



SOILCO Pty Ltd  
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 UNANDERRA NSW 2526  
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[www.soilco.com.au](http://www.soilco.com.au)

## CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

<b>Type of Business:</b> <input type="checkbox"/> Company <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Trader				
Company Name:			ABN No:	
Trading Name:			ACN No:	
Physical Address:			State:	Postcode:
Billing Address:			State:	Postcode:
Email Address:			Phone No:	
Alternative Email Address:			Fax No:	
<b>Directors / Owners / Trustee</b> (if more than two, please attach a separate sheet)				
1. Full Name:			D.O.B.	
Private Address:			State:	Postcode:
Driver's Licence No:	Phone No:		Mobile No:	
2. Full Name:			D.O.B.	
Private Address:			State:	Postcode:
Driver's Licence No:	Phone No:		Mobile No:	
Credit Limit Required: \$			Estimated Monthly Purchases: \$	
<b>Purchase Order Required:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO			Accounts Contact:	
Email Address:			Phone No:	
Trade References: (Please provide companies that are willing to do trade references)				
1. Name:			Address:	
Phone:	Fax:		Email:	
2. Name:			Address:	
Phone:	Fax:		Email:	
3. Name:			Address:	
Phone:	Fax:		Email:	

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Soilco Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.***

**SIGNED (CUSTOMER):** \_\_\_\_\_ **SIGNED (SOILCO):** \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

**WITNESS TO CUSTOMER'S SIGNATURE:**

Signed: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_

OFFICE USE ONLY				
ACCOUNT No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

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## Soilco Pty Ltd – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Soilco” means Soilco Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Soilco Pty Ltd.
- 1.2 “Customer” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by Soilco to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between Soilco and the Customer in accordance with clause 4 below.

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Goods, or accepts Delivery. Unless otherwise agreed in writing, all orders are subject to acceptance by Soilco within thirty (30) days of receipt by Soilco of the order.
- 2.2 These terms and conditions may only be amended with Soilco’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Soilco. Any terms and conditions contained in any order, offer, acceptance or other document of the Customer and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 These terms and conditions may be meant to be read in conjunction with Soilco’s Terms and Conditions for Dry Hire, and:
  - (a) where the context so permits, the terms ‘Goods’ or ‘Services’ shall include any supply of Equipment, as defined therein; and
  - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

### 3. Change in Control

- 3.1 The Customer shall give Soilco not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Soilco as a result of the Customer’s failure to comply with this clause.

### 4. Price and Payment

- 4.1 At Soilco’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by Soilco to the Customer; or
  - (b) Soilco’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. Any quotation:
    - (i) made by Soilco is not an offer to sell or to supply Goods. Soilco shall not be bound by any order given in pursuance of any quotation until Soilco accepts such order in writing or by the commencement of supply or provision of Goods; and
    - (ii) containing a provision to supply Goods “ex stock” is subject to fulfilment of prior orders at the date of receipt of the Customer’s order.
- 4.2 Soilco reserves the right to change the Price:
  - (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and cabling, etc.) which are only discovered on commencement of the Services; or
  - (c) in the event of increases to Soilco in the cost of labour or materials, or fluctuations in fuel prices, which are beyond Soilco’s control.
- 4.3 At Soilco’s sole discretion, a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Soilco, which shall be, failing any notice to the contrary, the date which is thirty (30) days following the end of the month in which the Goods were supplied.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card – Visa or MasterCard (plus a surcharge of up to one and a half percent (1.5%) of the Price), or by any other method as agreed to between the Customer and Soilco.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Soilco an amount equal to any GST Soilco must pay for any supply by Soilco under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 5. Delivery

- 5.1 Delivery of the Goods (“**Delivery**”) is taken to occur at the time that written advice is sent by Soilco to the Customer that the Goods are ready for Delivery, whether in whole or in part.
- 5.2 At Soilco’s sole discretion, the cost of Delivery is in addition to the Price.
- 5.3 The Customer must take Delivery (by receipt or collection of the Goods) whenever they are tendered for delivery. In the event that the Customer is unable to take Delivery as arranged then Soilco shall be entitled to charge a reasonable fee for redelivery and/or storage.

