

CREDIT ACCOUNT TERMS AND CONDITIONS

1. Definitions

In these Credit Account Conditions:

- a) "Application Form" means the Application For 25-day Nett Credit Account form that is completed by the Customer.
- b) "Boekeman Machinery" means Boekeman Machinery (WA) Pty Ltd (ACN 613 070 090) trading as Boekeman Machinery and includes its successors, assigns or any person acting on its behalf and with its authority.
- c) "Commencement Date" means the first to occur of the date on which Boekeman Machinery gives notice to the Customer that Boekeman Machinery has accepted the Customer's Application Form and the date on which Boekeman Machinery supplies Goods and/or Services to the Customer on credit pursuant to these Credit Account Conditions.
- d) "Credit Account Conditions" means these Credit Account Terms and Conditions.
- e) "Customer" means the person or entity who is designated as the applicant in the Application Form.
- f) "Customer Default" is defined in clause 8(a).
- g) "General Terms and Conditions" means Boekeman Machinery's General Terms and Conditions (as amended from time to time), which are available upon request or on Boekeman Machinery's website at <http://www.boekemans.com.au>
- h) "Goods" has the meaning given in the General Terms and Conditions.
- i) "Guarantor" means the person(s) named in the Guarantee and the Guarantee and Indemnity Deed Poll.
- j) "Invoice" means an invoice issued by Boekeman Machinery to the Customer detailing amounts owed by the Customer to Boekeman Machinery, whether those amounts are owed in respect of Goods or Services or otherwise.
- k) "Services" has the meaning given in the General Terms and Conditions.
- l) "Unpaid Goods" is defined in clause 9.3(a).
- m) Unless the context otherwise requires, capitalised terms which are used in these Credit Account Conditions will have the meanings given in the General Terms and Conditions.

2. Relationship with General terms and Conditions

These Credit Account Conditions and the Application Form form part of a Contract for the purposes of the General Terms and Conditions.

3. Term

These Credit Account Conditions commence on the Commencement Date and continue without limitation in time until terminated by either party under clause 9.

4. Payment Obligation

The Customer must pay in full any Invoice received from Boekeman Machinery by the relevant Due Date, without set-off, reduction or counter-claim. If no due date is specific on the invoice, the due date is 25 days after the end of the month in which the invoice is issued. The Customer charges any right, title or interest it holds in real or personal property with the Customer's obligations pursuant to this Credit Agreement, and for that purpose irrevocably authorises Boekeman Machinery to, at its sole discretion, lodge a caveat over any real property in which the Customer holds a right, title, or

interest in and authorises Boekeman Machinery to register a charge over any personal property in which the Customer has an interest.

5. Title to Goods

Ownership in the Goods Boekeman Machinery supplies shall not pass upon delivery but shall remain with Boekeman Machinery until the Customer has paid all monies that the Customer owes Boekeman Machinery.

6. Interest

- a) Boekeman Machinery may charge the Customer interest on any amount due but unpaid under these Credit Account Terms and Conditions.
- b) Interest payable under clause 6(a):
 - i. accrues at an interest rate of 7% per annum;
 - ii. accrues from day to day from and including the Due Date to the actual date of payment; and
 - iii. may be capitalised by Boekeman Machinery at monthly intervals.

7. Warranties and Authority to Supply Information

7.1 Customer's general warranties

The Customer warrants to Boekeman Machinery that:

- a) all information provided by the Customer in the Application Form or otherwise is complete and correct and not misleading and that Boekeman Machinery may rely on that information unless and until it receives notice of any change stated by the Customer;
- b) the Customer will notify Boekeman Machinery in writing within 2 Business Days of any material change from time to time in any information provided by the Customer to Boekeman Machinery in the Application Form or otherwise in connection with these Credit Account Conditions;
- c) the Customer has full power to, and may lawfully enter into and perform its obligations under these Credit Account Conditions; and
- d) the Customer is obtaining the credit pursuant to these Credit Account Conditions for business purposes only and not for personal, household or domestic purposes.

7.2 Customer's trust warranties

Where the Customer is acting as trustee of a trust, the Customer represents and warrants to Boekeman Machinery that:

- a) the trust is lawfully and validly constituted;
- b) it is not aware of any action pending to wind up the trust or to have the trustee changed; and
- c) the assets of the trust, as well as the assets of the Customer, will at all times be available to satisfy the obligations of the Customer.

7.3 Authority to supply information

- a) The Customer irrevocably authorises Boekeman Machinery to supply (at any time, including after the termination of these Credit Account Conditions) information contained in Boekeman Machinery's records in respect of the Customer held from time to time (including application forms) and any and all information obtained by Boekeman Machinery in relation to the Customer in the course of providing these

Credit Account Conditions including the Customer's name, address, contact and other personal details to any person directly and relevantly connected with the transactions contemplated by these Credit Account Conditions.

