

**CREDIT ACCOUNT APPLICATION**
**01 - BUSINESS AND CREDIT INFORMATION**

Full Legal Name:			
Business Name:		Credit Limit Required?	
Primary Business Address:			
City:		State:	Post Code:
Postal Address:			
City:		State:	Post Code:
ABN:		ACN:	
Telephone:		Fax:	Email:
Bank Name:	BSB:		Account No:
Bank Address:			Telephone:
City:		State:	Post Code:

**02- BUSINESS REFERENCES**

Company Name:			
Address:		Avg Monthly Spend:	
City:		State:	Post Code:
Phone:		Fax:	Email:
Company Name:		Avg Monthly Spend:	
Address:			
City:		State:	Post Code:
Phone:		Fax:	Email:
Company Name:		Avg Monthly Spend:	
Address:			
City:		State:	Post Code:
Phone:		Fax:	Email:

**03 - AGREEMENT**

- By submitting this application, you authorise **EmRock** Building Supplies Pty Ltd to make inquiries into the banking and business/trade references that you have supplied.
- By submitting this application, you agree to the **EmRock** Building Supplies Pty Ltd conditions detailed in pages 2-7 below as the whole agreement.

**04 - SIGNATURES**

TITLE: (print)		TITLE: (print)	
NAME: (print)		NAME: (print)	
DATE:		DATE:	
SIGN:		SIGN:	

## GUARANTEE, INDEMNITY & CHARGE

### WARNING: THIS IS A VERY IMPORTANT PART OF THIS DOCUMENT

It means you may have to pay **EmRock Building Supplies Pty Ltd** (the Supplier), as referred to in the Application for 30 Day End of Month Commercial Credit Account, if the Applicant does not meet its obligations under the Terms & Conditions of Sale. You will become personally liable if the Applicant fails to pay any moneys owing to the Supplier as referred to in the Application for 30 Day End of Month Commercial Credit Account.

#### Before you sign:

- you should read pages 2, 3 & 4 which detail what you are agreeing to by signing the Guarantee, Indemnity and Charge
- you should check for yourself whether the Applicant can pay its debts as and when they fall due and whether it can comply with its obligations under the Terms & Conditions of Sale
- you may wish to consult your lawyer and/or financial adviser

#### BY SIGNING THIS DOCUMENT, I CONFIRM THAT:

1. I have read the Guarantee, Indemnity and Charge clauses contained in pages 2, 3 & 4 of this document carefully
2. I know that it means I may be personally required to pay a debt incurred by the Applicant and indemnify the Supplier;
3. I have not signed this document under any form of duress or pressure from any person;
4. I am not purporting to act as a trustee or as agent for any other person;
5. I have been given the opportunity of obtaining legal and/or financial advice and have either taken such advice or I have decided not to obtain such advice despite the Supplier pointing out that this may be done; and
6. I know that it is my responsibility to find out whether the Applicant will be able to pay the Guaranteed Money, whether the Applicant will be able to comply with its obligations under the Arrangements, and to make sure my interests are protected. I have made my own enquiries; I have not relied on the Supplier to give me information about the Applicant or anything else. I have not relied on anything told to me by the Supplier about the Applicant or anything else.

#### GUARANTEE, INDEMNITY AND CHARGE

The Guarantor(s) set out below hereby Guarantee to the Supplier that the Applicant will pay the Supplier all the Guaranteed Money described below, and INDEMNIFY the Supplier against each claim, loss, liability, cost and expense incurred by the Supplier in connection with any default by the Applicant in relation to its obligations under the Arrangements. If the Applicant does not pay the Supplier any amount of the Guaranteed Money when it is due, the Supplier can demand that you pay that amount to the Supplier. You must then immediately pay the Supplier that amount. This can happen as often as the Applicant does not pay the Supplier. It can happen even if the Supplier does not take action to recover the Guaranteed Money from the Applicant. There is no limit on the amount of the Guaranteed Money.

