

**1. Definitions**

- 1.1. 'Company' means Zokal Safety Services Pty Limited ABN 35 105 245 181, Zokal Safety Training Pty Ltd ABN 35 289 156 018, Zokal Safety Hire Pty Ltd ABN 49 139 784 580, their related bodies corporate and their employees, agents, directors and independent contractors.
- 1.2. 'Applicant' means the party applying for a Credit Account.
- 1.3. 'Application' means the application form above and the following terms and conditions.
- 1.4. 'Account' means the account which is the subject of this Application.
- 1.5. 'Services' means any and all services provided by the Company to the Applicant or its agents or assigns.
- 1.6. 'Goods' means any and all goods provided by the Company to the Applicant or its agents or assigns.
- 1.7. 'Loss' means damage, loss, cost, expense or liability (whether actual or contingent).

**2. General**

- 2.1. For the purposes of considering the Application and, upon approval of this Application, at any time during the existence and operation of the Account, the Applicant authorises the Company to make such enquiries as the Company may require to be satisfied as to the creditworthiness of the Applicant. The Applicant agrees to provide signed written authorities addressed to the Applicant's banker, or other credit providers, as the Company requires from time to time.
- 2.2. The Company reserves the right to require the Applicant to spend a minimum dollar amount per year to obtain goods or services on credit (charged to the Account).
- 2.3. The Company shall specify in writing to the Applicant the maximum (GST-inclusive) amount that may be charged to the account over a particular period ('Credit Limit'). The Applicant's Credit Limit is subject to review at any time by the Company. The Company may, on request in writing by the Applicant, agree in writing to increase or decrease the Credit Limit. The balance of the Account at any one time must not exceed the Credit Limit. The Company is not responsible for any Loss whatsoever or howsoever caused arising from the refusal of the Company to supply the Applicant with any Goods or Services on credit because the Credit Limit has been exceeded. The Applicant agrees to immediately pay the amounts charged to the Account for any Goods or Services supplied by the Company in excess of the Credit Limit, whether or not demand for payment has been made by the Company.
- 2.4. The Applicant is responsible for and agrees to indemnify the Company against any unauthorised use of the Account. The Applicant must notify the Company in writing of any unauthorised transactions on the Account immediately upon the Applicant becoming aware of them.

**3. Terms of Payment**

- 3.1. The Applicant agrees to pay to the Company no later than thirty (30) days after the end of the month of the date of issue of the tax invoice the amounts set out therein.
- 3.2. Payment of the amount referred to in clause 3.1 shall be in Australian Dollars (AUD).
- 3.3. Tax invoices shall be emailed to the Applicant at the email address specified by the Applicant for that purpose in the Application. This shall be sufficient notice of the amount due under the Account.
- 3.4. Any complaint made by the Applicant that a transaction recorded on the Applicant's tax invoice is incorrect must be advised to the Company in writing within seven (7) days of the issue of the tax invoice. If this does not occur, the transactions recorded in the tax invoice shall be taken to be correct. If part of the amount in the tax invoice is in dispute, the Applicant agrees to pay the undisputed amount within the time referred to in clause 3.1.
- 3.5. Where the Applicant has defaulted in its payment obligations under these Terms and Conditions, any amounts owing by the Applicant to the Company in connection with the Account may be deducted by the Company from any fee payable by the Company to the Applicant under any other contract.

3.6. Clause 3.5 does not preclude or otherwise limit the rights of the Company to pursue legal recourse in the event of default by the Applicant.