- b) The Customer irrevocably authorises Boekeman Machinery to supply relevant information contained in the Application Form and other records of Boekeman Machinery to a credit reporting agency and to obtain credit reports about the Customer from a credit reporting agency in connection with the establishment and maintenance of these Credit Account Conditions and the collection of any overdue payments.

8. Customer Default

- a) It is a **Customer Default** under these Credit Account Conditions if the Customer:
 - i. breaches any term of the Contract, provided that if the breach is capable of remedy, Boekeman Machinery must give written notice of the breach and a period of seven days to remedy the breach; or
 - ii. suffers an Insolvency Event.
- b) If a Customer Default occurs, Boekeman Machinery may, in addition to any other rights it may have under these Credit Account Conditions, revoke or suspend these Credit Account Conditions until such time as Boekeman Machinery is satisfied that the Customer Default has been remedied.

9. Termination

9.1 Termination by Boekeman Machinery

Boekeman Machinery may terminate these Credit Account Conditions:

- a) with notice to the Customer upon the occurrence of a Customer Default; or
- b) at any time by giving 5 Business Days' notice to the Customer.

9.2 Termination by Customer

The Customer may terminate these Credit Account Conditions at any time by giving 30 days written notice to Boekeman Machinery.

9.3 Procedure following termination

If these Credit Account Conditions are terminated for any reason, the Customer must:

- a) do all things necessary to allow Boekeman Machinery to immediately reclaim possession of any Goods which have been supplied pursuant to these Credit Account Conditions and which have not yet been paid for by the Customer (**'Unpaid Goods'**); and
- b) immediately pay any outstanding amounts to Boekeman Machinery, including (if applicable) by remitting the proceeds of the sale of any Unpaid Goods by the Customer.

10. Indemnity

In addition to the indemnity in the General Terms and Conditions, the Customer indemnifies and must keep Boekeman Machinery indemnified from and against any Claim or Loss that Boekeman Machinery suffers or incurs arising out of or in any way connected with, either directly or indirectly with the Customer's use of credit pursuant to these Credit Account Conditions.

11. Disclaimer and Limitation of Liability

Subject to clause 20 in the General Terms and Conditions:

- a) Boekeman Machinery is not liable to the Customer for any Loss, however caused (including by the negligence of Boekeman Machinery), suffered or incurred by the Customer arising from or in connection with these Credit Account Conditions, including the Customer's use of credit pursuant to these Credit Account Conditions; and
- b) except for the express terms and warranties set out in these Credit Account Conditions, Boekeman Machinery gives no warranties and all other terms, warranties and conditions are expressly excluded.

GUARANTEE AND INDEMNITY

12. Definitions

In this Deed Poll:

- a) "Boekeman Machinery" means Boekeman Machinery (WA) Pty Ltd (ACN 613 070 090) trading as Boekeman Machinery and its successors, assigns or any person acting on its behalf and with its authority.
- b) "Customer" means the person or entity who is designated as the applicant in the Application Form.
- c) "Deed Poll" means this Guarantee and Indemnity Deed Poll.
- d) "General Terms and Conditions" means Boekeman Machinery's General Terms and Conditions (as amended from time to time, which are available upon request or on Boekeman Machinery's website at <http://www.boekemans.com.au>)
- e) "Goods" has the meaning given in the General Terms and Conditions.
- f) "Guaranteed Money" is defined in clause 13(a).
- g) "Guarantor" means the person or persons who agrees to be bound by this Deed Poll and where more than one party is named, will mean each of Guarantors and bind each of them jointly and severally.
- h) "Services" has the meaning given in the General Terms and Conditions.
- i) A reference to any party includes the party's successors and permitted assignees.

13. Guarantee and Indemnity

In consideration of Boekeman Machinery's agreement to provide Goods or Services to the Customer on credit, the Guarantor will:

- a) guarantee the due and punctual payment of all sums of money, interest, taxes, charges and other amounts that are, or may become, payable by the Customer to Boekeman Machinery (Guaranteed Money);
- b) as a separate covenant to clause 13(a), indemnify Boekeman Machinery from and against all losses, damages, costs and expenses which have, or may be, incurred by Boekeman Machinery by reason of any failure by the Customer or the Guarantor to duly and punctually pay any amount due to Boekeman Machinery;
- c) charges any right, title or interest the Guarantor holds in real or personal property with the Guarantor's obligations pursuant to this Deed Poll, and for that purpose irrevocably authorises Boekeman Machinery to, at its sole discretion, lodge a caveat over any real property in which the Guarantor holds a right, title, or interest in and authorises Boekeman Machinery to register a charge over any personal property in which the Guarantor has an interest; and
- d) acknowledges that clause 26 of the General Terms and Conditions applies to this Deed Poll as if the Guarantor were the Customer and authorises Boekeman Machinery to register such interests on the PPSR as it deems suitable.

