

Credit Account Application

This Credit Account Application ("**Application**") has three sections:
(1) Buyer's Details, **(2)** Guarantee, and **(3)** Standard Conditions of Sale.

Approval may be granted on a faxed copy of this form. Post the original to office ("**Seller**").

1. BUYER'S DETAILS

TYPE OF BUYER					
Please Tick:	<input type="checkbox"/> SOLE TRADER	<input type="checkbox"/> PARTNERSHIP	<input type="checkbox"/> PRIVATE COMPANY	<input type="checkbox"/> PUBLIC COMPANY	<input type="checkbox"/> TRUST

COMPANY / BUSINESS ENTITY ("BUYER")		
Name:		
Trading Name:		
Nature of Business:		
A.B.N.:	Date of Business Commencement/Takeover:	
Representative 1:	Position:	
Representative 2:	Position:	
Invoicing Address:		
Suburb/City:	State:	Postcode:
Delivery Address:		
Suburb/City:	State:	Postcode:
Tel: .. () ..	Facsimile No: .. () ..	Email:

DIRECTORS / OWNERS / PRINCIPALS		
Name 1:		
Residential Address:	Postcode:	
Tel: .. () ..	Email:	Drivers Licence No.:
Name 2:		
Residential Address:	Postcode:	
Tel: .. () ..	Email:	Drivers Licence No.:
Name 3:		
Residential Address:	Postcode:	
Tel: .. () ..	Email:	Drivers Licence No.:

TRADE REFERENCES		
Business Name	Contact Name	Tel
..... () ..
..... () ..
..... () ..

BANK DETAILS	
Bank Contact:	Tel: .. () ..
Contact's Job Title:	Account Name:
Bank:	BSB No:
Branch:	Account No:

FINANCIAL DETAILS	
Anticipated monthly purchases: \$	Credit limit required: \$
Estimated current resale value of all tangible assets: \$	
Latest financial year Net Profit / Loss After Tax:	

Agreed:

The Buyer hereby applies for a credit or cash on delivery account on the basis set out in this Credit Account Application and the Buyer agrees with the Standard Conditions of Sale. The Buyer warrants that it has all necessary authority to make this Application and that the information regarding the Buyer in the Buyer's Details section of this Application is correct in every detail. The Buyer must supply any future changed details for assessment and data entry. The Buyer irrevocably authorises the Seller to have access to any credit information file, kept by any credit reporting agency or others, that contains information relating to the Buyer or its principals for the purpose of assessment for credit worthiness, credit history or credit capacity consistent with any applicable privacy regulation.

(Option 1) For a Buyer which is a company:

----- Date	----- Date
----- Signature of Director or duly authorised representative for the Buyer	----- Signature of Director or duly authorised representative for the Buyer
----- Print Signatory's Full Name	----- Print Signatory's Full Name
----- Print Signatory's Job Title	----- Print Signatory's Job Title

[OPTION 2] For all other business entities *(Note: for a partnership all partners must sign):*

----- Date	----- Date
----- Signature for the Buyer	----- Signature for the Buyer
----- Print Signatory's Full Name	----- Print Signatory's Full Name
----- Print Signatory's Job Title	----- Print Signatory's Job Title

OFFICE USE ONLY - CREDIT TERMS

Account Type:	-----
Credit Time Limit:	30 Days from invoice date
Credit Sum Limit:	\$ -----

