

TERMS AND CONDITIONS OF CREDIT

1. Interpretation

"**Applicant**" means the party or parties seeking credit and is also referred to as the "Customer".

"**Bankruptcy Act**" means *Bankruptcy Act 1966* (Cth).

"**Corporations Act**" means the *Corporations Act 2001* (Cth).

"**Goods**" means any goods, equipment and other items (in each case as described in any quotation, invoice, purchase order or any other document in relation to the purchase of those goods) which RDO has supplied (or has agreed to supply) to the Applicant (including, without limitation, accessories and parts).

"**Guarantee**" shall mean the guarantee and indemnity provided as part of this Application (if any).

"**Guarantor**" shall mean each of the guarantors identified in the section entitled "Executed by the Guarantor" (if any).

"**Insolvency Event**" includes circumstances where:

- (a) a party is insolvent as defined by section 95A of the Corporations Act as disclosed in its accounts or otherwise;
- (b) a party is bankrupt as defined by section 5 of the Bankruptcy Act;
- (c) a party has committed an act of bankruptcy as defined by section 40 of the Bankruptcy Act;
- (d) a party is insolvent under administration as defined in the Corporations Act;
- (e) a party is presumed to be insolvent under an applicable law including under section 459C(2) or section 585 of the Corporations Act;
- (f) a party otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (g) a liquidator, provisional liquidator, administrator, controller, trustee or receiver is appointed to a party;
- (h) an application is made to a court for an order, or an order is made, that a party may be wound up, declared bankrupt or that a provisional liquidator, receiver or receiver and manager be appointed to that party, and that application is not withdrawn, struck out or dismissed within 14 days of it being made;
- (i) a party enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (j) a party proposes winding-up, dissolution or reorganisation, moratorium, a deed of company arrangement or other administration involving one or more of its creditors;
- (k) a party fails to comply with a statutory demand under section 459F(1) of the Corporations Act;
- (l) is the subject of a creditor's petition or debtor's petition under the Bankruptcy Act and that petition is not withdrawn, struck out or dismissed within 14 days of it being made;
- (m) a notice is issued to a party under section 601AA or section 601AB of the Corporations Act; or
- (n) a party ceases to carry on business or threatens to do so.

"**PMSI**" means any "purchase money security interest" and has the meaning given to it by the PPSA.

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

"**RDO**" shall mean RDO Equipment Pty Ltd ABN 58 060 286 759, any of its related bodies corporate as defined in the Corporations Act and includes the brands operated by RDO including Vanderfield and Vermeer.

"**Terms and Conditions of Credit**" means the terms and conditions set out in this Application for Credit, as amended, varied, supplemented or replaced from time to time.

"**Terms and Conditions of Sale**" means the terms and conditions of supply or trade or hire of RDO as amended, varied, supplemented or replaced from time to time and which are published on

the RDO Website www.rdoequipment.com.au.

2. General Provisions

The Applicant agrees and acknowledges that:

- 2.1 if RDO agrees to supply any Goods or provide any services to the Applicant, that supply or provision will (at all times) be subject to:
 - 2.1.1 the Terms and Conditions of Sale (as amended) and the Applicant shall be bound by (and will comply with) those amended Terms and Conditions of Sale as if set out (in full) herein; and
 - 2.1.2 these Terms and Conditions of Credit.
- 2.2 RDO may vary the Terms and Conditions of Sale, at any time, with notice to the Applicant and each such variation shall be binding on the Applicant.

3. Commercial Credit

Intentionally deleted.

4. Notification of Insolvency or Change to Entity

The Applicant will immediately advise RDO if it, or any Guarantor (if applicable) becomes subject to an Insolvency Event, or any change of structure of the entity or natural person described in this Application for Credit, including any Guarantor, or any change to its name or details including, if the Applicant or Guarantee is a trustee, the ABN of the relevant trust.