You must also indemnify the Supplier (that is, keep the Supplier harmless) in connection with any default by the Applicant under the Arrangements. Again, there is no limit on the amount that you might have to pay the Supplier to indemnify the Supplier.

You give this guarantee and indemnity, and make the promises set out below because the Supplier has agreed to enter or to continue the Arrangements at your request.

The Arrangements covered by this document are the supply of goods and/or services by the Supplier to the Applicant on whatever trading terms the Supplier set from time to time. If you agree in writing that any additional arrangements are to be covered by this document, then that also will be included as part of the Arrangements.

This document relates to all money which the Applicant may owe to the Supplier now or in the future for any reason under or in respect of the Arrangements. This is the Guaranteed Money.

This document also relates to the obligations of the Applicant under the Arrangements.

At any time, the Guaranteed Money will include the following, so long as they arise under or in respect of the Arrangements.

- (a) Money which the Applicant actually does owe or will owe the Supplier
- (b) Money which the Applicant contingently owes the Supplier at that time. Money is contingently owed where
- (c) the Applicant has an obligation to pay the Supplier if something happens or is discovered.
- (d) Money which the Applicant may owe the Supplier after that time if something happens or is
- (e) discovered. This applies even if at that time there is no existing obligation to pay it, so long as it arises in relation to circumstances which at that time either exist or can reasonably be foreseen or contemplated.
- (f) (d) Money which the Applicant owes or will owe as a result of a transfer to the Supplier of an obligation owed by the Applicant. This includes money contingently owed and money which any become owed later as described in paragraph (c)
- (g) (e) Money (including money of the type set out in the above paragraphs) which the Applicant would have owed the Supplier but for some reason as described in the clause below headed 'Legal problem with the Applicant or the Guaranteed Money'

It includes in each case any money which the Applicant may owe together or with others.

Once you have executed this document you cannot escape liability. You will continue to be liable to pay money that becomes due unless and until you notify the Supplier in writing that you wish

to withdraw your future support for the Applicant under this document. Such notice must be addressed to, The Supplier, C/- The Company Secretary, **EmRock Building Supplies Pty Ltd**, 85 Prosperity Place, Geebung Qld 4034. Then, you will not be liable for any moneys arising out of orders for goods and/or services made by the Applicant after the tenth business day following actual receipt by the Supplier of such notice from you but you will remain liable in respect of orders made on or prior to that day.

Other words used in this document are explained in the clause below headed 'Reading this document'.

#### LEGAL PROBLEM WITH THE APPLICANT OR THE GUARANTEES MONEY

If there is a legal problem with the Applicant or the Guaranteed Money, the Supplier might have no legal right to recover an amount of the Guaranteed Money from the Applicant. For example, this

might happen because the Applicant might be in Administration or might not have properly signed a document or the Arrangements might be affected by a breach of the law. If for any reason that happens you promise to pay that amount to the Supplier whenever the Supplier asks. That amount will be taken to be part of the Guaranteed Money.

This applies even if the Supplier knew of the problem or should have known. It applies even if, because of the problem, the Applicant could never have been required to pay the Supplier the amount.

#### CHARGE

You hereby charge all of your present and future real property, wherever situated, to secure repayment of the Guaranteed Money. Once you have signed this document, you cannot withdraw this charge. Upon the signing of this guarantee, a charge over all of your present and future real property will arise and the Supplier will then by reason

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## GUARANTEE, INDEMNITY & CHARGE

of the charge in this document have certain rights in relation to real property that you own or will own in the future.

These rights include:

- (a) a right to lodge a caveat over the title to any real property that you own at any time, including, any time prior to you being unable to pay the Guaranteed Money and
- (b) a right to appoint a receiver over all of your real property or a statutory trustee for sale.

The Supplier may enforce the charge at any time after your failure to pay the Guaranteed Money when demanded by the Supplier as a result of the Applicant not paying the Guaranteed Money when due.