2. GUARANTEE

- 2.1 The word "**Guarantors**" in this Guarantee refers to each signatory below of this Guarantee and his or her heirs, executors, administrators and assigns. The phrase "**Standard Conditions of Sale**" refers to the Seller's document with that title, and any related order-specific terms and conditions of sale and order process data or documents.
- 2.2 The Guarantors must pay to the Seller on demand all money of any type due now or after the date of this Guarantee by the Buyer to the Seller whether actually or contingently under the Standard Conditions of Sale, including interest on the Buyer's overdue payments for the Seller, costs of the Seller in demanding, collecting and enforcing judgements for money due to the Seller, and all expenses, damages, costs and losses (including legal costs and disbursements on a full indemnity basis and collection expenses and commissions of mercantile agents) in any way connected with or arising directly or indirectly from breach (by omission or commission) by the Buyer in punctual performance of its obligations to the Seller under the Standard Conditions of Sale.
- 2.3 As a separate, additional and severable liability, the Guarantors unconditionally and irrevocably indemnify the Seller against all claims, demands, liabilities, losses, damages, costs and expenses (including legal and accounting costs and disbursements on a full indemnity basis and collection expenses and commissions of mercantile agents) which the Seller may incur (either actual or contingent) in any way connected with or arising directly or indirectly from breach (by omission or commission) by the Buyer of the Standard Conditions of Sale.
- 2.4 Regarding money due, despite any implication to the contrary in this Guarantee or elsewhere, the Guarantors' obligations under this Guarantee will be discharged only on payment of such money to the Seller. This Guarantee is a principal obligation and not ancillary or collateral to any other obligation, and the Guarantors are not merely person(s) giving surety.
- 2.5 This Guarantee is a continuing unlimited guarantee and security, and liability under it is not affected, avoided or released by any failure, neglect, forbearance or waiver by the Seller in enforcing payment of any money due, the performance or observance of any of the provisions of this Guarantee, any variation of this Guarantee or the Standard Conditions of Sale, or by any other thing which under the law relating to sureties would but for this provision have the effect of releasing the Guarantors.
- 2.6 In addition to representations made to the Seller prior to, at or after the date of this Guarantee, the Guarantors warrant and represent that they have all necessary power to sign and perform this Guarantee and grant security over any trust property and that it is not necessary to obtain the prior consent of any person to grant such security.
- 2.7 Until this Guarantee is discharged, the Guarantors must not either directly or indirectly, and either before or after the insolvency, winding up or bankruptcy of the Buyer, or any other person have or exercise a right as surety in respect of the Buyer in competition with the Seller or receive the benefit of any distribution, dividend or payment connected to the insolvency, winding up or bankruptcy of the Buyer on any grounds.
- 2.8 If there is more than one guarantor under this Guarantee then such guarantors are liable both jointly and separately. This Guarantee binds each person signing it even if one or more of the signatories do not sign it, die, are not bound by it or are released from it. It is not incumbent on the Seller if it enforces this Guarantee against one guarantor to also enforce it against any other guarantor.
- 2.9 This Guarantee may be revoked by thirty (30) days' written notice provided that on the expiration of such period of notice all liabilities of the Buyer to the Seller have been discharged, otherwise this Guarantee will remain in force until such liabilities are discharged.
- 2.10 The Seller may assign its rights or part of them under this Guarantee. New South Wales law governs this Guarantee. A dispute that goes to court must go to a New South Wales court. This Guarantee is signed as a deed.

Signature by Guarantors (ie Buyer's principals or others)

Date

Signature of **Principal/Director 1**

Signature of Witness

Print Signatory's Full Name

Print Full Name of Witness

Print Signatory's Residential Address

Date

Signature of **Principal/Director 2**

Signature of Witness

Print Signatory's Full Name

Print Full Name of Witness

Print Signatory's Residential Address

Warehouse
Unit 1 - 9 Fremantle Street
Burleigh Heads Qld 4220

Postal Address PO Box 2768 Burleigh B.C. Qld 4220
Email sales@poolheating4u.com.au
Contact Tel: (07) 5522 0507 Fax: (07) 5593 8980

