13 Any account (invoice) in default (remains unpaid 7 days after due date) attracts a charge of 2.5% per month. This charge will be calculated on the full value of the invoice from due date (or part thereof being the daily rate of the month to 2 decimal places) until the invoice is paid in full. The 0.2% charge amount must be paid in full to lift a STOP CREDIT/TRADING status.
- 5.14 If Permaform's Trade Credit Insurer cancels or reduces the insurance offered on the Customer, then Permaform reserves the right to immediately terminate any Credit terms and demand immediate payment of any or all accounts (invoices) issued to the Customer.

### 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 Permaform's address; or
- (b) Permaform (or Permaform's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 Where the Goods are delivered by a third party, the Customer is required to sign the delivery docket or any other form requiring acknowledgement of receipt of the Goods by the Customer immediately on delivery and these forms are to be given to the Delivery Driver for return to Permaform. If there is any dispute on the delivery quantities or condition of the goods, the Customer must state its dispute in writing with in within seven (7) days of the delivery date (see Clause 11). If the Customer fails to comply with clause 6.2 then Permaform reserves the right to deem the Goods are supplied as per the Delivery documentation and to be in satisfactory working order.
- 6.3 At Permaform's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.4 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Permaform shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.5 Any time or date given by Permaform to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Permaform will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

### 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, Permaform is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Permaform is sufficient evidence of Permaform's rights to receive the insurance proceeds without the need for any person dealing with Permaform to make further enquiries.
- 7.3 If the Customer requests Permaform to leave Goods outside Permaform'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.

### 8. Title

- 8.1 Permaform and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Permaform all amounts owing to Permaform; and
- (b) the Customer has met all of its other obligations to Permaform.
- 8.2 Receipt by Permaform 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.
- 8.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to Permaform on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Permaform and must pay to Permaform the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) 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 Permaform and must pay or deliver the proceeds to Permaform 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 Permaform and must sell, dispose of or return the resulting product to Permaform as it so directs.
- (e) the Customer irrevocably authorises Permaform to enter any premises where Permaform believes the Goods are kept and recover possession of the Goods.
- (f) Permaform 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 Permaform.
- (h) Permaform may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 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 Permaform for Services – that have previously been supplied and that will be supplied in the future by Permaform to the Customer.
- 9.3 The Customer 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 Permaform 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 9.3(a)(i) or 9.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Permaform 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 Permaform;
- (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 Permaform;
- (e) immediately advise Permaform 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.
- 9.4 Permaform 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.
- 9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by Permaform, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Customer must unconditionally ratify any actions taken by Permaform under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary (including those contained in clause 9), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.



1800 PERMAFORM

ABN 70 609 958 527

WWW.PERMAFORM.COM.AU

ORDERS@PERMAFORM.COM.AU

PERMAFORM INTERNATIONAL Pty Ltd

## TERMS & CONDITIONS OF TRADE

### 10. Security and Charge

10.1 In consideration of Permaform 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).

10.2 The Customer indemnifies Permaform from and against all Permaform's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Permaform's rights under this clause.

10.3 The Customer irrevocably appoints Permaform and each director of Permaform as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

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

11.1 The Customer must inspect the Goods immediately on delivery and must within seven (7) days of delivery and prior to installation, notify Permaform 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 Permaform to inspect the Goods.

11.2 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).

11.3 Permaform acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Permaform makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Permaform's liability in respect of these warranties is limited to the fullest extent permitted by law.

11.5 If the Customer is a consumer within the meaning of the CCA, Permaform's liability is limited to the extent permitted by section 64A of Schedule 2.

11.6 If Permaform is required to replace the Goods under this clause or the CCA, but is unable to do so, Permaform may refund any money the Customer has paid for the Goods.

11.7 If the Customer is not a consumer within the meaning of the CCA, Permaform'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 Customer by Permaform at Permaform's sole discretion;
- (b) limited to any warranty to which Permaform is entitled, if Permaform did not manufacture the Goods;
- (c) otherwise negated absolutely.

11.8 Subject to this clause 11, returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 11.1; and
- (b) Permaform 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.

11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Permaform 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 Permaform;
- (e) fair wear and tear, any accident, or act of God.

11.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Permaform as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Permaform has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 11.10.

### 12. Intellectual Property

12.1 Where Permaform has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Permaform.

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

12.3 The Customer agrees that Permaform may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Permaform has created for the Customer.

### 13. Default and Consequences of Default (definition of Default?)

13.1 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 Permaform's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

13.2 If the Customer owes Permaform any money the Customer shall indemnify Permaform from and against all costs and disbursements incurred by Permaform in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Permaform's contract default fee, and bank dishonour fees).

13.3 Further to any other rights or remedies Permaform may have under this contract, if a Customer has made payment to Permaform, 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 Permaform under this clause 13 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.

13.4 Without prejudice to any other remedies Permaform may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Permaform may suspend or terminate the supply of Goods to the Customer. Permaform will not be liable to the Customer for any loss or damage the Customer suffers because Permaform has exercised its rights under this clause.

13.5 Without prejudice to Permaform's other remedies at law Permaform shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Permaform shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Permaform becomes overdue, or in Permaform's opinion the Customer will be unable to make a payment when it falls due;
- (b) 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 14. Cancellation

14.1 Permaform 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 Permaform shall repay to the Customer any money paid by the Customer for the Goods. Permaform shall not be liable for any loss or damage whatsoever arising from such cancellation.

14.2 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 Permaform as a direct result of the cancellation (including, but not limited to, any loss of profits).

14.3 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.

### 15. Privacy Act 1988

15.1 The Customer agrees for Permaform 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 Permaform.

15.2 The Customer agrees that Permaform 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 years.
- 15.3 The Customer consents to Permaform being given a consumer credit report to collect overdue payment on commercial credit.
- 15.4 The Customer agrees that personal credit information provided may be used and retained by Permaform 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.

15.5 Permaform 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.

15.6 The information given to the CRB may include:

- (a) personal information as outlined in 15.1 above;
- (b) name of the credit provider and that Permaform 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 Permaform has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of Permaform, 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).

15.7 The Customer shall have the right to request (by e-mail) from Permaform:

- (a) a copy of the information about the Customer retained by Permaform and the right to request that Permaform correct any incorrect information; and that Permaform does not disclose any personal information about the Customer for the purpose of direct marketing.

15.8 Permaform 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.

15.9 The Customer can make a privacy complaint by contacting Permaform via e-mail. Permaform 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).

### 16. Building and Construction Industry (Security of Payment) Act 2009

16.1 At Permaform'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 Payment) Act 2009 may apply.

16.2 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 Payment) Act 2009 of the Australian Capital Territory, except to the extent permitted by the Act where applicable.

### 17. General

17.1 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.

17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts in New South Wales.

17.3 Subject to clause 11, Permaform 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 Permaform of these terms and conditions (alternatively Permaform's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

17.4 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 Permaform nor to withhold payment of any invoice because part of that invoice is in dispute.

17.5 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.

17.6 The Customer agrees that Permaform 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 Permaform to provide Goods to the Customer.

17.7 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.

17.8 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.