- 5.4 Soilco may deliver the Goods in separate instalments. Soilco may, at its sole discretion, invoice each separate instalment, or multiple instalments, which the Client must pay in accordance with the provisions in these terms and conditions, and the Customer shall not be entitled:
- (a) to terminate or cancel this agreement; or
  - (b) to claim any loss or damage, howsoever arising, for failure by Soilco to deliver any instalments on or before the quoted date.
- 5.5 Any date quoted for Delivery is an estimate only. The Customer must still accept Delivery even if late and, unless a guarantee shall have been given by Soilco in writing providing for liquidated damages for failure to deliver by the quoted date, Soilco shall not be liable to the Customer for any loss or damage howsoever arising, even if arising out of the negligence of Soilco for failure to deliver on or before the quoted date.

## **6. Risk**

- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 Unless otherwise agreed in writing, risk of damage to, or loss of, the Goods shall pass to the Customer at the time the Goods are placed on the vehicle which is to effect Delivery from Soilco's depot or yard to the Customer, whichever is the sooner. The Goods remain at the Customer's risk at all times, unless and until Soilco retakes possession of the Goods pursuant to these terms and conditions.
- 6.3 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Soilco is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Soilco is sufficient evidence of Soilco's rights to receive the insurance proceeds without the need for any person dealing with Soilco to make further enquiries.
- 6.4 If the Customer requests Soilco to leave Goods outside Soilco's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

## **7. Title**

- 7.1 Soilco and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Soilco all amounts owing to Soilco; and
  - (b) the Customer has met all of its other obligations to Soilco.
- 7.2 Receipt by Soilco of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then Soilco's rights and ownership in relation to the Goods, and this agreement, shall continue.
- 7.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 7.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Soilco on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Soilco and must pay to Soilco the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Soilco and must pay or deliver the proceeds to Soilco on demand.
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Soilco and must sell, dispose of or return the resulting product to Soilco as it so directs.
  - (e) the Customer irrevocably authorises Soilco to enter any premises where Soilco believes the Goods are kept and recover possession of the Goods without liability for tort of trespass, negligence or payment of any compensation to the Customer whatsoever. On retaking of the Goods, Soilco may elect to refund the Customer any part payment that may have been made and to credit the Customer's account with the value of the Goods, less any charge for recovery thereof, or to resell the Goods.
  - (f) Soilco may recover possession of any Goods in transit whether or not Delivery has occurred.
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Soilco.
  - (h) Soilco may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Customer.

## **8. Personal Property Securities Act 2009 ("PPSA")**

- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Soilco to the Customer.
- 8.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Soilco may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Soilco for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Soilco;

- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Soilco;
  - (e) immediately advise Soilco of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.4 Soilco and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by Soilco, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Customer must unconditionally ratify any actions taken by Soilco under clauses 8.3 to 8.5.
- 8.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## 9. Security and Charge

- 9.1 In consideration of Soilco agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Customer indemnifies Soilco from and against all Soilco's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Soilco's rights under this clause.
- 9.3 The Customer irrevocably appoints Soilco and each director of Soilco as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Customer's behalf.

## 10. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 10.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of such time notify Soilco in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Soilco to inspect the Goods.
- 10.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("**Non-Excluded Guarantees**").
- 10.3 Soilco acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Soilco makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Soilco's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Customer is a consumer within the meaning of the CCA, Soilco's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6 If Soilco is required to replace the Goods under this clause or the CCA, but is unable to do so, Soilco may refund any money the Customer has paid for the Goods.
- 10.7 If the Customer is not a consumer within the meaning of the CCA, Soilco's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Soilco at Soilco's sole discretion;
  - (b) limited to any warranty to which Soilco is entitled, if Soilco did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 10.8 Subject to this clause 10, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 10.1; and
  - (b) Soilco has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 10.9 Notwithstanding clauses 10.1 to 10.8 but subject to the CCA, Soilco shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
  - (b) misuse, abuse, neglect, electrical or other overload, non-suitable lubricant, improper installation, repair or alteration (other than by Soilco) or accident;
  - (c) the Customer using the Goods for any purpose other than that for which they were designed;
  - (d) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (e) the Customer failing to follow any instructions or guidelines provided by Soilco;
  - (f) fair wear and tear, any accident, or act of God.
- 10.10 Soilco shall not be liable in any circumstances for:
- (a) any transport/freight charges, installation or removal labour or other costs; and/or
  - (b) technical advice or assistance given or rendered by Soilco to the Customer, or not in connection with the manufacture, construction or supply of Goods for or to the Customer, provided always that Soilco has rendered such Services with due care and skill and that any material supplied in connection with those Services are reasonably fit for the purpose for which they are supplied.

10.11 Notwithstanding anything contained in this clause if Soilco is required by a law to accept a return then Soilco will only accept a return on the conditions imposed by that law.