5. Payment

- 5.1 The Applicant will pay the amount shown on each invoice for Goods supplied or rented and service provided by RDO before the due date for payment.
- 5.2 If payment is not made when due, RDO may charge interest on all moneys outstanding from the Applicant and interest shall accrue and be calculated on a daily basis at the rate of 14% per annum, calculated daily from the due date until the date that payment is made.

6. Credit Terms

- 6.1 If any amount due and payable by the Applicant to RDO is not paid on time, all amounts actually or contingently owing under this Application for Credit, whether or not due and payable become immediately due and payable.
- 6.2 Should the Applicant be the subject of an Insolvency Event or otherwise RDO may, in addition to any other course of action available to it, and to the extent permitted by law, elect to terminate or rescind this Application for Credit.

7. Credit approval

- 7.1 RDO will advise the Applicant by email if, subject to these Terms and Conditions of Credit, it agrees to extend credit to the Applicant from time to time and the terms of that credit (including the credit limit that will apply) (the **Credit Approval**).
- 7.2 If RDO has granted any Credit Approval under clause 7.1, it may, in its sole discretion, withdraw, reduce or otherwise vary that Credit Approval (or any terms of that Credit Approval) at any time.
- 7.3 RDO may vary these Terms and Conditions of Credit from time to time, at any time and with prior notice to the Applicant or a Guarantor.

8. Credit Reporting Information

- 8.1 The Applicant signing this Application for Credit acknowledges that RDO may give credit information about the Applicant to a credit reporting body.
- 8.2 The Applicant acknowledges and agrees that RDO may seek and obtain credit reporting information about the Applicant from a credit reporting body for the purposes of:
 - 8.2.1 assessing the Applicant's application for and the continuation of commercial credit;
 - 8.2.2 assessing whether to accept the Applicant's obligations under this Application for Credit; or
 - 8.2.3 collecting overdue payments in respect of commercial credit provided to the Applicant.
- 8.3 The Applicant acknowledges and agrees that RDO may give credit eligibility information to a person who is currently a Guarantor, or who is considering becoming a Guarantor of credit

RDO has either provided to the Applicant or the Applicant has applied for to RDO.

8.4 The Applicant acknowledges and agrees that RDO may exchange crediteligibility information about the Applicant with another credit provider for the purposes of:

8.4.1 assessing the Applicant's application for credit;

8.4.2 to notify other credit providers of a default by the Applicant; or

8.4.3 to exchange information with other credit providers as to the status of the Applicant's credit agreement with RDO where the Applicant is in default with one or more other credit providers.

9. Application of funds

The Applicant agrees that any funds received by RDO in respect to Goods supplied or services provided by RDO to the Applicant shall be applied against any debt owed by the Applicant to RDO in the following order:

9.1 firstly to any unsecured portion of that debt; and

9.2 secondly to any secured non-PMSI liability,

and thereafter against any PMSI or in any other order that RDO may direct from time to time.

10. General

The invalidity or unenforceability of any provision of these terms (or any provision of the Terms and Conditions of Supply) shall not affect the validity or enforceability of the remaining provisions of these terms and any clerical errors are subject to correction and do not bind RDO.

11. Jurisdiction

These terms and conditions shall be construed according to the laws that apply in the State of Queensland and any proceedings in respect of any cause or matter arising hereunder may be instituted heard and determined by a Court of competent jurisdiction in Queensland. The parties submit to the jurisdiction of the Courts of Queensland.

12. Joint and several

An obligation of two or more persons under this agreement binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in terms of this agreement will take effect for the benefit of those persons jointly and severally.

13. Waiver

The failure of a party to this agreement to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the party at a later time to enforce the provision.

14. Counterparts

14.1 This agreement may be signed in counterparts. Each counterpart will be deemed an original and the counterparts taken together constitute one and the same instrument.

14.2 A copy of a counterpart sent by electronic communication (as defined in the in *Electronic Transactions (Queensland) Act 2001* (Qld)):

(a) will be deemed an original counterpart;

(b) is sufficient evidence of the signing of the original; and

(c) may be produced in evidence for all purposes in place of the original.