14. Representations and Warranties

The Guarantor represents and warrants to Boekeman Machinery that:

- a) the Guarantor has:
 - i. signed this Deed Poll voluntarily;
 - ii. understood the nature and effect of this Deed Poll and the obligations that may be incurred through the operation of the Deed Poll;
 - iii. considered the consequences should the Guarantor breach the terms of this Deed Poll; and

- iv. the power and authority to enter into and perform its obligations under this Deed Poll;
- b) all information provided by the Guarantor to Boekeman Machinery in relation to this Deed Poll is complete and correct and not misleading and that Boekeman Machinery may rely on that information unless and until it receives notice of any change stated by the Guarantor;
- c) before executing this Deed Poll, the Guarantor;
 - i. has taken, or has had the opportunity to take, advice as to the effect and consequences of and obligations created by this Deed Poll from a legal practitioner and from a financial adviser independent of Boekeman Machinery and the Customer; and
 - ii. was aware of and fully understood the effect and consequences of and accepted the financial risks of and the obligations created by this Deed Poll; and
- d) it has not entered into this Deed Poll in reliance on any representation, warranty, promise or statement of Boekeman Machinery or of any person on behalf of Boekeman Machinery

15. Guarantor's Obligations

- a) This Deed Poll is a continuing guarantee.
- b) This Deed Poll will not be prejudiced or affected by:
 - i. any other guarantee or any security or instrument Boekeman Machinery may hold in respect of the Guaranteed Money;
 - ii. any judgment obtained by Boekeman Machinery, or any release, discharge, surrender or modification of or dealing with any guarantee, security, instrument or judgment;
 - iii. any arrangement with, or release of, the Customer or any other Guarantor or person by Boekeman Machinery or by operation of law;
 - iv. the fact that the money owed by the Customer in whole or in part may cease to be recoverable from the Customer or from another Guarantor or person or for any other reasons except that the money has been paid;
 - v. any change in the membership of, or termination of, any partnership or firm of which the Customer or Guarantor is a member;
 - vi. the death, liquidation or bankruptcy of the Customer;
 - vii. the assent of Boekeman Machinery to any composition, arrangement or scheme in respect of the Customer or the acceptance by Boekeman Machinery of any dividend or sum of money under any such composition, arrangement or scheme;
 - viii. the failure of any other person named as a party to execute this instrument;
 - ix. any variation of the terms on which the Goods or Services are supplied to the Customer and paid for by the Customer;
 - x. any claim the Customer may have against Boekeman Machinery;
 - xi. any act or omission by Boekeman Machinery that may result in prejudice to the Guarantor;
 - xii. any payment to Boekeman Machinery by the Customer that is later avoided by the application of any statutory provision; or
 - xiii. the death, liquidation or bankruptcy of the Guarantor.

16. Customer's Default

Until Boekeman Machinery has received full payment of all money owed by the Customer, the Guarantor agrees that:

- a) it must immediately pay, on demand from Boekeman Machinery, any Guaranteed Money that has not been paid by the Customer, and must do so in the same manner and currency as the Guaranteed Money is or was required to be paid;
- b) a demand under clause 16(a) may be made at any time and from time to time;
- c) all payments that the Guarantor is required to make under this Deed Poll must be without any set off, counterclaim or condition or any deduction or withholding for any tax or any other reason, unless the Guarantor is required to make a deduction or withholding by applicable law;
- d) the Guarantor's liability under clause 16(a) will be that of principal debtor;
- e) in the event of any bankruptcy or administration of the Customer's estate or any winding up, voluntary administration, official management, or scheme of arrangement of the Customer the Guarantor will:
 - i. not lodge any proof of debt or other claim in respect of any debt or liability owing to the Guarantor without the written permission of Boekeman Machinery;
 - ii. not enforce any security held by the Guarantor in respect of the Customer;
 - iii. will hold any debt, liability or security and any rights or benefits in respect of the Customer's estate in trust for Boekeman Machinery; and
 - iv. if Boekeman Machinery requests, lodge a proof of debt or other claim, enforce any security held and execute all documents and do all things that Boekeman Machinery may require to enable Boekeman Machinery to have and receive the benefit of, or arising from, the proof, claim or security;
- f) Boekeman Machinery is not required to make any claim or demand for payment from the Customer before making a claim for payment from the Guarantor; and
- g) each of the Guarantor's obligations under this Deed Poll are unconditional and irrevocable.

17. Evidence of Debt

A statement in writing signed by an agent authorised by Boekeman Machinery outlining the Guaranteed Money owed by the Customer is prima facie evidence of the amount due or owing by the Customer that is covered by this Deed Poll.