#### **11. Default and Consequences of Default**

- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Soilco's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 11.2 If the Customer owes Soilco any money the Customer shall indemnify Soilco from and against all costs and disbursements incurred by Soilco in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Soilco's contract default fee, and bank dishonour fees).
- 11.3 Further to any other rights or remedies Soilco may have under this agreement, if the Customer has made payment to Soilco by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Soilco under this clause 11 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 11.4 Without prejudice to any other remedies Soilco may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Soilco may suspend or terminate the supply of Goods to the Customer. Soilco will not be liable to the Customer for any loss or damage the Customer suffers because Soilco has exercised its rights under this clause.
- 11.5 Without prejudice to Soilco's other remedies at law Soilco shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Soilco shall, whether or not due for payment, become immediately payable if:
- any money payable to Soilco becomes overdue, or in Soilco's opinion the Customer will be unable to make a payment when it falls due;
  - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

#### **12. Cancellation**

- 12.1 Soilco may cancel any contract to which these terms and conditions apply or cancel Delivery at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Soilco shall repay to the Customer any money paid by the Customer for the Goods. Soilco shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Customer cancels Delivery the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Soilco as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 12.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

#### **13. Privacy Act 1988**

- 13.1 The Customer agrees for Soilco to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Soilco.
- 13.2 The Customer agrees that Soilco may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Customer; and/or
  - to notify other credit providers of a default by the Customer; and/or
  - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 13.3 The Customer consents to Soilco being given a consumer credit report to collect overdue payment on commercial credit.
- 13.4 The Customer agrees that personal credit information provided may be used and retained by Soilco for the following purposes (and for other agreed purposes or required by):
- the provision of Goods; and/or
  - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - enabling the collection of amounts outstanding in relation to the Goods.
- 13.5 Soilco may give information about the Customer to a CRB for the following purposes:
- to obtain a consumer credit report;
  - allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 13.6 The information given to the CRB may include:
- personal information as outlined in 13.1 above;
  - name of the credit provider and that Soilco is a current credit provider to the Customer;
  - whether the credit provider is a licensee;
  - type of consumer credit;
  - details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or



alternatively that the Customer no longer has any overdue accounts and Soilco has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

- (g) information that, in the opinion of Soilco, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 13.7 The Customer shall have the right to request (by e-mail) from Soilco:
- (a) a copy of the information about the Customer retained by Soilco and the right to request that Soilco correct any incorrect information; and
  - (b) that Soilco does not disclose any personal information about the Customer for the purpose of direct marketing.
- 13.8 Soilco will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 13.9 The Customer can make a privacy complaint by contacting Soilco via e-mail. Soilco will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

#### 14. General

- 14.1 The parties agree that service of any notices, demands, proceedings, summons, suits or actions (process) upon which the Customer may be effected by Soilco or its solicitors sending such process by prepaid post to the address given in this agreement as the address of the Customer. Service shall be deemed to have been effected two (2) business days after the posting of the process.
- 14.2 The failure by Soilco to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Soilco's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which Soilco has its principal place of business, and are subject to the jurisdiction of the Wollongong Court in that state.
- 14.4 Subject to clause 10, Soilco shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Soilco of these terms and conditions (alternatively Soilco's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 14.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Soilco nor to withhold payment of any invoice because part of that invoice is in dispute.
- 14.6 Soilco may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 14.7 The Customer agrees that Soilco may amend these terms and conditions at any time. If Soilco makes a change to these terms and conditions, then that change will take effect from the date on which Soilco notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Soilco to provide Goods to the Customer.
- 14.8 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.
- 14.9 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

