

Account Application Document

(Please complete and return via to Email: admin@hyteco.com.au)

Company Name

Trading Name Ph ()

Delivery Address..... Postcode

Postal Address Postcode

Mobile Email..... ABN

Registered Office..... Postcode.....

Business Established.....

Manager's Name.....A/c's Payable Contact.....

Purchaser's Contact.....Service Manager.....

Amount of Monthly Credit Requested.....Bank.....Branch.....

Account's email (for invoices & statements): Ph. No.....

Name of Proprietors/Directors

1 Address..... Ph ()

2 Address..... Ph ()

3 Address..... Ph ()

Trade References (please exclude fuel or freight companies)

1. Company Ph () Email:

2. Company Ph () Email:

3. Company..... Ph () Email;

The Customer and any person whose signature appears below (in whatever capacity) irrevocably consent to HYTECO (Aust.) Pty Ltd making enquires of and obtaining any information from any person whatsoever in relation to the financial standing and credit worthiness of the Customer and the said signatories. The Customer and the said signatories hereby request and authorise such persons to provide such information and agree that HYTECO (Aust.) Pty Ltd may also supply such information however gained to any person who in HYTECO (Aust.) Pty Ltd's opinion has a legitimate interest in such information.

The Customer and any person whose signature appears below (in whatever capacity) acknowledges that HYTECO (Aust.) Pty Ltd has informed them in accordance with section 18E (8) (C) of the Privacy Act 1988 that certain items of personal information about them contained in this application and permitted to be kept on a credit information file might be disclosed to a credit reporting agency.

In consideration to HYTECO (Aust.) Pty Ltd agreeing to give 30 day credit to the Customer, I/We jointly and severally agree that I/We have read and agree to the Terms and Conditions of Sale and these can be viewed on our web site at www.hyteco.com.au. I/We agree to your 30 day Net Trading Terms of payment due on or before thirty (30) days from the end of the month in which purchases were made and understand credit facilities may be withdrawn without notice and/or interest at current bank overdraft rates and collection expenses be charged on overdue accounts placed in the hands of Collection Agents or Solicitors.

Dated thisday of20.....

Signature of Authorised Person.....Printed Name.....Position.....

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TERMS & CONDITIONS OF TRADE

1 INTERPRETATION

1.1 Definitions

In these Terms of Trade, unless the contrary intention appears:

Agreement means any agreement between the Supplier and the Customer relating to the supply of Goods or Services, as evidenced by a supply agreement, order form, accepted quote, tax invoice or otherwise.

Customer / you means the buyer of Goods or Services from the Supplier.

Goods means the products the Supplier sells or supplies to the Customer provided that:

- (a) unless the context provides otherwise, any reference to 'Goods' where it relates to goods provided by the Supplier to the Customer includes all proceeds of such Goods; and
- (b) for the purposes of the Personal Property Securities Act 2009 (Cth), where Goods are supplied to a Customer as inventory, then all references to the Goods will be to them as inventory only while they are held as inventory by the Customer.

GST means Goods and Services Tax as defined by A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Loss includes, but is not limited to, costs (on a full indemnity basis), expenses, lost profits, personal injury and property damage.

Order means any request by you to us for supply of Goods and/or Services but will ideally be a purchase order placed in response to a Quote.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Quote means a written description of Goods and/or Services to be provided, prices of any Goods to be supplied and / or an estimate of the Supplier's charges for the performance of any Services, and estimated time frame for the performance of any Services.

Services means the services to be provided by the Supplier to the Customer in accordance with these Terms of Trade.

Supplier / we / us / our means Hyteco (Aust.) Pty Ltd and may at our discretion include its successors, assigns and agents.

Trade Credit Account means a credit facility with the Supplier under which amounts payable for Goods or Services supplied to the Customer by the Supplier become due for payment at an agreed later time.

2 SALE AND PURCHASE

2.1 These Terms of Trade apply to all transactions between the Supplier and the Customer for the supply or potential supply of Goods or Services and prevail over any conflicting provision contained in any other document, instrument or agreement, whether or not the Supplier has notice of this.

2.2 Goods and Services must be ordered by returning a completed Order to us. Any order we receive is deemed to be an offer made by you to purchase from us under these Terms of Trade.

3 QUOTES

3.1 We may provide you with a Quote. Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by you of necessary material and instructions to us.