3. STANDARD CONDITIONS OF SUPPLY

- 3.1 **Definitions** In these Standard Conditions of Sale:
- "**Seller**" means Preferred Pool Heating and its successors and assigns.
 - "**Buyer**" means the Buyer or any person acting on behalf of and with the authority of the Buyer. This includes any person, corporation, firm or unincorporated association.
 - "**Buyer's Representative**" is identified in the Buyer's Details section of the Application.
 - "**Goods**" means goods, and services where relevant, ordered, supplied or rendered from time to time by the Seller (or by manufacturers, service providers or others on its behalf) to the Buyer under a Seller's written order confirmation.
 - "**Price**" means the sum payable by the Buyer for the Goods for specific individual contracts, being a sum set by the Seller by reference to any of the following means, and at all times subject to **clauses 3.6 and 3.7**:
 - (**Quote**) in the Seller's quote, provided that the Buyer accepts it before expiry of the validity period for the quote;
 - (**Price List**) in the Seller's price set out in its price list current at the date of delivery of the Goods; or
 - (**Invoice**) in the Seller's invoice to the Buyer for the Goods.The Price is exclusive of Goods and Services Tax ("GST") and any other applicable current or future taxes and duties, unless expressly stated otherwise. The Price is depended on the relevant specification(s) for the Goods, hence changes in the specification(s) require a review of the Price and changes to the Price where appropriate.
- 3.2 **Role of Representatives:** The Buyer's Representative(s) identified in the Buyer's Details, as may be amended from time to time, is/are the primary representative of the Buyer with full authority to provide or obtain any necessary information and approvals that may be required by the Seller. Approval by the Buyer's Representative(s) is conclusive evidence of the Buyer's consent. Only the managing director of the Seller, or a person specified in writing as the representative of the Seller, is authorised to make representations, statements, conditions or agreements binding on the Seller as regards these Standard Conditions of Sale and contracts arising pursuant to them.
- 3.3 **Individual Contracts:** On each occasion the Seller receives from the Buyer an order or instructions for the Goods and the Seller responds with an order confirmation, a binding and enforceable contract comes into force for the Goods which are the subject of that order or instruction. The terms and conditions of that contract are set out in these Standard Conditions of Supply and the order confirmation. That contract is for the Price and for sale by the Seller and purchase by the Buyer under the terms and conditions of these Standard Conditions of Supply and the order confirmation. These Standard Conditions of Supply are irrevocable and can only be varied, modified, amended or added to in writing by the Seller. At its discretion the Seller may assign, novate, subcontract or transfer in any way such individual contracts or these Standard Conditions of Sale or any of its rights or obligations.
- 3.4 **Composition and Inconsistency:** These Standard Conditions of Sale are the entire standard or general conditions of sale applicable to all contracts and transactions between the Buyer and the Seller to the exclusion of any provisions to the contrary in any purchase order form or other document of the Buyer (eg the Buyer's project brief, project plan, request for tender, request for information, or proposal). If as part of any specific contract or transaction pursuant to these Standard Conditions of Sale any such documents are incorporated by express reference, then:
 - such documents are only incorporated to the extent they are expressly accepted in writing by the Seller in an order confirmation;
 - such documents apply only to the extent of specifying the description, quality or quantity of the Goods; and
 - to the extent of any inconsistency between such documents and these Standard Conditions of Sale, these Standard Conditions of Sale will have precedence and the Buyer and the Seller must take all necessary steps to remove that inconsistency.
- 3.5 **Security Sum:** At the Seller's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated in the Seller's order confirmation for the Goods and will become immediately due and payable.
- 3.6 **Charges and Discounts:** Various charges may apply (including for freight, transport, insurance, packaging, inspection, postage and handling) in addition to the Price. Settlement discounts and all other offered discounts, are not applicable if payment for the relevant Goods is not received on or before the due date.
- 3.7 **Price Variation:** The Seller may increase the Price to reflect any variations, beyond the reasonable control of the Seller, to the plan of scheduled works, specification, raw material, manufacturing costs, or foreign currency exchange rates. Such Price increase may only arise if such variations increase the Price by more than ten per cent (10%). Such Price increase may be made by the Seller giving notice to the Buyer verbally or in writing at any time before delivery of the Goods.
- 3.8 **Payment:** The Buyer must pay the Price and all charges for the Goods within the time period for payment specified in the relevant invoice of the Seller. The Seller may withhold delivery of the Goods until the Buyer has paid for them, in which event payment will be made before the delivery date. Payment by cheque will not be treated as having been made until that cheque is cleared. Payment will be made in favour of the Seller by cash on delivery, or by cheque, or by bank cheque, or by credit card (plus any charges that maybe applicable), or by any other method as agreed to between the Buyer and the Seller. The Seller may charge a processing fee of \$30 on all dishonoured cheques.
- 3.9 **Cancellation Policy:** The Seller will accept orders and instructions for the Goods on a firm sale and irrevocable basis (ie no rescission, termination, or cancellation is permitted), except within twenty-four (24) hours from the Seller's despatch to the Buyer of an order confirmation. Any costs incurred by the Seller for cancellations accepted by the Seller after expiry of that period will be paid by the Buyer within one (1) month.