#### 15. Trusts

- 15.1 This clause applies if the Customer is a trustee and whether or not Soilco has notice of the trust
- 15.2 Where the Customer comprises two (2) or more persons, and any of those persons is a trustee, this clause applies to such trustee.
- 15.3 The Customer agrees that even though the Customer enters into this agreement as trustee of the trust, the Customer shall also be liable personally for the performance and observance of every covenant to be observed and performed by the Customer expressed or implied in this agreement.
- 15.4 The Customer warrants its complete, valid and unfettered power to enter into this agreement pursuant to the provisions of the trust, including the power to obtain the credit facility from Soilco and to enter into the covenants to be observed and performed by them expressed or implied in this agreement, and warrants that its entry into this agreement is in the due administration of the trust.
- 15.5 The Customer covenants that the rights of indemnity which it may have against the property of the trust have not been, and in the future will not be, excluded, modified, released, lost or diminished (whether by agreement, breach of trust or otherwise).
- 15.6 The Customer shall not, without Soilco's prior written consent:
- (a) resign or be removed as trustee of the trust or appoint or allow the appointment of a new or additional trustee of the trust;
  - (b) amend or revoke any of the terms of the trust;
  - (c) vest or distribute the property of the trust or advance or distribute any capital of the trust to a beneficiary or resettle any of the property of the trust;
  - (d) permit a beneficiary to have the use, occupation, employment or possession of the property of the trust;
  - (e) do or permit or omit to do an act or thing in breach of the trust, or which would permit the trustee to be removed as a trustee of the trust;
  - (f) exercise or permit or allow to be exercised a power to change the vesting date of the trust or provide for an early determination of the trust;
  - (g) lend any money, give any guarantee or incur any debt other than in the ordinary course of business of the trust;
  - (h) pay any of the income of the trust to any beneficiary of the trust if such payment will prejudice or affect the Customer's ability to pay all monies due to Soilco.



# Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Soilco Pty Ltd and its successors and assigns ("Soilco") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply Goods and/or Services to

[ ] ("the Customer") [Insert Company Name In Box Provided]

### I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

- GUARANTEE** the due and punctual payment to Soilco of all monies which are now owing to Soilco by the Customer and all further sums of money from time to time owing to Soilco by the Customer in respect of Goods and/or Services supplied or to be supplied by Soilco to the Customer or any other liability of the Customer to Soilco, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with Soilco, including but not limited to the Terms and Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to Soilco the Guarantor will immediately on demand pay the relevant amount to Soilco. In consideration of Soilco agreeing to supply the Goods and/or Services to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to Soilco registering any interest so charged. The Guarantor irrevocably appoints Soilco and each director of Soilco as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which Soilco may reasonably require to:
  - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - register any other document required to be registered by the PPSA or any other law; or
  - correct a defect in a statement referred to in clause 1(a) or 1(b).
- HOLD HARMLESS AND INDEMNIFY** Soilco on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, Soilco in connection with:
  - the supply of Goods and/or Services to the Customer; or
  - the recovery of monies owing to Soilco by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to Soilco's nominees costs of collection and legal costs; or
  - monies paid by Soilco with the Customer's consent in settlement of a dispute that arises or results from a dispute between, Soilco, the Customer, and a third party or any combination thereof, over the supply of Goods and/or Services by Soilco to the Customer.

### I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- I/We have received, read and understood Soilco's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
- This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to Soilco by the Customer and all obligations herein have been fully paid satisfied and performed.
- No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on Soilco's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to Soilco, each Guarantor shall be a principal debtor and liable to Soilco accordingly.
- If any payment received or recovered by Soilco is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and Soilco shall each be restored to the position in which they would have been had no such payment been made.
- The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
- I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to Soilco.**
- I/we irrevocably authorise Soilco to obtain from any person or company any information which Soilco may require for credit reference purposes. I/We further irrevocably authorise Soilco to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with Soilco as a result of this Guarantee and Indemnity being actioned by Soilco.
- The above information is to be used by Soilco for all purposes in connection with Soilco considering this Guarantee and Indemnity and the subsequent enforcement of the same.

**GUARANTOR-1**  
 SIGNED: \_\_\_\_\_  
 FULL NAME: \_\_\_\_\_  
 HOME ADDRESS: \_\_\_\_\_  
 DATE OF BIRTH: \_\_\_\_\_  
 SIGNATURE OF WITNESS: \_\_\_\_\_  
 NAME OF WITNESS: \_\_\_\_\_  
 OCCUPATION: \_\_\_\_\_  
 PRESENT ADDRESS: \_\_\_\_\_  
 EXECUTED as a Deed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**GUARANTOR-2**  
 SIGNED: \_\_\_\_\_  
 FULL NAME: \_\_\_\_\_  
 HOME ADDRESS: \_\_\_\_\_  
 DATE OF BIRTH: \_\_\_\_\_  
 SIGNATURE OF WITNESS: \_\_\_\_\_  
 NAME OF WITNESS: \_\_\_\_\_  
 OCCUPATION: \_\_\_\_\_  
 PRESENT ADDRESS: \_\_\_\_\_  
 EXECUTED as a Deed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

- Note:
- If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
  - If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member.

**WARNING: THIS IS AN IMPORTANT DOCUMENT YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT**