

# CREDIT APPLICATION



trading as



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<b>Office Use Only</b>
Date approved: _____
Facility: _____
Insurance Limit: _____
Terms: _____
PPSA: _____
Signed: _____



# TERMS AND CONDITIONS OF SALE

## 1. APPLICATION OF THESE TERMS AND CONDITIONS

For the purposes of this agreement, "the Supplier" is QMI Pty Ltd ABN 91 164 217 565 and its successors and assigns or any person acting on behalf of and with the authority of QMI Pty Ltd; "the Customer" is the Customer identified as the Applicant in the Supplier's Credit Application and as the Customer ordering and receiving Goods from the Supplier and includes the Customer's successors, assigns and any person acting on behalf of and with the authority of the Customer; "Goods" means all goods sold, consigned or otherwise made available to the Customer by the Supplier, including but not limited to heating, ventilation and air-conditioning grilles and vents, architectural lighting, light fittings and associated lighting products; and "Manufacturer" means a business providing warrantable products to the Supplier.

## 2. QUOTE

### 2.1 Supplier Supply Quote

The Supplier may give the Customer a quote specifying Goods of interest, the prices (excluding GST) and delivery dates. Quotes are valid for thirty (30) days unless otherwise varied and duly authorised by the Supplier.

### 2.2 Acceptance by the Customer

Where the Supplier has given the Customer a quote:

- a) the Supplier need not commence the order until the quote has been accepted by the Customer;
- b) the Customer shall accept the quote by instructing (in writing) the Supplier to commence the order by signing and returning a true copy of the quote accompanied by a purchase order number if applicable;
- c) acceptance by the Customer of the quote will constitute acceptance by the Customer of these Terms and Conditions; and
- d) in acceptance of the quote the Customer warrants that it has not relied on any representation by the Supplier other than as supplied in writing in the quote.

### 2.3 Cancellation

**2.3.1** The Customer shall reimburse the Supplier for any costs, expenses or losses incurred by the Supplier should the Customer cancel an accepted quote. The Customer will be charged a cancellation fee of either one hundred percent (100%) of the quoted price for Goods manufactured to the Customer's specifications or requirements and fifty percent (50%) of the quoted price for Goods manufactured as standard items.

**2.3.2** The time for payment for such cancellation shall be seven (7) days from the date of the Supplier's invoice.

### 2.4 Supplier May Revise Quote

The Supplier may amend the quote if not accepted after thirty (30) days from the date of the quote, as a consequence of price increases for materials, currency fluctuations, increases in taxes or any other increases beyond the Supplier's control. The Supplier shall notify the Customer of such amendment as soon as practicable thereafter. The Supplier will not be obliged to commence work until such time as the Customer agrees to the amendment of the quote.

### 2.5 Variations to Initial Quote

The Customer shall indemnify the Supplier from any additional cost incurred by the Supplier should:

- a) the Customer make changes to specifications and design work or increase the scope of the Goods to be provided by the Supplier; or
- b) the designs and specifications supplied by the Customer prove to be inaccurate, impractical or unworkable in application.

### 2.6 Copyright

The copyright in all plans, sketches, design ideas and custom made solutions which appear in the Supplier's quote shall be the property of the Supplier.

## 3. DESCRIPTIVE DATA

All illustrations, drawings, catalogues, advertisements and other such descriptive data accompanying the Supplier's quote must be regarded as informative only and not part of any agreement unless otherwise stipulated in the quote. All measurement, powers, capacities and other particulars specified in descriptive data are stated in good faith but inaccuracies shall not vitiate any agreement or be made the basis of any claim against the Supplier nor justify rejection.

## 4. DELIVERY

**4.1** Delivery of the Goods made to the Customer's nominated address will incur freight charges unless otherwise agreed in the written quote. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Failure to do so may incur additional costs.

**4.2** Delivery of the Goods made to the Customer at the Supplier's address will be on an agreed date and failure by the Customer to uplift completed Goods from the Supplier's address on this agreed date will incur storage charges of thirty percent (30%) of the quoted price payable by the Customer on a monthly or part monthly basis at the Supplier's sole discretion.

**4.3** Delivery of Goods to a third party and/or site nominated by the Customer is deemed to be delivery to the Customer for the purpose of this agreement.

**4.4** Delivery dates are forecast as accurately as possible. Failure of the Supplier to deliver shall not entitle either party to treat this agreement as repudiated. The Supplier shall not be liable for any loss or damage whatsoever due to the failure by the Supplier to deliver the Goods, or any part of them, promptly.

## 5. FITNESS FOR PURPOSE

The Customer agrees that it does not rely on the skill or judgment of the Supplier in relation to the suitability of any of the Goods for a particular purpose. Any advice, recommendation, information or assistance given by the Supplier is provided without any liability to the Supplier whatsoever.

## 6. PAYMENT AND DEFAULT

### 6.1 Time for Payment

Unless otherwise agreed in writing, the Supplier's payment terms are strictly thirty (30) days from date of invoice without deduction.

### 6.2 Deposit

The Supplier may require a deposit from the Customer. This will be at the sole discretion of the Supplier. The Customer acknowledges the Supplier is under no obligation to start the order as requested by the Customer, until the deposit is received by the Supplier in full and when all details pertaining to contract are finalised. In the event of default as to payment owing to the Supplier on the part of the Customer, the Supplier shall be entitled to forfeit the deposit and claim any Supplier's profit or margin contemplated by or allowed for in the contract in addition to any remedy available to the Supplier at law or in equity.

### 6.3 Administration Fee

The Supplier reserves the right to charge a monthly administration fee of twenty-five dollars (\$25) on accounts that exceed the agreed payment terms.

### 6.4 Interest

The Supplier may charge interest at fifteen percent (15%) per annum calculated on a daily basis on amounts not paid within the Supplier's agreed payment terms.

### 6.5 CASH ON DELIVERY ("C.O.D.")

The Supplier reserves the right to place the Customer's account on restrictive trading (C.O.D) terms should the account exceed the Supplier's agreed terms.

### 6.6 Damages

The Customer must pay to the Supplier any costs, expenses or losses incurred by the Supplier as a result of the Customer's failure to pay to the Supplier all sums outstanding as owed by the Customer to the Supplier including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

## 7. RISK

The risk in the Goods shall pass to the Customer upon delivery of the Goods to the Customer or its agent or to a third party nominated by the Customer.

## 8. RETENTION OF TITLE

### 8.1 Title

Notwithstanding the delivery of the Goods, title in any particular Goods shall remain with the Supplier regardless of whether the Goods are on-sold by the Customer until the Customer has paid and discharged any and all monies owing pursuant to any invoice issued by the Supplier for the Goods, including all applicable GST and other taxes, levies and duties.

Where the Goods have been on-sold by the Customer, the Customer will be taken to hold the proceeds of sale of such Goods upon trust for the Supplier and to account to the Supplier for these proceeds. Any payment made by or on behalf of the Customer which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Supplier's title in the Goods nor the Customer's indebtedness to the Supplier and, in such event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

### 8.2 Bailment

The Customer acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made pursuant to clause 8.1 and until that time the Customer:

- a) is not entitled to sell the Goods but only in the ordinary course of business;
- b) must not encumber or otherwise charge the Goods; and
- c) shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery of the Goods to the Customer.

### 8.3 Repossession

The Customer hereby irrevocably grants to the Supplier the right, at its sole discretion, to access the Customer's property and remove or repossess any Goods from the Customer and sell or dispose of them, and the Supplier shall not be liable to the Customer or any person claiming through the Customer and the Supplier shall be entitled to retain the proceeds of any Goods sold and apply same towards the Customer's indebtedness to the Supplier.

If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Supplier may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid in accordance with these Terms and Conditions and commence proceedings to recover the balance of any monies owing the Supplier by the Customer.

## 9. WARRANTY

**9.1** The Warranty period for the Goods shall be twelve (12) months from the date of the Supplier's tax invoice. The warranty period cannot be extended unless otherwise agreed in writing by the Supplier.

## TERMS AND CONDITIONS OF SALE (continued)

**9.2** Any warranty as to Goods sourced from another Manufacturer who is not the Supplier shall be the same as the written warranty provided by that Manufacturer to the Supplier on or before delivery of the Goods and shall be subject to fair wear and tear.

**9.3** Work and/or service carried out on the Goods by anyone other than the Supplier and/or its nominated agents shall make the warranty null and void unless the Customer obtains prior written approval from the Supplier before any remedial work is carried out.

**9.4** The Supplier reserves the right to make null and void the warranty should the Goods be modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform.

**9.5** The Customer shall indemnify the Supplier from any labour costs connected to warranty work.

**9.6** In respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship or Goods or in properly assessing the Customer's claim.

### 10. LIABILITY

#### 10.1 Non-Excludable Rights

The parties acknowledge that, under the Australian Consumer Law ("ACL"), certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of the Goods or of services which cannot be excluded, restricted or modified by the agreement ("Non-Excludable Rights").

#### 10.2 Disclaimer of Liability

The Supplier disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-Excludable Rights.

To the extent permitted by law, the liability of the Supplier for a breach of a Non-Excludable Right is limited, at the Supplier's option, to the supplying of the Goods again or payment of the cost of having the Goods supplied again.

#### 10.3 Indirect Losses

Notwithstanding any other provision of these Terms and Conditions, the Supplier is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:

- a) any increased costs or expenses;
- b) any loss of profit, revenue, business, contracts or anticipated savings;
- c) any loss or expense resulting from a claim by a third party; or
- d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Supplier's failure to complete or delay in completing the order or failure to deliver or delay in delivering the Goods.