- 3.10 **Default in Payment:** If the Seller has not received or been tendered the whole of the Price and charges for the Goods, or the payment has been dishonoured, the Seller will have: (a) a lien on the Goods; (b) a right to retain the Goods while the Seller is in possession of them; (c) a right to stop the Goods in transit whether or not delivery has been made or ownership has passed; (d) a right to suspend the Seller's performance of any of its obligations under these Standard Conditions of Sale; and (e) a right to resell the Goods and if in the reasonable opinion of the Seller they cannot be resold then the right to dispose of the Goods. Each of these remedies will remain in force for the Seller despite the commencement of proceedings or judgement for the Price and/or charges. The Seller is not liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause. As regards any Buyer default in payment of any part of the Price or the charges due for the Goods, the Buyer indemnifies the Seller against all claims, demands, liabilities, losses, damages, costs and expenses (including legal and accounting costs and disbursements on a full indemnity basis and collection expenses and commissions of mercantile agents).
- 3.11 **Interest:** Interest must be paid at the rate of 2.5% per calendar month on overdue balances until the Buyer's account is brought within the credit time and sum limits agreed to by the Seller.
- 3.12 **Account Issues:** The Buyer must give written notice to the Seller within five (5) days of the date of any disputed invoice, account or statement. If the Buyer disputes an invoice, account or statement it must nonetheless pay all other undisputed invoices, accounts and statements and must not set off, suspend or withhold payment of them.
- 3.13 **Accounts and Records Inspection:** The Buyer grants the Seller or the Seller's authorised representative the right on seven (7) days notice to examine the accounts and records of the Buyer in so far as they relate to disputed invoices or accounts for Goods.
- 3.14 **Delivery:** The Seller's obligation to deliver is discharged on arrival of the Goods at the Buyer's nominated delivery location. If the Buyer has not nominated its delivery location for a specific transaction then delivery will be sufficient if it is to the Buyer's Delivery Address specified in the Buyer's Details section of the Application. The record of delivery signed by the Buyer or the Buyer's representative or agent (including the nominated transport company, customs clearing agent, or freight forwarding agent) is conclusive evidence that the Buyer has received the full and complete order.
- 3.15 The Buyer must take delivery of the Goods tendered notwithstanding that the quantity so delivered is either greater or less than the quantity purchased provided that the Price must be adjusted pro rata to the discrepancy.
- 3.16 The Seller may, at its discretion, make and invoice deliveries in instalments and the Buyer will accept each instalment and each instalment is a separate sale pursuant to these Standard Conditions of Sale.
- 3.17 Any delivery date or time given is on the basis that it is an estimate. The Seller is not liable for late delivery or non-delivery. Late delivery or non-delivery of the Goods does not give the Buyer a right to cancel, terminate or refuse future delivery nor does it render the Seller liable for any loss or damages. The Buyer will not be relieved of its obligation to accept or pay for the Goods by reason of any delay in delivery or any other cause whatsoever not expressly specified in these Standard Conditions of Sale.
- 3.18 If the Buyer is unable or unwilling to accept physical delivery of the Goods when they are ready for delivery, they will be held at the Buyer's risk and the Buyer must pay any consequent charges including a handling fee for any delay experienced and storage fee for the Goods.
- 3.19 **Short Delivery and Defective Goods:** On delivery the Buyer must inspect the Goods and satisfy itself as regards both their quantity, shortages, breakages or non-conformity with specifications. For the Seller to assess the position, the Buyer must give written notice within five (5) days of delivery of the Goods as regards any claimed shortage, misdelivery, damaged Goods, defect, non-conformity with specifications, or failure to comply with the Goods description or quote. The Buyer must keep such Goods as received, including all the packaging materials, until inspection by the Seller or its representative. If the Buyer does not comply with the provisions of this clause then the Goods will be conclusively treated to be in full compliance. Subject to the availability of materials and resources, the Seller's liability for short delivery is limited to supply of the Goods in shortage.
- 3.20 **Insurance:** As regards damaged Goods the Seller has the right to receive all insurance proceeds payable in respect of the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's right to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 3.21 **Returns:** No returns are permitted except for an error or non-conformity for which the Seller is responsible, in which case the Seller's liability is limited to replacing the Goods or repairing the Goods provided that:
(a) the Goods are returned only with the Seller's prior express written consent;
(b) the Goods are returned with the Seller's requested documentation (including, but not limited to, authorisation number);
(c) the Seller is not liable for Goods stored or used in an improper manner;
(d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.
The Seller may elect in its absolute discretion to accept the Goods for credit but this may incur a restocking fee of 20% of the value of the returned Goods plus any freight in all jurisdictions relevant to the Goods and transactions relating to them.
- 3.22 **Legal Compliance:** For the Goods supplied by the Seller to the Buyer, it is the Buyer's responsibility to obtain and fully comply with all licenses, permits, authorisations and approvals needed under any relevant legislation, regulation, proclamation, ordinance, by-law, industrial award and other statutory instrument or rules.

- 3.23 **Storage of Goods:** Until the Seller is paid in full by the Buyer: (a) the Buyer must keep the Goods delivered to it at its own expense in safe custody and stored separately from any other stock; and the Buyer must not pledge, mortgage, charge or part with the Goods.
- 3.24 **Legal Title and Risk:** Until payment of the Price and the charges for the Goods is made in full to the Seller: (a) legal title to the Goods remains the property of the Seller; and (b) the Buyer will be in possession of any delivered Goods solely as a bailee for the Seller. Risk in the Goods pass to the Buyer on delivery of them to the Buyer's nominated delivery location.
- 3.25 **Conditional Sales:** Notwithstanding that the property in the Goods has not passed to the Buyer, the Buyer may resell the Goods in the name of the Buyer but only as agent for the Seller and may deliver the Goods to the Buyer's customer(s) but only on terms and conditions which do not prejudice the Seller's ability to obtain the sale proceeds of them. Such sale proceeds must be held by the Buyer in trust for the Seller until the Price and all charges for the Goods are received by the Seller from the Buyer.
- 3.26 **Intellectual Property:** Where the Seller has drafted the drawings for the Goods, then the ownership of intellectual property in and to those drawings vests in the Seller, and may only be used by the Buyer at the Seller's discretion. On making the Buyer's order to the Seller and at the latest on receipt by the Buyer of the Seller's order confirmations, the Buyer must ensure specifications by the Seller meet the Buyer's requirements. If the Buyer has drafted or supplied drawings for the Goods, then the intellectual property in and to those drawings vests with the Buyer and the Buyer indemnifies the Seller as regards the specifications, designs and all intellectual property rights, title and interest in and to the drawings and the Goods to the effect that such intellectual property does not infringe rights of any third party.
- 3.27 **Consequences of Insolvency:** If the Buyer becomes, threatens to become or is in jeopardy of becoming subject to any form of insolvency administration; passes a resolution for winding up; becomes unable in the Seller's opinion to pay its debts as and when they fall due; becomes bankrupt, is the subject of a bankruptcy petition or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit:
- (d) the Seller may by notice in writing immediately terminate these Standard Conditions of Sale;
 - (e) all amounts owing to the Seller by the Buyer, whether or not due for payment, immediately become payable;
 - (f) the Buyer immediately ceases to have any right to sell supplied but unpaid and unsold Goods;
 - (g) the Buyer must immediately place under the control and at the disposal and repossession of the Seller all supplied but unpaid and unsold Goods and the Seller will have all rights, title and interest to those Goods without encumbrance; and the Seller may where necessary use reasonable force to liberate and take possession of those Goods;
 - (h) where those Goods are held in a warehouse or other place outside the control of the Buyer then the Buyer will be treated as having hereby irrevocably appointed the Seller as the Buyer's attorney to sign, execute, deliver, record and do all acts and things and in the name and in the favour of the Seller in respect of deeds, agreements and documents necessary, proper or convenient in such attorney's opinion to secure, convey, grant, perfect and otherwise deal with the release of those Goods, whether or not the warehouse or any third party has money outstanding and to be paid by the Buyer or its principals; and
 - (i) the Seller has the right to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies available to the Seller.
- 3.28 **Refusal of Supply:** The Seller may refuse to supply further Goods, without giving prior notice. The Seller is not liable for loss or damage if it refuses to supply.
- 3.29 **Termination:** The Seller may by written notice to the Buyer immediately terminate these Standard Conditions of Sale if the Buyer (without limiting the operation of any other terminating event and without limiting any other right which the Seller may have under these Standard Conditions of Sale or at law):
- (a) fails to pay the Price, any Price variation or the charges due for the Goods, respectively within the required time; or
 - (b) is in material breach (by omission or commission) of any provision of this Agreement, whether an obligation (including representation, duty, undertaking, liability, prohibition, covenant, warranty or indemnity) or a right (including a benefit, remedy, discretion, authority or power), of these Standard Conditions of Sale and that breach is not in the Seller's opinion capable of being remedied or remedied within ten (10) days after notice of breach is given by the Seller to the Buyer.
- 3.30 **Liability:** Except as expressly specified in these Standard Conditions of Sale or elsewhere expressly in writing agreed to by the Seller and the Buyer and at all times subject to the extent it is lawful or possible to do so at law:
- (a) all conditions, warranties or other rights, both express and implied by law or by custom or other circumstances, and whether written or oral are excluded and disclaimed as to the Goods' description, quality, performance or fitness for its purpose;
 - (b) the entire risk as to the results and performance of the Goods is assumed by the Buyer;
 - (c) each of the Goods is supplied "as is" and the Buyer relies on its own skill and judgment in deciding to acquire and/or use them for any application or purpose;
 - (d) the Seller accepts no liability for any and all demands, claims, actions, proceedings, settlements accidents, events, acts or omissions, expenses, damages, costs and losses of any type which may be incurred (either actual or contingent) in any way connected with or arising directly or indirectly from breach (by commission or omission) in whole or part of any death, bodily injury, disability, sickness, disease, damage or loss of property whether relating to the Buyer or third parties, the Buyer's premises or the premises of others, by whatever legal theory, whether contract, tort, property, bailment, trust, unjust enrichment, statutory law or otherwise;