18. Attorney

The Guarantor irrevocably appoints Boekeman Machinery as the Guarantor's attorney with authority to do on behalf of the Guarantor anything the Guarantor may lawfully authorise an attorney to do to give effect to or enforce the terms of this Deed Poll, including:

- a) to make, sign, execute, seal and deliver any document;
- b) to execute any instrument or do any act which may result in a benefit being conferred on Boekeman Machinery;
- c) to appoint substitute attorneys;
- d) to exercise any rights or powers as trustee held by the Guarantor; and
- e) to take possession of, use, sell or otherwise dispose of any asset of the Guarantor.

19. Jurisdiction and Severance

- a) This Deed Poll is governed by and will be construed according to the laws of Western Australia.
- b) Any provision of this Deed Poll that is held to be illegal, void or unenforceable will only be ineffective to the extent of the illegality or unenforceability without invalidating the remaining provisions of the Deed Poll.

20. Guarantor's authorisation under the *Privacy Act 1988* (Cth)

- a) The Guarantor agrees that Boekeman Machinery may, until the Deed Poll ceases, obtain from a credit reporting agency a consumer credit report containing information about the Guarantor.
- b) Boekeman Machinery may only use the information in the Guarantor's credit report for the purpose of assessing whether to accept this Deed Poll for the credit applied for, or provided to, the Customer.

21. Notices

- a) Any notice or other communication including any request, demand, consent or approval, to or by Boekeman Machinery or the Guarantor must be in legible writing and in English addressed as shown below:
 - i. if to the Guarantor, in accordance with the details set out in the signing clause in this Deed Poll; and
 - ii. if to Boekeman Machinery:

Address: PO Box 259, Northam, WA, 6401
Attention: Stuart, Tim and Andrew Boekeman
Email: admin@boekemans.com.au
or as specified to the sender by the party by notice.

- b) Any notice or other communication is regarded as being given by the sender and received by the addressee:
 - i. if by delivery in person, when delivered to the addressee;
 - ii. if by post, 2 Business Days after posting; or
 - iii. if by facsimile when received by the addressee in legible form,
 - iv. but if the delivery or receipt is on a day that is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.
- c) A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after the transmission is received or regarded as received under paragraph (b) and informs the sender that it is not legible.

22. General

- a) Assignment: The Guarantor must not assign or transfer or purport to assign or transfer this Deed Poll or any benefit or obligation under this Deed Poll to any person.
- b) Jurisdiction: This Deed Poll will be construed in accordance with the law of Western Australia. Any disputes arising under this Deed Poll are to be determined by the Courts of Western Australia.

- c) Variation: A variation to the terms of this Deed Poll must be in writing and signed by Boekeman Machinery and the Guarantor.
- d) Waiver: neither Boekeman Machinery or the Guarantor may rely on the words or conduct of the other as a waiver of any right unless the waiver is in writing and signed by the entity granting the waiver.
- e) Other terms: any terms and conditions in addition to those in this Deed Poll must be separately signed by Boekeman Machinery and the Guarantor in order to be binding.
- f) Entire agreement: this Deed Poll contains the entire agreement between Boekeman Machinery and the Guarantor with respect to its subject matter and supersedes all prior agreements and understandings between them in relation to its subject matter.

Signature of Guarantor _____

Address _____

Name in Block Letters _____

Date _____

Signature of Guarantor _____

Address _____

Name in Block Letters _____

Date _____

PRIVACY ACT AUTHORISATION

**This authorisation relates to the *Privacy Act 1988*
and **MUST BE COMPLETED IN FULL****

If Boekeman Machinery considers it relevant to assessing my/our application for commercial credit, I/we agree to Boekeman Machinery obtaining a credit report containing personal credit information about me/us from a credit reporting agency for the purpose of assessing my/our application for a commercial credit account.

If Boekeman Machinery considers it relevant to collecting overdue payments in respect of commercial credit provided to me/us, I/we agree to Boekeman Machinery obtaining a credit report containing personal credit information about me/us from a credit reporting agency for the purpose of the collection of overdue payments in respect of commercial credit provided to me/us.

I/we agree that Boekeman Machinery may give to and seek from any credit providers named in this credit application and any credit providers that may be named in a credit report issued by a credit reporting agency information about my/our credit arrangement, and I/we understand that this information can include any information about my/our creditworthiness, credit standing, credit history or credit capacity that credit providers are permitted to give or receive from each other under the *Privacy Act 1988*.

I/we understand that Boekeman Machinery may use any information for the following purposes:

1. to assess an application by me/us for commercial credit;
2. to notify other credit providers of any default by me/us;
3. to exchange information with other credit providers as to the status of any credit account I/we are granted where I/we are in default with other credit providers; and
4. to assess my/our creditworthiness.

Signed: _____ Print name: _____

Signed: _____ Print name: _____