3.2 Prices quoted are valid for a period of thirty (30) days from the date of issue and, unless expressly agreed or specified, the Quote does not include delivery charges, GST and/or installation. All other prices are subject to change without notice.

3.3 Any quote may be amended or withdrawn by us at any time before we accept your offer to purchase Goods or Services.

3.4 An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only; not fixed or a warranty.

3.5 Any Quote containing a provision to supply Goods "ex-stock" is subject to fulfilment of prior contracts.

4 DELIVERY

4.1 Any date quoted for delivery is indicative only and not guaranteed unless a guarantee is given by us in writing.

4.2 We may deliver Goods or Services by more than one delivery, in which case you will not be entitled to:

- (a) terminate the Agreement;
- (b) withhold payment for the supply or value delivered; and/or
- (c) any Loss, costs or damages arising from such delivery or any delay in any delivery.

4.3 Delivery will be deemed made at the Supplier's nominated premises or any point of installation agreed in writing at such time as those Goods are received by you, your servants, agents, customers or any carrier nominated by you.

4.4 You must take delivery of the Goods within seven (7) days of notification from us that the Goods are ready for delivery.

4.5 Where you do not accept the delivery of Goods that are ready for delivery by us, we may at our option arrange suitable storage of the Goods at our premises or elsewhere and you must pay all costs of such storage and any incidental charges on demand, including insurance, demurrage and handling.

4.6 We will not be responsible for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not we are ordinarily responsible for the person who caused or contributed to that loss or damage).

5 PAYMENT

5.1 If you do not have a Trade Credit Account with us, you will pay us without deduction the price payable on delivery of the Goods pursuant to clause 4.3.

5.2 If prior to delivery you have completed a Trade Credit Account application which has been approved by us, all amounts are to be paid in full without deduction within thirty (30) days from the end of the month in which the Goods, Services or part of the Goods or Services are delivered pursuant to clause 4.3.

5.3 If we are not paid on the date specified in under these Terms of Trade, without prejudice to any other right or remedy:

- (a) interest may be charged on amounts due (up to and including the date of payment) at a rate of 4% p.a. above the overdraft interest rate charged by our bankers; and
- (b) we may recover the price of the Goods and/or Services together with all interest as a liquidated debt, irrespective of any offsetting claim that you may have against us; and
- (c) You indemnify us for any and all Loss, fees or outlay we incur in trying to recover any amounts owed by you.

6 CANCELLATION

An Order may only be cancelled, varied or suspended by you with our prior written consent. If we consent to the cancellation, variation or suspension of the Order you undertake to reimburse and indemnify us against any costs, expenses or charges incurred by us in preparing for and performing the Agreement, as well as any profit which we may reasonably have been expected to receive. We may, by notice in writing, cancel, vary or suspend this Agreement and any agreement to supply Goods or Services.

7 CLAIMS FOR CREDIT

7.1 You agree we will not be liable to you on any claim for short delivery of the Goods unless such claim is made in writing within forty-eight (48) hours of delivery.

7.2 No returns will be accepted for credit unless the Goods are defective or supplied in error by us and returned within fourteen (14) days of receipt of the Goods, excepting Goods procured by us for you which are not returnable under any circumstances.

7.3 Our prior written approval will be required to return Goods for credit and if approved will be subject to a 15% restocking fee.

8 RISK

Goods will be entirely at your risk upon delivery to you, your servants, agents, customers or to any carrier nominated by you. You bear the sole responsibility for and the risk of unloading.

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9 RETENTION OF TITLE

9.1 Property in Goods supplied to you pursuant to these Terms of Trade does not pass to you until all money due and payable to us by you have been fully paid.

9.2 Where Goods are supplied by us to you without payment in full of all moneys payable in respect of the Goods and any Services provided by us in respect of those Goods, you:

- (a) are a bailee of the Goods until property in them passes;
- (b) irrevocably appoint the Supplier as your attorney to do all acts and things necessary to ensure the retention of title, including the registration of a security interest in favour of the Supplier;
- (c) must be able to upon demand separate and identify as belonging to the Supplier the Goods supplied by us from other goods held by you;
- (d) must not allow any person to have or acquire any security interest in the Goods;
- (e) agree that we may repossess the Goods if payment is not made when due; and
- (f) grant to the Supplier and its agents an irrevocable licence to enter any premises you may access in order to recover possession of Goods and you agree to indemnify us in respect of any Loss or damage which occurs as a result.