- (e) the Buyer has received no promise, guarantee, representation, warranty or undertaking regarding the profitability of or any other consequence or benefit to be obtained from use of the Goods;
- (f) under no circumstances will the liability of the Seller exceed the Price of the Goods; and
- (g) in no event is the Seller liable for any special, incidental, direct, indirect or consequential loss, damage or injury whatsoever (including, without limitation, damages for loss of profits, business interruption, or loss of reputation, data or computer programs) whether foreseeable or unforeseeable, whether based on statute, common law, contract, equity, tort or any other legal theory, arising out of the delivery, use, design, performance or repair of the Goods.

This clause does not exclude, limit or modify remedies that may be available under the Trade Practices Act 1974 (Cth) or state fair trading laws. The limitations and exclusion of liability specified in this clause and these Standard Conditions of Sale remain in force after the termination, completion or expiration of these Standard Conditions of Sale and any contract pursuant to them.

- 3.31 **Force Majeure:** No default, delay, inability or failure to perform on the part of the Seller will constitute a breach if such default, delay, inability or failure is due to a cause, fact, circumstance, matter, or thing beyond the reasonable control of the Seller. The Seller is relieved of the relevant obligation to perform to the extent and for the period that it is so unable to perform.
- 3.32 **Standard Agreement Continuity:** If the Seller develops revised standard conditions of sale and the Buyer agrees to them, they then immediately supersede these Standard Conditions of Sale.
- 3.33 **Joint and Separate Liability:** If the Buyer comprises more than one person then his/her/its rights are for the benefit of them jointly and separately and his/her/its obligations and liability to the Seller is to be joint and separate.. These Standard Conditions of Supply bind any Buyer accepting it although another Buyer may not sign or may not be bound by these Standard Conditions of Sale or may be released from it by the Seller.
- 3.34 **Severability:** If a provision or part of it of these Standard Conditions of Sale is held invalid, void, unenforceable or illegal for any reason, it is to be read down if possible so as to be valid, enforceable and legal. But if it cannot be read down it is to be taken to be severed from these Standard Conditions of Sale and these Standard Conditions of Sale will otherwise remain in full force. If the reading down makes these Standard Conditions of Sale vague or uncertain or changes them materially and in substance then the Buyer and Seller will no longer be bound by these Standard Conditions of Sale for the relevant transaction.
- 3.35 **Waiver:** No provision of these Standard Conditions of Sale is to be taken to be waived by the Seller except by express written consent executed by the Seller.
- 3.36 **Notices:** Any notice given under these Standard Conditions of Sale:
- (a) must be in writing addressed to the intended recipient at the address specified in these Standard Conditions of Sale or the address last notified by the intended recipient to the sender;
 - (b) must be signed by the sender or an authorised officer of the sender which is to be taken to include any director or secretary; and
 - (c) must be taken to be duly given, in the case of delivery in person or by post, courier, facsimile or email when left, delivered or received at the street address, postal address, courier address, facsimile number or email address of the intended recipient - in each case as set out in these Standard Conditions of Sale or as the intended recipient may from time to time give written notice of to the sender. Despite the foregoing, if delivery or receipt occurs on a day which is not a business day in New South Wales or is later than 4pm on a business day in New South Wales it will be taken to have been duly given at the commencement of business on the next business day in New South Wales.