To better give protection to the Supplier's rights, you offer to execute or register any other document or agreement to more satisfactorily assure, mortgage or secure all of your real property

in favour of the Supplier and to aid in the execution or exercise of any power, right or remedy by the Supplier, at your own cost. In addition, if the Supplier accept your offer, you agree to execute

a legal or statutory mortgage over any real property securing the Guaranteed Money in form and substance required by the Supplier and the Supplier may register that mortgage with the applicable government agencies

You appoint any of the Supplier's Officers as your attorney to complete and execute any legal or statutory mortgage over any real property securing the Guaranteed Money, if the Supplier accept your offer, as contemplated in the preceding paragraph. This appointment operates as a deed poll in the Supplier's favour.

You agree not to create or allow to exist any form of security interest over any of your present and future real property except where the Supplier consent to that security interest by executing a deed of priority acceptable to the Supplier (in the Supplier's absolute discretion) except any security interest created by you before the date of this document.

### UNCONDITIONAL OBLIGATION

Your obligations under this document are unconditional. They are not affected by anything which might release you from all or part of your obligations, or limit them, if you had not agreed to this clause.

For example, you continue to be liable even if:

- (a) the Supplier does not exercise any of our rights against the Applicant or anyone else;
- (b) the Supplier gives the Applicant or anyone else time to pay or any other concession;
- (c) the Supplier makes any arrangement or compromise with the Applicant or anyone else;
- (d) the Supplier gives the Applicant or anyone else a discharge, or release or limits the Supplier's rights;
- (e) the Supplier does not take security (for example, a mortgage or another guarantee) or does not have security, even if that security was mentioned to you;
- (f) This or any other document or security is not signed by any person or is not binding on any person;
- (g) the Supplier is negligent or mistaken, or break any agreement;
- (h) You, the Applicant or anyone else:
  - I. who is an individual, dies or goes into some form of Administration; or
  - II. who is not an individual (for example, a corporation or partnership), has a change in its constitution or membership or goes into some form of Administration; or,
  - III. the Applicant or anyone else has any claim against the Supplier.

### CHANGES TO TRADING TERMS OR CREDIT LIMIT

The Guaranteed Moneys and the indemnity relate to the Arrangements between the Supplier and the Applicant. The Supplier's trading terms & credit limit are a key part of the Arrangements. The Supplier may change the trading terms or credit limit or replace

them. The Supplier does not have to get your consent. This document will cover the changed trading terms or credit limit or new trading terms or credit limit, even if it means that the amount of the Guaranteed Money is increased.

### IF THE APPLICANT DIES OR GOES INTO ANY FORM OF EXTERNAL ADMINISTRATION

If the Applicant or anyone else dies or goes into any form of Administration, and the Supplier can make a claim in the estate or Administration, you promise not to make a claim in that estate or

Administration until the Supplier has been paid all of the Guaranteed Money. If the Supplier receive any amount as a result of making a claim, or for any other reason, the Supplier will use the funds to reduce the Guaranteed Money. You are fully liable for the remainder of the Guaranteed Money.

### LIABILITY AFTER THE APPLICANT MAKES A PAYMENT

Your obligations under this document are continuing. They apply to all of the Guaranteed Money from time to time even though some of it may have been paid by the Applicant or you or anyone else in the meantime

### THE SUPPLIER'S DISCLOSURE RESPONSIBILITY

The Supplier does not have to tell you anything about the Applicant or anyone else, nor does the Supplier have to tell you whether anything happens in relation to the Guaranteed Money or the Arrangements or any security or rights.

### PAYMENT REFUNDS

The Supplier might be required to refund or give up money which the Applicant or anyone else has paid to the Supplier or which the Supplier has recovered in any way. For example, this might happen because of a law about Administration or about the duties or powers of mortgagees, trustees, directors or officers, or because the money belonged to someone else.

If that happens for any reason, you will owe the Supplier all the money you would have owed if the amount refunded or given up had never been paid or recovered. You promise to do everything you can to restore to the Supplier all security and rights which the Supplier held immediately before the Supplier received the money the Supplier later had to refund or give up.