#### 10.4 Force Majeure

The Supplier will have no liability to the Customer in relation to any loss, damage or expense caused by the Supplier's failure to complete the order or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Supplier's normal suppliers to supply necessary material or any other matter beyond the Supplier's control.

### 11. DEFECTS, SHORTAGES AND RETURN OF GOODS

**11.1** The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Supplier in writing of any alleged shortage in quantity, or damage or failure to comply with the description, quoting the applicable invoice number. The Customer shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with these Terms and Conditions and free from any damage.

**11.2** Defective Goods must be returned promptly, after the written approval of the Supplier, with reference to the appropriate delivery docket or tax invoice.

**11.3** Goods returned shall be at no cost to the Supplier.

### 12. PERSONAL PROPERTY SECURITIES ACT ("PPSA")

**12.1** In this clause, the following words have the respective meanings given to them in the PPSA: Financing Statement, Financing Change Statement, Proceeds, Register, Security Agreement, Security Interest and Verification Statement. In this clause "the Customer" is the grantor and "the Supplier" is the secured party, as defined in the PPSA.

**12.2** The Customer acknowledges and agrees:

- a) that these Terms and Conditions constitute a Security Agreement that creates a Security Interest in all Goods (and Proceeds):
  - (i) previously supplied by the Supplier to the Customer;
  - (ii) to be supplied in the future by the Supplier to the Customer;
- b) that the Security Interest created by these Terms and Conditions is a continuing Security Interest in all Goods (supplied now or in the future by the Supplier to the Customer) and Proceeds, which will operate (despite any intervening payment or settlement of account) until the Supplier has signed a release;
- c) to waive its rights under section 157 of the PPSA and the following subsections of section 115 of the PPSA, which will not apply to the Security Agreement created by these Terms and Conditions: 95, 117, 118, 121(4), 130, 132(4), 135 and 143.

**12.3** The Customer undertakes to:

- a) keep all Goods free of any charge, lien or Security Interest except as created under these Terms and Conditions and not otherwise deal with the Goods in a way that may prejudice any rights of the Supplier under these Terms and Conditions or the PPSA;
- b) sign any further documents and provide any further information (which must be complete, accurate and up-to-date in all respects) that the Supplier may require to:
  - (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the 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 12.3(b) (i) or 12.3(b) (ii);
- c) indemnify, and on demand reimburse, the Supplier for all fees (including legal fees on a solicitor and own client basis), costs, disbursements and expenses in:
  - (i) registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged thereby; and
  - (ii) enforcing or attempting to enforce the Security Interest created by these Terms and Conditions; and
- d) not register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the Goods or Proceeds in favour of a third party, without the prior written consent of the Supplier.

### 13. PRIVACY

**13.1** The Customer hereby authorises the Supplier to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the Privacy Act 1988 and the Privacy Principles outlined in the Privacy Amendment Act 2012, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Supplier, a debt collector, credit reporting body and/or any other individual or organisation which maintains credit references and/or default listings.

**13.2** Subject to the Privacy Principles outlined in the Privacy Amendment Act 2012, the Customer further authorises the Supplier to collect, retain, record, use and disclose personal information about the Customer for the marketing of the Goods provided by the Supplier.

### 14. SECURITY AND CHARGE

The Customer hereby charges all property, both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer to the Supplier under these Terms and Conditions or otherwise and hereby authorises the Supplier or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Customer at any time.

### 15. ARBITRATION & MEDIATION

Any dispute or difference between the Customer and the Supplier may be notified by a party to the other party and the parties shall firstly meet to negotiate, in good faith, resolution of the dispute and secondly, if negotiation fails to achieve a resolution of the dispute within five (5) working days of the notification of the dispute, attend mediation, administered in accordance with procedures as set out by the Institute of Arbitrators and Mediators Australia, provided that this provision shall not prevent the Supplier from instituting legal action at any time to recover monies owing by the Customer to the Supplier.

### 16. GENERAL MATTERS

#### 16.1 No Waiver

Failure by the Supplier to enforce or delay in enforcing any right or provision of these Terms and Conditions will not constitute a waiver of such right or provision unless acknowledged and agreed by the Supplier in writing.

#### 16.2 Advice of Customer Changes

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

#### 16.3 Amendments to these Terms and Conditions

The Supplier reserves the right to vary these Terms and Conditions at any time with notice in writing to the Customer. Any subsequent orders will represent the Customer's agreement to the Terms and Conditions as amended.

#### 16.4 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

#### 16.5 Governing Law and Jurisdiction

These Terms and Conditions are governed by the laws of the State of Queensland and all disputes arising between the Supplier and the Customer will be submitted to the Brisbane Registry of any such court as is competent to hear the matter.