**4. Quotations, Orders and Contract**

- 4.1. A written quotation issued by the Company to the Applicant is an offer of Goods and/or Services for purchase by the Applicant and will not create any contract for the supply of Goods and/or Services between the Company and the Applicant until the quotation is accepted.
- 4.2. A contract for the supply of Goods and/or Services is made when the Applicant communicates to the Company its acceptance of a written quotation or provides any form (including email or verbal) acceptance or agreement to engage the Company.
- 4.3. The Company may withdraw, revoke or vary a written quotation at any time prior to the Applicant accepting the quotation.
- 4.4. A written quotation expires on the date specified as the expiry date. If no expiry date is specified, the written quotation expires 60 days after the date of the written quotation.
- 4.5. A contract made pursuant to clause 4.2 shall be executed on the terms and conditions expressed in any document in which the contract is contained. To the extent of any inconsistency between the terms and conditions of that contract and any of these Terms and Conditions, the terms and conditions of the contract shall prevail. Where no inconsistency arises, the provisions of these Terms and Conditions shall be taken to apply in addition to any terms and conditions expressed in a contract made pursuant to clause 4.2.
- 4.6. The provisions of these Terms and Conditions shall prevail over any terms and conditions of trade of the Applicant whether or not any inconsistency arises.
- 4.7. The Company shall have the right to cancel any contract made pursuant to clause 4.2 including the cancellation of the supply of Goods and/or Services in respect of the same, at any time before the supply of the Goods and/or Services by giving written notice to the Applicant. On giving such notice, the Company shall repay to the Applicant any monies paid in respect of the contract. The Company shall not be liable for any Loss whatsoever arising from such cancellation.
- 4.8. In the event that the Applicant cancels any contract for the supply of Goods and/or Services, the Applicant shall be liable for a cancellation fee of twenty-five percent (25%) of the total agreed amount. However, in the event of cancellation of a service contract 48 hours or less prior to commencement of that service, 100% of the agreed amount of the service will be due and payable.

**5. Price**

- 5.1. In respect of contracts for the supply of Goods and/or Services made pursuant to clause 4.2, the price shall be at the Company's sole discretion and shall be either:
  - 5.1.1. As indicated on invoices provided by the Company in respect of the supply of Goods and/or Services;
  - 5.1.2. The Company's current price as at the date of supply according to the Company's current prices; or
  - 5.1.3. The Company's quoted price provided that the Applicant accepts the Company's written quotation within thirty (30) days of the date on the written quotation.
- 5.2. Where in the period between acceptance of a written quotation and the supply of Goods and/or Services, the Company incurs an increase in the cost of supplying the Goods and/or Services, the Company reserves the right to increase the quoted price of those Goods and/or Services at any time prior to supply ('Price Escalation'). The Applicant accepts any such Price Escalation.
- 5.3. The Company reserves the right to vary the price in the event of a variation to the written quotation.
- 5.4. The Company reserves the right to seek a non-refundable deposit from the Applicant, the terms of which to be stated in any written quotation issued by the Company to the Applicant.

**6. Default and Consequences of Default**

- 6.1. In the event that the Applicant fails to make any payment when due then, without prejudice to the application of any other provision contained in these Terms and Conditions or to any other remedy provided for by these Terms or Conditions or otherwise, interest shall accrue on the amount of the overdue payment at the rate of fifteen percent (15%) per annum calculated from the date payment was due.
- 6.2. In such an event, the Company shall have the right to withhold the supply of Goods and/or Services and to cancel all outstanding orders and retain any payments already made.

- 6.3. No cheque will be treated as payment if dishonoured despite the issue of a receipt. The Applicant will be responsible for any charge or fee issued to the Company for any cheques not met on presentation.
- 6.4. If the Applicant fails to make any payment when due, the Applicant shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs and/or collection agency costs.
- 6.5. Without prejudice to any other remedies the Company may have, if at any time the Applicant is in breach of any obligation (including those related to payment), the Company may suspend any of its obligations under these Terms and Conditions. The Company will not be liable to the Applicant for any Loss the Applicant suffers because the Company has exercised its rights under this clause.
- 6.6. Without prejudice to any other remedies which the Company may have at law or in equity, the Company shall be entitled to cancel all or any part of any order of the Applicant which remains unfulfilled and all amounts owing to the Company shall, whether or not due and payable, become immediately payable in the event that:
  - 6.6.1. Any money payable to the Company becomes overdue, or in the Company's opinion the Applicant will be unable to meet its payments as they fall due; or
  - 6.6.2. The Applicant becomes insolvent, convenes a meeting with its creditors or proposes to or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - 6.6.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Applicant or any asset of the Applicant.

**7. Limitation of Liability**

- 7.1. To the extent permitted by the law the liability of the Company whether in contract or in tort, in respect of all claims for loss, damage or injury arising from a breach of any of the Company's obligations arising under the contract, from any negligence of any act, matter or thing done or permitted to be done by the Company, its servants, agents and contractors shall not in the aggregate exceed the price stated in the written quotation issued by the Company to the Applicant.
- 7.2. Where so permitted, under no circumstances will the Company be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Applicant or its servants, agents and contractors and the Applicant acknowledges this express limit of liability and agrees to limit any claim accordingly.
- 7.3. Except as provided herein, all express and implied warranties and guarantees in respect of the supply of any Goods and/or Services are hereby expressly excluded and the Company shall not be liable for loss or damage (including consequential loss or damage) of any kind arising in connection with the supply of any Goods and/or Services.

**8. The Company's Warranty**

- 8.1. The Applicant shall, within seven (7) days of the supply of any Goods and/or Services (time being of the essence), notify the Company of any alleged defect, error, omission, shortage in quantity, damage or failure to comply with the description or quotation. The Applicant shall afford the Company an opportunity to inspect the alleged defect, error, omission, shortage in quantity, damage or failure to comply within a reasonable time of receiving notification. If the Applicant fails to give notice in accordance with this clause, the Goods or Services shall be presumed to be free from any defect, error, omission, shortage in quantity, damage or failure to comply.
- 8.2. Goods will not be accepted for return other than in accordance with the provisions of this clause.

**9. Indemnity**

- 9.1. The Applicant shall at all times indemnify and hold harmless the Company, its employees and agents from and against any Loss including, but not limited to:
  - 9.1.1. Legal costs and expenses on a full indemnity basis;
  - 9.1.2. Loss (including consequential loss) in relation to property;
  - 9.1.3. Loss in respect of personal injury, disease, illness or death;
  - 9.1.4. Economic loss; and
  - 9.1.5. Loss in relation to the environment;

caused by a breach by the Applicant of these Terms and Conditions and any contract made thereunder, or any wilful, unlawful or negligent act or omission by the Applicant. In these circumstances, the Company and/or its employees or agents shall not be held responsible for any Loss suffered by the Applicant, disruption to normal business operation or incorrect information due to any defect in workmanship or any other reason in relation to the supply of Goods and/or Services by the Company.