### INTEREST

You promise to pay to the Supplier interest on any amount which you must pay under this document. That interest will be calculated as from the day that the amount is due and on the daily balance of the amount unpaid. This applies even if the Supplier has a judgment for the amount. The rate will be the same as the rate payable by the Applicant on any overdue moneys under the

Arrangements. If you do not pay the interest due within the month that interest will compound monthly from the date the amounts you owe the Supplier became due until you have paid the all outstanding amounts due to the Supplier.

### EXPENSES

You promise to pay all amounts which the Supplier reasonably spend or incur in connection with enforcing our rights under this document or consider enforcing which include our legal fees on a full indemnity basis.

### Notices and demands

A notice or demand under this document given by any of the Supplier's Officers will be taken to have been received by you if:

- (a) it is served on you personally
- (b) it is left at your last address known to the Supplier
- (c) it is sent by mail to your last known address to the Supplier. If so, it will be taken to be received on the third day after posting
- (d) it is sent by facsimile transmission to any number you give to the Supplier
- (e) it is sent by e-mail to any e-mail address you give to the Supplier

### JOINT AND SEVERAL OBLIGATIONS

In this document, a reference to an obligation of any two or more persons confers that obligation, as the case may be, jointly and severally and a reference to that party includes a reference to any one or more of those persons.

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## GUARANTEE, INDEMNITY & CHARGE

**LEGAL PROCEEDINGS**

You agree that service of any legal proceedings or other legal documents may be made by:

- (a) prepaid post to the address stated by you in the Guarantee, Indemnity and Charge; and/or
- (b) facsimile to any facsimile number stated by you in the Guarantee, Indemnity and Charge; and/or
- (c) e-mail to any e-mail address stated by you in the Guarantee, Indemnity and Charge or to such other address/facsimile number/e-mail address as may be notified by you in writing to the Supplier and that such service will be effective regardless of any correspondence being returned to the Supplier or otherwise not being able to be transmitted.

**EFFECT OF LAW**

This document is subject to laws limiting the Supplier which cannot be excluded. Otherwise all laws which limit our power or require notices to be given are excluded as far as possible. If any part of this Guarantee is prohibited or unenforceable, it will not affect the remaining parts.

**GOVERNING LAW AND JURISDICTION**

This Guarantee, Indemnity and Charge shall be governed will be governed by and construed in accordance with the laws of Queensland.

**PRIVACY**

You agree that the Supplier may obtain from a credit reporting agency a consumer credit report containing information about each of you for the purpose of assessing whether to accept each of

you as a guarantor for credit applied for by, or provided to, the Applicant. You each agree that the agreement under this clause commences from the date of this document and continues until the credit covered by the Applicant's application ceases.

**READING THIS DOCUMENT**

In this document:

- I. *Administration includes bankruptcy, administration arising out of mental illness or incapacity, administration of an insolvent estate, administration or liquidation of a corporation, scheme of arrangement, receivership or winding up or anything similar.*
- II. *The definitions in the Terms and Conditions of Sale shall apply in this Guarantee, except that: The Supplier also includes any person to whom the Supplier assigns its rights under this Guarantee and under all or part of the Arrangements.*
- III. *The Supplier has the same meaning as in the Terms and Conditions of Sale and the Application for 30 Day Commercial Credit Account and includes any person to whom the Supplier assigns its rights under this Guarantee and under all or part of the Arrangements.*

1ST GUARANTOR		2ND GUARANTOR	
Signature of Guarantor	Signature of Witness	Signature of Guarantor	Signature of Witness
Full Name (please print)			
Address of Guarantor	Address of Witness	Address of Guarantor	Address of Witness
Email of Guarantor	Facsimile of Guarantor	Email of Guarantor	Facsimile of Guarantor
3RD GUARANTOR		4TH GUARANTOR	
Signature of Guarantor	Signature of Witness	Signature of Guarantor	Signature of Witness
Full Name (please print)			
Address of Guarantor	Address of Witness	Address of Guarantor	Address of Witness
Email of Guarantor	Facsimile of Guarantor	Email of Guarantor	Facsimile of Guarantor

## TERMS & CONDITIONS

### 01 - CONTRACT

The specifications, timing, price and other details of the products and, or services to be provided by *EmRock Building Supplies Pty Ltd* - ABN 86 621 727 802 ('**EmRock**') will be agreed in writing between you and **EmRock** ('the Contract').