9.3 Where Goods are supplied by us to you without payment in full of all amounts payable and you make a new object from the Goods (whether finished or not), mix the Goods with other goods or the Goods become part of other goods ('New Goods'), you agree that the ownership of the New Goods immediately passes to us. You will hold the New Goods on trust for us until payment of all sums owing to us (whether under these Terms of Trade or otherwise) have been made and at our direction we may require you store the New Goods in a manner that clearly shows our ownership of them.

9.4 For the avoidance of doubt, under clause 9.3 the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.

9.5 Notwithstanding clause 9.2 you may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business provided that:

- (a) where you are paid by a third party in respect of Goods including New Goods, you hold the whole of the proceeds of sale less any GST on trust for us, in a separate account, until all amounts owned by you to us have been paid; or
- (b) where you are not paid by a third party, you agree to assign all of your rights against the third party to us if we give notice in writing to you to that effect and you hereby irrevocably appoint us as its attorney for the purpose of giving effect to that assignment.

10 PERSONAL PROPERTIES SECURITIES ACT 2009 ('PPSA')

10.1 Terms defined in the PPSA have the same meaning when used in this agreement.

10.2 The Supplier and the Customer acknowledge that these Terms of Trade constitute a Security Agreement and give rise to a Purchase Money Security Interest (PMSI) in favour of the Supplier over the Goods supplied or to be supplied to you, the Grantor, pursuant to this Agreement.

10.3 The Goods supplied or to be supplied under these Terms of Trade fall within the PPSA classification of 'Other Goods' acquired by the Customer pursuant to these Terms of Trade.

10.4 We, as the Secured Party, are entitled to register our interest in the Goods supplied or to be supplied to you, the Grantor, pursuant to this Agreement on the PPS Register as Collateral.

10.5 You agree to:

- (a) do all things necessary to assist us to continuously perfect any Security Interest arising under these Terms of Trade, including signing any agreements or providing any information we might reasonably request for the purposes of protecting our Security Interest;
- (b) indemnify us on demand for all reasonable costs and expenses associated with:

i. the registration, amendment or discharge of any Financing Statement registered by us or on our behalf; and

ii. the enforcement or attempted enforcement of any Security Interest granted to us.

10.6 Until such time as title in the Goods has passed to you as contemplated by clause 9, you agree not to assign, charge, lease or otherwise deal with the Goods in such a manner as to create a Security Interest over the Goods in your favour or in favour of any third party. The parties agree that this clause will not prohibit you from selling the Goods in the ordinary course of business.

10.7 You acknowledge that:

- (a) our Security Interest will continue in any Goods supplied to you by us and, if the Goods are sold, attaches to the proceeds under section 32(1) of the PPSA;
- (b) if the Goods (or any part thereof) are installed in or affixed to other goods and thereby become an accession to those other goods, our Security Interest continues in the accession under section 88 of the PPSA; and
- (c) if the Goods (or any part thereof) are manufactured, processed, assembled or commingled with other property by you, our Security Interest continues in the product or mass under section 99(1) of the PPSA.

10.8 The parties agree that the Agreement and all related information and document(s) are confidential ('Confidential Information') and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by these Terms of Trade or required by law. The parties agree that the Supplier will not need to disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.

10.9 To the maximum extent permitted by law, the Supplier and the Customer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of the Supplier's Security Interest in the Goods or of this Agreement:

- (a) Any requirement for us to give you a notice of removal of accession;
- (b) Any requirement for us to give you a notice of the Supplier's proposed disposal of the Goods;
- (c) Any requirement for us to include the details of any amounts paid to other secured parties in a Statement of Account after disposal of the Goods;
- (d) Any requirement for us to give you a Statement of Account if we do not dispose of the Goods;
- (e) Any right you have to redeem the Goods before we exercise a right of disposal;
- (f) Any right you have to reinstate this Agreement before we exercise a right of disposal of the Goods.