**10. Rights in Relation to Goods**

- 10.1. The Applicant and the Company agree that:
  - 10.1.1. Property and ownership (including legal and equitable title) in any Goods sold by the Company to the Applicant remains with the Company until the Applicant meets all of its obligations pursuant to the Terms and Conditions, including but not limited to payment in full of the purchase price of the Goods and all other amounts owing to the Company by the Applicant;
  - 10.1.2. Risk in the Goods shall pass to the Applicant at the time of delivery. The Applicant shall insure (and keep insured) the Goods on the following conditions until such time as property and ownership (including legal and equitable title) pass to the Applicant:
    - 10.1.2.1. The Goods shall be insured for their full insurable or replacement value (whichever is higher); and
    - 10.1.2.2. The Goods shall be insured by an insurer licensed or authorized to conduct the business of insurance in the place where the Goods will be stored.
  - 10.1.3. If the Applicant fails to pay for the Goods within the period of credit (if any) extended by the Company to the Applicant:
    - 10.1.3.1. The Applicant shall deliver the Goods to the Company, where demanded by the Company or its Agent; or
    - 10.1.3.2. The Company may recover possession of the Goods by any necessary means at any site owned, possessed or controlled by the Applicant;
    - 10.1.3.3. The Applicant agrees that the Company has an irrevocable license to exercise its rights under this clause;
    - 10.1.3.4. The Applicant shall be liable for all costs associated with the exercise of the Company's rights under this clause, and this liability shall be payable on demand.
  - 10.1.4. The Applicant shall not purchase, make orders or have any dealings with any entity other than the Company in relation to any and all goods that the Company now, previously or in the future has available for supply and/or purchase.
- 10.2. The Company and the Applicant agree that, until property and ownership (including legal and equitable title) of the Goods has passed to the Applicant:
  - 10.2.1. The Applicant will not supply any of the Goods to any person outside of its ordinary or usual course of business;
  - 10.2.2. The Applicant will not allow any person to have or acquire any security interest in the Goods;
  - 10.2.3. The Applicant will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorized by the Company;
  - 10.2.4. The Applicant must not remove, deface or obliterate any identifying place, mark or number on any of the Goods;
  - 10.2.5. Where the Applicant is in actual or constructive possession of the Goods:
    - 10.2.5.1. The Applicant shall hold the Goods as fiduciary bailee and agent for the seller;
    - 10.2.5.2. After giving 48 hours notice to the Applicant, the Company shall be entitled to enter upon the Applicant's premises between 9am and 5pm to inspect the Goods;
    - 10.2.5.3. The Applicant will not deliver the Goods, or any document of title to the Goods, to any person except as directed by the Company;
    - 10.2.5.4. The Applicant shall store the Goods separately and in a manner that enables the Goods to be identified and cross-referenced to particular invoices issued to the Applicant by the Company; and
    - 10.2.5.5. The proceeds of any Goods sold shall be kept in a separate account and shall not be mixed with any other moneys, including funds of the Applicant.
  - 10.2.6. The Applicant acknowledges that if it should mix the Goods with other products or items such that the Goods are no longer separately identifiable, then the Applicant and the Company shall be owners in common of the new product;

10.2.7. The Applicant has no right to claim any interest in the Goods to secure any liquidated debt or obligation the Company owes to the Applicant; and

10.2.8. The Applicant cannot claim any lien over the Goods

#### **11. The Applicant's Warranty**

11.1. The Applicant warrants, represents, guarantees and acknowledges to the Company that:

11.1.1. All statements made and documents provided in connection with the Application and all representations that the Applicant has made or may make during the existence and operation of the Account to the Company are true and correct; and

11.1.2. The Account is required for the Applicant's business or commercial purposes and will not be used for personal, domestic or household purposes.

#### **12. Termination**

12.1. The Company may, at its sole discretion and without requiring any reason to do so, at any time, suspend or terminate the Applicant's Account on seven (7) days notice to the Applicant.

12.2. The Applicant acknowledges that the Company may suspend or terminate the Account immediately (with or without written notice) if:

12.2.1. The Company was induced by fraudulent misrepresentation on the Applicant's part to approve the Application; or

12.2.2. The amount charged to the Applicant's Account exceeds the Credit Limit at any time without the prior written approval of the Company; or

12.2.3. Any amount charged to the Account is due and unpaid (amounts disputed in accordance with clause 3.4 are not considered due until the dispute is rectified); or

12.2.4. In the opinion of the Company, any change of circumstances, including, without limitation, changes in the Applicant's constitution, ownership, membership, control status or ability to provide security for payments of amounts which have been or are likely to be charged to the Account, makes the continued operation of the Account undesirable or unsatisfactory; or

12.2.5. The Applicant:

12.2.5.1. Being a company, becomes, threaten or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration; or

12.2.5.2. Being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or

12.2.5.3. The Applicant being a natural person, dies; or

12.2.6. The Applicant ceases or threatens to cease conducting business in the normal manner; or

12.2.7. The Applicant uses the Account for any non-commercial purposes including, without limitation, for personal, domestic or household purposes; or

12.2.8. The Applicant is otherwise in default of their obligations under these Terms and Conditions or any contract made thereunder.

12.3. If the Company suspends or terminates the Account under either of clauses 12.1 or 12.2, the balance of the Account and any amounts incurred but not then billed are immediately due and payable by the Applicant to the Company. The Applicant must pay to the Company any amounts reasonably incurred or expended by the Company in exercising its rights under these Terms and Conditions as a result of default by the Applicant or as a result of any circumstances referred to in clause 12.2.