These Terms and Conditions are applicable to all your purchases from **EmRock** regardless of how the purchase request is made and by whatever means the order is transmitted (e.g. in person, or via telephone, email, facsimile, Electronic Data Interchange (EDI) or via the web).

By submitting an order to **EmRock** you are deemed to be making an order to purchase goods and or services.

Each Order will constitute an offer by you to acquire Products from **EmRock** upon and subject to these Terms and Conditions to the exclusion of all other Terms and Conditions.

All quoted prices are valid for a 14-day period from the date of that quotation unless withdrawn earlier by **EmRock** or agreed to in writing stating otherwise.

No quotation should be construed as an offer or obligation to supply products and, or services.

If you make a request or order ('the Order') for **EmRock** to supply products and, or services the Order should be construed as an offer and not as an acceptance of an offer previously made by **EmRock**, the Order does not create any obligation on **EmRock** to supply the products and the Contract will not be formed until such time as **EmRock** accepts the Order either verbally or in writing or by delivery of the products and, or provision of the services.

Once formed, the Contract and the **EmRock** Terms and Conditions ('the Terms') constitute the entire agreement between you and **EmRock**. All prior negotiations, agreements, arrangements, representations, understandings and correspondence are superseded by the Contract and these Terms.

The Contract and these Terms will in all circumstances prevail over your terms and conditions (if any), unless **EmRock** agrees in writing to be bound by your terms and conditions.

To the extent that there is any inconsistency between the Contract and these Terms, these Terms prevail unless the inconsistency is agreed in writing.

### 02 - YOU WARRANT THAT:

- you have provided all relevant information to **EmRock** when seeking a Quotation or placing an Order for Goods or Services from **EmRock**;
- all relevant information supplied by you to **EmRock** was accurate and complete;
- in giving any Quotation, accepting any Order or supplying or delivering any Goods or Services, **EmRock** will be entitled for all purposes to rely upon the accuracy and completeness of all Relevant Information provided by you;
- subject to any Law to the contrary, unless **EmRock** makes an express representation to the contrary in writing, you will not allege or in any circumstances maintain:
  - a) that **EmRock** had, or should be taken to have, approved of or represented any specification (whether supplied by you, by **EmRock** or by a third party) as being suitable for any particular purpose; or
  - b) that **EmRock** is liable for any Loss to the extent that the Loss results from or is attributable to any defects in, or unsuitability of, the specification.
- you have formed your own opinion as to the correctness or otherwise of any information or advice provided by or any representation made by **EmRock** (including as to product design and application) in connection with any Goods or Services quoted for, ordered from or supplied or Delivered by **EmRock** and does not rely on **EmRock** in respect of such information, advice or representation or maintain or allege that it has so relied.

### 03 - PRICING

**EmRock** may increase the price of products and, or services if the price increase results from any introduction of, or change to, any legislation, regulation or government policy.

Each product has minimum order quantities ('**MOQ**'), an additional charge may be applied for product orders below the **MOQ**.

Unless otherwise stated, the price for the products and, or services agreed in the Contract and any other amount payable under the Contract or these Terms shall be exclusive of any tax payable pursuant to A New Tax System (Goods and Services Tax) Act 1999 (Cth) ('GST') or similar legislation, you will be required to pay to **EmRock** an amount equal to the GST in addition to the price or relevant amount.

### 04 - PAYMENT TERMS

Payment terms shall be at **EmRock's** discretion and unless agreed to in writing stating otherwise **EmRock** requires payment strictly 30 days from end of Month Australian Dollars (AUD).