- 3.37 **Required Notice of Change of Ownership:** The Buyer must give the Seller written notice within seven days of a change to the ownership of the Buyer's business or a change to his/her/its business structure. If such notice is not given, the Buyer remains liable for outstanding balances granted after any changeover or transfer of ownership.
- 3.38 **Required Notice of Change of Buyer's Details:** The Buyer must promptly, diligently and legibly give written notice to the Seller of all changes to particulars set out in the Buyer's Details section of the Application, including changes to contact details and representatives. If such notice is not given, the Buyer remains liable for any consequent errors and costs arising from them.
- 3.39 **Interpretation:** In these Standard Conditions of Sale, unless the context otherwise requires: (a) a reference to any party to these Standard Conditions of Sale includes its heirs, administrators, successors, substitutes (including persons taking by novation), assigns and related bodies corporate; (b) words in the singular number include the plural and vice versa; (c) headings are for convenience only and have no affect on interpretation; (d) a reference to "including" and like terms means "including but not limited to"; (e) a reference to any period of months is to calendar months; (f) a right includes a benefit, remedy, discretion, authority or power; (g) an obligation includes a representation, responsibility, duty, undertaking, liability, prohibition, covenant, warranty or indemnity; (h) a failure to comply, observe or perform an obligation constitutes a breach of an obligation; (i) a reference to a thing (including any amount) is a reference to the whole and each part of it and a reference to a group of things or persons is a reference to all of them collectively and to any one or more of them; (j) words importing any gender include all genders; and (k) no rules of construction apply to the disadvantage of one party on the basis that it offered or drafted these Standard Conditions of Sale.

3.40 **Governing Law and Jurisdiction:** These Standard Conditions of Sale must be interpreted and governed by the law of the State of New South Wales and the Commonwealth of Australia as applicable. If a dispute arises in relation to these

Standard Conditions of Sale it must be subject to the exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.

3.41 **Goods Warranty/Guarantee:** The Seller may specify a warranty period for the Goods identified in any specific contract transaction order confirmation form or other Seller document. The warranty period, if any, will commence on the day after the date of delivery of the Goods or each instalment of the Goods, whichever is the earlier. As regards the duration of the warranty period time is of the essence. During such warranty period on written notice to it by the Buyer the Seller will promptly and at its expense rectify any non-conformity in the Goods if the non-conformity is in the reasonable opinion of the Seller within the Seller's scope of responsibility (relating to design, materials, or workmanship of the Goods not in conformity with specifications) and subject always to the following conditions:

- (a) such warranty does not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure by the Buyer or third parties to properly maintain any of the Goods;
 - (ii) failure by the Buyer or third parties to follow any instructions or guidelines provided by the Seller;
 - (iii) use of the Goods otherwise than for its purpose, eg any application specified on a quote or order confirmation;
 - (iv) continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
 - (v) fair wear and tear; or
 - (vi) any event or circumstance which is in the nature of force majeure, including fire, flood, storm, accidents, plague, earthquakes, act of God, riots, explosions, wars, or hostilities;
- (b) such warranty will cease if the design, materials or workmanship is altered, repaired or overhauled without the Seller's consent; and
- (c) the Seller is not liable to the Buyer for any reasonable delay in assessing the Buyer's claim or performing the required alteration, repair or overhaul.