

# TERMS AND CONDITIONS TO APPLICATION FOR CREDIT

## 1. Interpretation

"Applicant" means the entity shown on the front page of these Terms and Conditions and its successors and permitted assigns contracting with Pivotrom and its successors and permitted assigns.

"Credit Application" means the form on the front page of these Terms and Conditions to be completed by the Applicant by way of application for credit.

"Fee" means the amount payable for the Material provided by Pivotrom.

"Material" means any or all of the goods and services and any part thereof provided or performed by Pivotrom for the Applicant.

"Pivotrom" means Pivotrom Pty Ltd and its successors and assigns.

"Specified Period" means a period of 30 days from the end of the calendar month in which the Material is delivered to the Applicant.

"Terms and Conditions" means the Terms and Conditions set out in this document and any amendment notified to the Applicant in writing from time to time.

## 2. Payment

- (a) Where Pivotrom has approved a Credit Application made by the Applicant, the Applicant shall pay the Fee and all other monies owing for the Material within the Specified Period. Where Pivotrom has not accepted a Credit Application made by the Applicant, the Applicant shall pay cash on or before delivery or by such other means as Pivotrom shall from time to time determine.
- (b) Where the Applicant does not pay the Fee or any other monies owing for the Material in full within the Specified Period, interest will be payable by the Applicant to Pivotrom on the amount unpaid at a rate equal to the General Interest Charge (GIC) published by the Australian Taxation Office. Interest will be calculated daily on a compounding basis immediately following the due date for payment to and including the date of actual payment. Interest charges are debited to the credit account and are payable together with the overdue amount.
- (c) The Applicant must pay all legal costs and other expenses (on an indemnity basis) incurred by Pivotrom in the recovery or the attempted recovery of any overdue amount. Pivotrom may in its sole discretion apply any payment received from the Applicant towards any debt (including interest charged) owed by the Applicant to Pivotrom at any time.
- (d) If a clause in these Terms and Conditions is void or unenforceable, it may be severed without affecting the enforceability of any other provision.
- (e) Any breach of these Terms and Conditions will involve withdrawal of credit without notice and the issue of legal process for recovery of any outstanding amounts.
- (f) Property in, and title to any goods purchased does not pass to a purchaser until such time as the goods purchased have been paid for in full. Where payment is made by cheque, payment is not effected until the funds have been cleared.
- (g) Pivotrom will not be required to deliver any Material while any Fee or any other monies are outstanding after their due date for payment.
- (h) The Fee quoted from time to time by Pivotrom does not include packing, freight, transport, insurance, taxes, duties or fees payable in respect of the delivery of the Material to the Applicant, which may be the subject of additional charges and invoices by Pivotrom if it so determines in its absolute discretion.
- (i) The Applicant agrees that Pivotrom at its sole discretion may charge a storage fee for any Material belonging to the Applicant that remains uncollected for a period longer than 7 days after it was advised the Material was ready to be picked up.

## 3. Quotation

Quotations given by Pivotrom are based upon specifications and instructions received from the Applicant, upon which Pivotrom relies. In the event that any such specification or instruction is incorrect, incomplete or ambiguous, Pivotrom shall be entitled to amend or withdraw any relevant quotation given to the Applicant.

## 4. Exclusion of Liability

- (a) Pivotrom will not in any circumstances be liable for economic or consequential loss or loss of profit.
- (b) Pivotrom will in the event that Material is defective because of faulty materials or workmanship at its option:-
  - (i) Replace the Material or supply equivalent Material;
  - (ii) Repair the Material; or
  - (iii) Pay for the cost of repairing the Material or acquiring replacement Material,at its absolute discretion, and its liability shall be limited thereto.
- (c) Pivotrom shall not be liable for any loss of or damage to Material sent by the Applicant to Pivotrom for replacement or repair. The Applicant shall be responsible for all such transport, freight and insurance costs and arrangements.
- (d) Notwithstanding any other provision of this agreement Pivotrom shall not be liable for any loss, cost, damage or claim resulting from or in any way arising from any delay in or failure to supply Material where such delay or failure arises as a result of any action, matter or thing beyond Pivotrom's reasonable control, including without limitation, storm, fire, explosion or any act of God, act of war, civil commotion or disruption, union dispute or strike, mechanical breakdown or failure.

## 5. Insurance and Risk

The Applicant agrees it is liable to Pivotrom for any and all loss or damage to the Material including but not limited to the cost of repairing or replacing the Material at the full new replacement cost, salvage costs, and rental charges incurred while the Material is repaired or replaced.

## 6. Indemnity

The Applicant indemnifies and will keep Pivotrom indemnified against any loss arising from or any claims, demands or proceedings made or commenced by any third party caused by the use or ownership of any Material, including but not limited to any injury to or death of any person, or any loss of or damage to any property and including all economic and consequential loss and loss of profit.

## 7. Variation

Pivotrom may vary these Terms and Conditions at any time by giving 7 days notice to the Applicant specifying the variation.