**EmRock** reserves the right to request a deposit on projects greater than \$10,000 AUD.

**EmRock** encourage payment through electronic transfer to the following account:  
Account Name: **EmRock** Building Supplies Pty Ltd

- **Bank:** CBA
- **BSB:** 064-000
- **Account No:** 14944291

If payment is not made within the specified time, **EmRock** reserves the right to:

- charge interest at **EmRock's** current overdraft rate + 5% per annum on any amounts overdue and such interest will accrue and be recoverable from day to day; and
- commence legal proceedings to recover the outstanding amount plus any costs incurred in the recovery on an indemnity cost basis, including debt collection, agency fees and legal fees on a client /solicitor basis.

**EmRock** may pass credit information on to our debt collectors when pursuing outstanding debts.

Payment is only considered 'received by **EmRock**' when it receives cash, or when the proceeds of other methods of payment are credited and cleared to **EmRock's** bank account.

You are not entitled to any retention or otherwise retain any amount due to **EmRock**. All payments are to be made without deduction or equitable or other **set-off** whatsoever.

### 05 - PRODUCT SHIPMENT AND FREIGHT COSTS

Standard product pricing does not include any allowance for shipping or freight costs. You will, unless **EmRock** and you agree otherwise, bear the cost of delivery of the products.

**EmRock** will make all reasonable efforts to have the products and, or service results delivered or provided to you by the date agreed, but **EmRock** will not be liable for:

- any failure, or delay in delivery or provision, of the products, services and, or service results for any reason;
- any damage or loss due to unloading or packaging of the products and, or service results;
- any damage to property caused upon entering premises to deliver the products and, or service results; and
- any damage to property caused upon entering premises to supply the products and, or service results.

You will inspect all products, services and, or service results upon delivery or collection.

You will be deemed to have accepted the products and, or service results supplied in the following events:

- failure by you to reject or return the products and, or service results; or
- installation or use of the products and, or service results in any way by you.

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## TERMS & CONDITIONS

### 06 - WARRANTIES AND LIMITATION OF LIABILITY

**EmRock** warrants that the products and, or services it supplies are free from defects in their design, materials and workmanship. This warranty does not include wear and tear of parts and defects caused by:

- improper handling;
- unskilled operators;
- non-compliance with **EmRock's** operating instructions; or
- if the products and, or service results are modified in any way.

The warranty is valid for all defects that occur within 12 months of delivery to you. You shall notify **EmRock** in writing of the existence and nature of any defect without unreasonable delay after discovery of the defect.

It is your responsibility to remove the faulty product and, or service results and ship them back to **EmRock** who will replace or repair them and pay for freight costs to return them. This however is only the case if the products are covered by the warranty as outlined above.

All repairs made to products after the aforementioned warranty period shall be charged to you accordingly.

All terms and warranties, which would otherwise be implied by law or otherwise, are excluded except as stated in these Terms.

If under the Australian Consumer Law or any other law any terms which apply to the sale of the products under the Contract cannot be legally excluded, restricted or modified then those terms apply only to the extent required by law.

To the extent permitted by law, **EmRock's** liability for any breach of the terms of the Contract, and any condition or warranty implied by the provisions of the Australian Consumer Law, is limited to and will be completely discharged by any one of the following as determined by **EmRock** in its absolute discretion:

- the replacement of the products and, or service results or the supply of equivalent products and, or service results;
- the repair of the products and, or service results;
- the payment of the cost of replacing the products and, or service results or of acquiring equivalent products;
- the payment of the cost of having the products and, or service results repaired;
- the re-supply of the products and, or services; or
- the payment of the cost of having the products and, or services re-supplied.

Except as expressly provided in these Terms and to the extent permitted by law, **EmRock** is not liable to you (and any party claiming through you) for:

- any claim made under, or in connection with, the Contract, in tort, under statute, in equity or otherwise in respect of defects whatsoever in the products for the loss or damage to person or property arising from or caused from such defects;
- any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the products performed where such loss or damage includes:
  - a) any loss of income, profit or business; or
  - b) any loss of goodwill or reputation.