11 WARRANTY AND LIABILITY

11.1 We warrant that:

(a) subject to clause 11.3, the Goods will be free from defects in material and workmanship, except such defects that are within the normal tolerances set out in the relevant Australian Standards, and will be fit for the purpose for which they are sold for a period of 12 months from the Goods being placed in service or from the date the Goods are first delivered, whichever occurs first, except in the case of repair work where the period shall be 90 days, provided that:

- i. the Goods are properly installed (if not installed by us), maintained and operated; and
- ii. any defect is notified to us as soon as it becomes known.

(b) in relation to an Agreement valued at less than \$40,000: the Goods come with guarantees that cannot be excluded under the Australian Consumer Law ('ACL'). You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

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11.2 Our liability in respect of a breach of a consumer guarantee or any warranty made under these Terms of Trade for any Goods not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permissible by law and at our option:

- (a) in relation to the Goods, to:
 - i. replacing the Goods or the supply of equivalent Goods;
 - ii. the repair of the Goods;
 - iii. the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - iv. the payment of the cost of having the Goods repaired.
- (b) in relation to any service, to:
 - i. the supply of the services again; or
 - ii. the payment of the cost of having the services supplied again.

11.3 In the case of goods sold but not manufactured by us, we will to the extent permitted by law extend the manufacturer's warranty to you in full to the exclusion of any other warranty by us.

11.4 To the extent permitted by law, we will not be liable in any circumstances for:

- (a) any defects or damage caused in whole or part by fair wear and tear, improper installation repair or alteration (other than repair or alteration performed by us), abnormal conditions of temperature, dirt or corrosive matter, operation above rated capacities, misuse, abuse, neglect, electrical or other overload, unsuitable lubricants, dismantling or accident;
- (b) any transport, installation, removal labour or other costs; or
- (c) any loss or damage to the goods in transit.

11.5 In no event will we be liable to you or any other party for any direct, indirect, consequential or inconsequential injury, loss or damage whatsoever by reason of any defect, delay in delivery, deterioration, deficiency or other fault or harm in the Goods or occasioned to you or any other party, or to your of their property or interests, and whether or not due to our negligence or the negligence of our servants or agents.

11.6 Unless otherwise stated in writing, we accept no responsibility for the condition, suitability or otherwise of any existing machinery, plant or fittings which may be set to work in conjunction with the Goods.

11.7 Prior written approval from us will be required for you to return Goods subject to any warranty and, to the extent permitted by law, must be returned to us at your expense.

11.8 Unless given by us in writing, no other warranty is provided by us and any implied terms, conditions or warranties are expressly negated to the maximum extent permitted by law.

11.9 As we retain ownership of the Goods until we are paid for them, we reserve the right to not honour any warranty or provide any support without final payment.

12 REPRESENTATION

12.1 You agree that any Goods manufactured by us or for which we are party to an agreement with a third party supplier that gives us the sole right to Australian distribution will not be exhibited by any person, firm or company at any show, exhibition or trade fair without our prior written consent. You warrant that such goods will not be misrepresented in any way to our detriment as to their origin or source of import.

12.2 It is your sole responsibility to ensure that Goods will comply with any relevant standards or requirements of law or as may be required by any statutory authority from time to time. You agree to make your own enquiries and will not rely solely on our skill or judgement in respect of any particular purpose for which the Goods are supplied, other than as specified by us to you.

13 COPYRIGHT AND INTELLECTUAL PROPERTY

13.1 You warrant that you own all Intellectual Property Rights pertaining to your Order or have a licence to authorise us to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by you to us for the purposes of the Order. Further, you indemnify and agree to keep indemnified the Supplier against all Loss in relation to or in any way directly or indirectly

connected with any breach of any other Intellectual Property Rights in relation to any material supplied by you.

13.2 Unless specifically agreed in writing between the parties all Intellectual Property Rights in any works created by us on your behalf vest in us and remain our property, and any Intellectual Property Rights created prior to this Agreement will remain vested in the relevant rights holder(s), and you will maintain confidentiality in all such works. Subject to payment of all amounts owing in respect of all our Goods or Services supplied to you, we hereby grant to you a revocable, non-exclusive licence to use the works created or produced by us in connection with the provision of Goods or Services under these Terms of Trade for the purposes contemplated by the Agreement.

13.3 You agree we may revoke our license to use software supplied to you and to cease the operability of such software in our absolute discretion without liability for any resulting loss.

14 TRADE PURCHASE

The Customer agrees and acknowledge that any Goods supplied or to be supplied under the Agreement and these Terms of Trade are acquired in trade or commerce and are not wholly or predominantly for personal, household or domestic use.