## 8. Privacy Act 1988

- (a) The Applicant:
  - (i) agrees that Pivotrom may seek from a credit reporting agency, a credit report containing personal information about the Applicants and or directors to assess whether to accept me/us as a guarantor for credit applied for or provided to the Applicant named in the application.
  - (ii) acknowledges that Pivotrom may pass on certain details about the Applicant as set out in 18E(1) of the Privacy Act 1988 to credit reporting agencies at any time.
  - (iii) agrees that Pivotrom may exchange information with the Applicants other credit providers to assess its creditworthiness; notify them of any default; and exchange information about the status of the default.

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### 9. PPSA

- (a) The Applicant:
- (i) grants a security interest in the goods supplied to it by Pivotrom and acknowledges that this agreement constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA").
  - (ii) acknowledges that the Applicant may register its security interest in the goods supplied to it by Pivotrom and in the proceeds of the sale of the goods as a purchase money security interest on the PPS register and the Applicant agrees to execute documents and do such further acts and things provide such further information as may be required to enable registration on the PPS register or to perfect or correction any registration; and;
  - (iii) where the PPSA applies to action taken by Pivotrom in relation to the goods supplied to it:-
    - (A) agrees sections 116 (2), 120, 125, 142 and 143 of the PPSA will not apply; and
    - (B) waives its right to receive notices under sections 95, 118 (1) (b), 121 (4), 123 (2), 130, 135, 132 (3) (d) and 132 (4) and any verification statement.

### 10. Guarantee

Where the Application for Credit has been given relying on a guarantee from the proprietor or director ("the Guarantor") then the following conditions apply:-

- (a) **Guarantee**  
The Guarantor hereby unconditionally and irrevocably guarantees to Pivotrom the satisfaction and due and punctual payment of any debt owing to it by the Applicant and, if the Applicant does not pay any debt when it falls due, the Guarantor acknowledges that it must pay that debt upon receiving a demand from Pivotrom ("the Guarantee").
- (b) **Indemnity**  
The Guarantor hereby unconditionally and irrevocably agrees to indemnify Pivotrom, and keep Pivotrom indemnified, against any loss, damage, expense, liability or obligation suffered by Pivotrom which arises out of:
- (i) any failure by the Applicant to pay any debt; or
  - (ii) any obligation or liability that would otherwise form part of the debt being void, voidable, unenforceable against or irrecoverable from the Applicant for any reason, regardless of whether or not Pivotrom knew or ought to have known of the reason;
  - (iii) any and all expenses incurred by Pivotrom in connection with the enforcement, attempted enforcement or preservation of any rights under or pursuant to this Guarantee.
  - (iv) any other liability, loss, damage, expense or claim incurred by Pivotrom arising directly or indirectly from any breach of this Guarantee by the Applicant or the Guarantor.
- (c) **Nature and extent of Guarantee and Indemnity**
- (i) The Guarantee and Indemnity shall be a continuing Guarantee and Indemnity. It shall not be considered as wholly or partly discharged upon payment at any time of any debt, and shall apply to present and future debts.
  - (ii) The Guarantee and Indemnity extends to the entire amount that is now owed, or any amount whatsoever that may become owing, at any time in the future to Pivotrom by either the Applicant or the Guarantor under or contemplated by this personal Guarantee and Indemnity.
  - (iii) Nothing in the Guarantee and Indemnity shall be construed as a requirement that the Guarantor must consent to or be made aware of any transactions or arrangements between Pivotrom and the Applicant, including any variation, postponement, release or compromise of any debt, and such transactions will not affect the Guarantor's liability under the Guarantee and Indemnity.
  - (iv) If any payment made to Pivotrom by or on behalf of the Applicant or the Guarantor is subsequently avoided in any way, including by any statutory provision, then:
    - (A) that payment does not discharge the Guarantor's liability for the amount of that payment; and
    - (B) Pivotrom and the Guarantor are deemed to be in the position in which each would have been if that payment had not been made and are entitled to exercise all rights which each would have had if that payment had not been made.

### 11. Miscellaneous

- (a) This agreement shall be created, construed, performed and enforced in accordance with the laws of New South Wales and the parties shall submit to the non exclusive jurisdiction of the courts of that state.

### 12. Warranties

- (a) The Applicant warrants that:-
- (i) it is not insolvent;
  - (ii) it has never entered a solvency regime, including but not limited to bankruptcy, part x, administration, or liquidation. If yes please give full details.
  - (iii) it is able to pay its debts as and when they fall due;
  - (iv) it has the capacity to enter into this agreement.
  - (v) It has read and accepts the terms and conditions of the application
  - (vi) the applicant hereby acknowledges that no warranty is given express or implied as to the suitability or the condition of the goods for any purpose.

Signature:.....

Date:.....

Name:.....

Position Held:.....

Witness Signature:.....

Witness Name:.....

Signature:.....

Date:.....

Name:.....

Position Held:.....

Witness Signature:.....

Witness Name:.....