### 07 - INDEMNITY

You will indemnify and keep indemnified and hold **EmRock** harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by **EmRock**, and from and against all actions, proceedings, claims or demands made against **EmRock**, arising from one or more of the following:

- your failure to comply with any laws, rules, standards, regulations or instructions applicable in relation to the products, services and, or service results, or the use of the products, services and, or service results; and

- any negligence or breach of duty by you and your employees, agents or contractors in relation to products, or the use of the products.

### 08 - INTELLECTUAL PROPERTY

You acknowledge that:

- **EmRock** have the licence to use all intellectual property rights in the products and, or services; and
- the provision of the products and, or services to you does not transfer any of the intellectual property rights.

You warrant to **EmRock** that **EmRock** is entitled to use any drawings, specifications and documents provided to **EmRock** for the purposes of, or in the course of, the supply of products and, or services and that such use does not infringe any third party's intellectual property rights.

You indemnify **EmRock** against all claims, losses and damages incurred by **EmRock** as a result of drawings, specifications and, or documents provided by you to **EmRock** for the purposes of, or in the course of, the supply of the products and, or services breaching a third party's intellectual property rights.

### 09 - TITLE AND RISK

The legal and equitable title to the products and, or service results will only be transferred from **EmRock** to you when you have met and paid all that is owed **EmRock** on any account whatsoever.

You acknowledge that until you have met and paid all that is owed to **EmRock** on any account whatsoever, you hold the products and, or service results as bailee for **EmRock** and that a fiduciary relationship exists between you and **EmRock**.

You will store the products and, or service results safely and in such manner to ensure that they are capable of being clearly identified as the property of **EmRock**.

If required, you shall deliver the products and, or service results which are subject to this clause to **EmRock** at your cost.

If you default as contemplated by **clause 11**, **EmRock** may, without notice, take possession of the products and, or service results and you agree that representatives of **EmRock** may enter your premises for that purpose.

Despite the above, you may sell as a fiduciary agent for **EmRock** the products to a third party or use the products in some manufacturing or construction process of its own or some third party, provided that where the products you use are paid by that third party to you, you hold the proceeds separate from other monies, to the extent of the amount owing by you to **EmRock**.

Notwithstanding this clause, you are still required to pay **EmRock** for products and, or service results already delivered and products and, or service results manufactured or ordered to specification and not yet delivered.

The risk in the products passes to you upon delivery or handover (including all risks associated with unloading) or upon title in the products and, or service results passing to you, whichever is earlier.

You acknowledge that insurance of the products and, or service results is your responsibility.

### 10 - PERSONAL PROPERTY SECURITIES ACT 2009 (Cth) ('PPSA')

You acknowledge and agree that for the purposes of the PPSA or substitute legislation:

- the Contract and the Terms constitute a 'security agreement';
- **EmRock** holds a 'security interest' in respect of all the products and, or service results supplied and in any proceeds of the sale of the products; and
- any supply of the products to which **clause 9** applies will constitute a 'purchase money security interest'.

You will execute all documents, provide all such information and do such further acts as **EmRock** may reasonably require to enable the registration a 'security interest' or a 'purchase money security interest' under the PPSA.

To the extent permitted by law and the PPSA, you agree to waive all of your right to receive any notice, statement or information under sections 95, 123, 130, 132(3)(d) and 135 of the PPSA, and all of its rights under sections 142 and 143 of the PPSA.

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You will pay the costs, charges and expenses of and incidental to the registration of a 'security interest' or a 'purchase money security interest' in favour of **EmRock** under the PPSA, you will also pay all reasonable legal costs arising from any disputes or negotiations with third parties claiming an interest in any products and service results supplied.

### 11 - DEFAULT

You will be in default if:

- you breach any of the Terms or the Contract; or
- you being an individual commits an act of bankruptcy or you being a body corporate becomes insolvent within the meaning of section 95A of the Corporations Act 2001 (Cth).