15 PURPOSE OF CREDIT

The Customer acknowledges and agrees that any credit to be provided to the Customer by the Supplier is to be applied wholly or predominantly for commercial purposes.

16 INSOLVENCY

If the Customer becomes insolvent, the Customer remains liable under the Agreement and these Terms of Trade for payment of all liabilities incurred. The Customer remains liable under these Terms of Trade even if the Supplier receives a dividend or payment as a result of the Customer being insolvent.

17 GST

Goods and Sales Tax (GST) will be shown separately from the quoted or listed price of the Goods. The amount of GST payable in respect of the supply of the Goods is payable by you. You agree to indemnify us in respect of GST paid and payable by us in respect of the supply of the Goods.

18 VARIATION OF TERMS

18.1 We reserve the right to amend or vary these Terms of Trade from time to time without needing to give reason.

18.2 You will be given notice of any change by the Supplier publishing its amended Terms of Trade ('Amended Terms') on its website or by being sent a copy of the Amended Terms by email, post or facsimile.

18.3 The Amended Terms will take effect seven (7) days after the date on which they are published or are sent to you in accordance with clause 18.2, whichever applies and is the earlier. The Terms of Trade, as amended, apply and are incorporated into each and all Agreements from that time.

18.4 You may elect not to proceed under the Amended Terms. If so, you must give notice to us in writing clearly expressing your non-acceptance of the Amended Terms at any time before they take effect. If no notice is given and in any case by continuing to order Goods from us after that time, you are deemed to irrevocably accept the Amended Terms without reservation and are bound by them.

18.5 If you elect not to proceed under the Amended Terms, the Supplier reserves its right not to provide further credit, accept further orders from or supply Goods to you. You indemnify and agree to keep indemnified the Supplier against all Loss incurred by you or any third party in relation to or in any way directly or indirectly connected with our exercise of this right.

18.6 Not initialling these Terms of Trade does not affect their enforceability or incorporation into any Agreement.

19 FORCE MAJEURE

19.1 If circumstances beyond our control prevent or hinder our performance of any obligation under the Agreement, we are free from any obligation to perform that obligation while those circumstances continue. We may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.

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19.2 Circumstances beyond our control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

20 PRIVACY

20.1 The Customer hereby authorises the Supplier to collect, retain, record, use and disclose commercial and/or consumer information about the Customer, in accordance with the *Privacy Act 1988*, to persons and/or legal entities who are a solicitor or any other consultant engaged, e.g. a debt collector, credit reference organisation.

20.2 The Customer also authorises the Supplier to make enquiries with respect to the Customer's commercial and/or consumer credit worthiness; to exchange information with other credit providers in respect to previous commercial and/or consumer defaults of the Customer and to notify other credit providers of a commercial and/or consumer default by the Customer.

21 GENERAL

21.1 Governing Law

The Agreement shall be governed by the law of the State of Queensland. In the event of dispute arising in relation to this Agreement the parties agree to submit to the non-exclusive jurisdiction of competent courts of Queensland.

21.2 Waiver

A waiver of any clause or a breach of these Terms of Trade by the Supplier must be made by an authorised officer of the Supplier in writing.

21.3 Dispute Resolution

If any dispute, controversy or claim arises between the parties, except a claim for payment by us, it must be dealt with in accordance with this clause and the following procedure applies:

- (a) Any party claiming that a dispute exists must notify the other (the **'Second Party'**) in writing of the nature of the dispute.
- (b) If the dispute is not resolved by agreement within five (5) business days of the Second Party receiving the notice referred to in paragraph (a) above, either party may refer the matter to mediation conducted by a mediator agreed between the parties within a further five working days. The costs of the mediator shall be borne equally between the disputing parties. The chosen mediator shall determine the procedures for the mediation. The mediator will not have the power or authority to make any other determination in relation to the dispute.
- (c) If the parties have not mediated a resolution of the dispute within ten (10) working days of the selection of a mediator or cannot agree on a mediator to appoint, neither party shall be obliged to continue mediation under this clause, and either party may then commence such legal proceedings as it thinks fit.
- (d) The parties must hold confidential, unless otherwise required by law or at the direction of a court, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

21.4 Severance

If any provision of this agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this agreement.

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