#### **13. Notice**

13.1. Notice served pursuant to these Terms and Conditions or any contract made thereunder may be delivered by post, or by facsimile to:

13.1.1. In the case of the Applicant, at the postal or facsimile address provided in the Application or notified in writing by the Applicant to the Company in accordance with clause 13.2; or

13.1.2. In the case of the Company, at its office as listed at the top of this Application.

13.2. Notice is taken to be given:

13.2.1. In the case of ordinary post, the second business day after the day of posting; or

13.2.2. In the case of facsimile, the business day following the date of transmission provided that the sender has received confirmation receipt.

#### **14. Assignment**

14.1. The Applicant must not dispose of, assign, license, encumber or otherwise deal with its interest in or rights and obligations under these Terms and Conditions or any contract made hereunder without the express prior written consent of the Company which it may withhold in its absolute discretion.

#### **15. Personal Property Securities Act 2009 (Cth) ('PPSA')**

15.1. The Applicant hereby acknowledges that these Terms and Conditions constitute a security agreement which creates a security interest in favour of the Company in all Goods supplied by the Company to the Applicant to secure payment from time to time, including future advances. The Applicant agrees to grant to the Company a 'Purchase Money Security Interest'.

15.2. The Applicant acknowledges and agrees that by assenting to these Terms and Conditions the Applicant grants a security interest (by virtue of clause 10.1 and/or clause 16 of these Terms and Conditions) to the Company.

15.3. The Applicant undertakes to:

15.3.1. Sign any further documents and/or provide any further information (which information the Applicant warrants to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to enable registration of a financing statement of financing change statement on the Personal Property Securities Register ('PPSR');

15.3.2. Not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior consent of the Company;

15.3.3. Pay all costs incurred by the Company in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Terms and Conditions including executing subordination agreements;

15.3.4. Be responsible for the full costs incurred by the Company (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA; and

15.4. The Applicant waives any right it may have under section 115 of the PPSA upon enforcement.

15.5. Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by the Company, the Applicant waives any right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.

15.6. The Applicant agrees that immediately on request by the Company the Applicant will procure from any persons considered by the Company to be relevant to its security position such agreement and waivers as the Company may at any time require.

#### **16. Security Interest**

16.1. The Applicant gives the Company a security interest in all of the Applicant's present and after-acquired property in which Goods supplied or financed by the Company have been attached or incorporated.

#### **17. General**

17.1. Upon acceptance of these Terms and Conditions by the Applicant, these Terms and Conditions become binding and, subject to clause 17.8, can only be amended with the written consent of the Company.

17.2. The Applicant shall give to the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Applicant or any change to the Applicant's constitution, membership, control status, or the Applicant's name and/or any other change in the Applicant's details including, but not limited to, changes in the Applicant's address, facsimile number or business practice. The Applicant shall be liable for any loss incurred by the Company as a result of the Applicant's failure to comply with this clause.

17.3. If any provision of these Terms and Conditions becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.4. These Terms and Conditions and any contract to which they apply shall be governed by the laws of the New South Wales and the Commonwealth of Australia and the Applicant irrevocably submits to the non-exclusive jurisdiction of that jurisdiction.

17.5. The Company shall be under no liability whatsoever to the Applicant for any indirect and/or consequential Loss and/or expense (including loss of profit) suffered by the Applicant arising out of a breach by the Company of these Terms and Conditions.

- 17.6. The Applicant shall not be entitled to set off against, or deduct from amount payable, any sums owed or claimed to be owned to the Applicant by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.7. The Company may license or sub-contract all or any part of its rights or obligations arising under these Terms and Conditions without the Applicant's consent.
- 17.8. The Applicant agrees that the Company may review these Terms and Conditions at any time. If, following such review, there is to be any change to these terms and conditions, then that change shall take effect from the date on which the Company notifies the Applicant of such change.
- 17.9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.10. The failure of the Company to enforce any provision of these Terms or Conditions or any provision of any contract made thereunder shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.