If you default, **EmRock** may without notice to you:

- treat the whole of the Contract as repudiated and sue for breach of contract;
- refuse to supply or continue to supply any products and, or services to you;
- claim the return of any products and, or service results in your possession where title has not passed to you;
- withdraw or vary any credit **EmRock** has provided to you; and, or
- make all monies owing by you to **EmRock** on any account immediately due and payable.

Notwithstanding any provision in this clause, **EmRock** reserves all of its rights to claim any remedy available to it as a result of your default.

### 12 - FORCE MAJEURE

If **EmRock's** ability to perform its obligations under the Contract is adversely affected by war, strike, trade dispute, damage to plant or machinery, shortage of any material or labour or any cause beyond **EmRock's** control, **EmRock** may, if it chooses, end the Contract or suspend it for a period determined by **EmRock** by giving you written notice. **EmRock** will not be liable for any loss, damage or liability, which you incur.

You must accept delivery of the products and, or service results notwithstanding any delay in delivery caused by any of the events specified in this clause.

### 13 - GENERAL

You cannot assign, charge or otherwise deal with your rights and obligations under the Contract and these Terms without the prior written consent of **EmRock**

You acknowledge that you have been given reasonable opportunity to obtain independent legal advice before entering into the Contract.

The rights and obligations of the parties will not merge on completion of any transaction under the Contract and these Terms or upon the execution of any other document in connection with the subject matter of the Contract and the Terms.

All rights under the Contract and these Terms are in addition to and do not abrogate, limit or reduce any other rights that **EmRock** may have.

Any provision of the Contract and these Terms that is invalid, unenforceable or illegal must be read down to the extent necessary to avoid that effect. If that is not possible, that provision must be excluded from the Contract and these Terms but only to the extent necessary to avoid that effect.

Unless otherwise specified, time is of the essence in the Contract.

**EmRock may vary these Terms from time to time and without notice. Current Terms are available on our website. You must review the Terms on our website as part your due diligence prior to placing an order with EmRock.**

A right or obligation under the Contract and these Terms cannot be waived except by a document executed by the party waiving that right or obligation and specifying the waiver.

You must pay all stamp duty, registration fees and any other fees charged by any government authority or body in respect of the Contract and these Terms and any document required by the Contract and these Terms.

In these Terms, mentioning anything after include, includes or including does not limit what else might be included and a reference to a party that comprises two or more persons or corporations means those persons or corporations jointly and severally.

### 14 - DISPUTES

If a dispute arises in relation to goods supplied by the **EmRock** to you, **EmRock** may by notice to you at any time prior to determination by a court require that such dispute or part thereof be determined by arbitration according to law. The arbitration is to be conducted in accordance with the Commercial Arbitration Act of Queensland.

There is to be a single arbitrator appointed by agreement or failing agreement by the president of the law society of Queensland. The arbitrator's decision is final and binding subject to any right of appeal under the QLD Commercial Arbitration Act.

The reference of a dispute to arbitration does not affect your obligation to pay the price of goods when due which must be paid without deduction or equitable or other **set-off** pending the resolution of any dispute whether referred to arbitration or otherwise

### 15 - DISCLAIMER

The **EmRock** website may contain links to other websites and materials obtained through third parties. You should make your own enquiries before relying on the content of any third-party website. **EmRock** is not liable for any content appearing on websites operated by third parties.

Furthermore, the **EmRock** website may contain product information provided by or obtained directly or indirectly through third parties (such as suppliers) and while it is provided in good faith, we cannot always verify its accuracy. To the extent permissible at law, such material is provided on an "as is" and without warranty basis, and you acknowledge it may contain inaccuracies or errors or be incomplete or out of date.

You should make your own enquiries before relying on such content, including by referring to the relevant third party's websites and other materials for information regarding their relevant products and services.

To the extent permitted at law, your access to and use of **EmRock** website is subject to these terms and all applicable laws, and is at your own risk.

**EmRock** disclaims all liability for loss or damage (whether direct or indirect) arising out of your use of the **EmRock** website or reliance on its contents.

### 16 - GOVERNING LAW

These terms will be governed by and construed in accordance with the laws of Queensland.

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