

# CREDIT ACCOUNT APPLICATION

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

<b>Customer's Details:</b> <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:			
Full or Legal Name:			
Trading Name (if different from above):			
Physical Address:		State:	Postcode:
Billing Address:		State:	Postcode:
Email Address:			
Phone No:		Fax No:	Mobile No:
<b>Personal Details:</b> (please complete if you are an Individual)			
D.O.B.		Driver's Licence No:	
<b>Business Details:</b> (please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)			
ABN:		ACN:	Date Established (current owners):
Nature of Business:			
Paid Up Capital: \$		Estimated Monthly Purchases: \$	Credit Limit Required: \$
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged (to whom):			
Directors / Owners / Trustee (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:
<b>Account Terms:</b> <input type="checkbox"/> 7 Days <input type="checkbox"/> 14 Days <input checked="" type="checkbox"/> 30 Days <input type="checkbox"/> COD <input type="checkbox"/> Other:			
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO		Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Accounts Email Address:			
Accounts Contact:		Phone No:	
Bank and Branch:		Account No:	
<b>Trade References:</b> (please provide companies that are willing to do trade references)			
Name:	Address:	Phone / Fax / Email:	
1.			
2.			
3.			

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 Brett Grimley Sales Pty Ltd T/A Grimleys 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 (GRIMLEYS):** \_\_\_\_\_  
 Name: \_\_\_\_\_ Name: \_\_\_\_\_  
 Position: \_\_\_\_\_ Position: \_\_\_\_\_  
 Date: \_\_\_\_\_ Date: \_\_\_\_\_  
**WITNESS TO CUSTOMER'S SIGNATURE:**  
 Signed: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

# Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Brett Grimley Sales Pty Ltd T/A Grimleys and its successors and assigns ("Grimleys") 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:

- 1. GUARANTEE** the due and punctual payment to Grimleys of all monies which are now owing to Grimleys by the Customer and all further sums of money from time to time owing to Grimleys by the Customer in respect of goods and services supplied or to be supplied by Grimleys to the Customer or any other liability of the Customer to Grimleys, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with Grimleys, including but not limited to the Terms & 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 Grimleys the Guarantor will immediately on demand pay the relevant amount to Grimleys. In consideration of Grimleys agreeing to supply the goods 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 Grimleys registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints Grimleys and each director of Grimleys 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 Grimleys may reasonably require to:
  - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (b) register any other document required to be registered by the PPSA or any other law; or
  - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
- 2. HOLD HARMLESS AND INDEMNIFY** Grimleys 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, Grimleys in connection with:
  - (a) the supply of goods and/or services to the Customer; or
  - (b) the recovery of monies owing to Grimleys by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to Grimleys' nominees contract default fee and legal costs; or
  - (c) monies paid by Grimleys with the Customer's consent in settlement of a dispute that arises or results from a dispute between, Grimleys, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by Grimleys to the Customer.

## I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- 3. I/We have received, read and understood Grimleys' Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
- 4.** 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 Grimleys by the Customer and all obligations herein have been fully paid satisfied and performed.
- 5.** No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on Grimleys' 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 Grimleys, each Guarantor shall be a principal debtor and liable to Grimleys accordingly.
- 6.** If any payment received or recovered by Grimleys is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and Grimleys shall each be restored to the position in which they would have been had no such payment been made.
- 7.** 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 and shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.
- 8. 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 Grimleys.**
- 9.** I/we irrevocably authorise Grimleys to obtain from any person or company any information which Grimleys may require for credit reference purposes. I/We further irrevocably authorise Grimleys 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 Grimleys as a result of this Guarantee and Indemnity being actioned by Grimleys.
- 10.** The above information is to be used by Grimleys for all purposes in connection with Grimleys 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: 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).

2. 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**

# Brett Grimley Sales Pty Ltd T/A Grimleys – Terms & Conditions of Trade

1. **Definitions**
- 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"Grimleys"** means Brett Grimley Sales Pty Ltd T/A Grimleys, its successors and assigns or any person acting on behalf of and with the authority of Brett Grimley Sales Pty Ltd T/A Grimleys.
- 1.3 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Grimleys to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 **"Goods"** means all Goods or Services supplied by Grimleys 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).
- 1.5 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when using Grimleys' website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.7 **"Price"** means the Price payable (plus any GST where applicable) in Australian Dollars for the Goods as agreed between Grimleys and the Customer in accordance with clause 6 below.
- 1.8 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
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 or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges and accepts that:
  - (a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Grimleys and it has been approved with a credit limit established for the account;
  - (b) in the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, Grimleys reserves the right to refuse Delivery; and
  - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Grimleys reserves the right to vary the Price with alternative Goods as per clause 6.2.
- 2.5 Where Grimleys gives any advice, recommendation, information, assistance or service provided by Grimleys in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on Grimleys own knowledge and experience and shall be accepted without liability on the part of Grimleys.
3. **Electronic Transactions Act**
- 3.1 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 (NSW), the Electronic Communications Act 2000 (SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA), or any other applicable provisions of that Act or any Regulations referred to in that Act.
4. **Errors and Omissions**
- 4.1 The Customer acknowledges and accepts that Grimleys shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
  - (a) resulting from an inadvertent mistake made by Grimleys in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Grimleys in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Grimleys, the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
5. **Change in Control**
- 5.1 The Customer shall give Grimleys 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, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Grimleys as a result of the Customer's failure to comply with this clause.
6. **Price and Payment**
- 6.1 At Grimleys' sole discretion, the Price shall be either:
  - (a) as indicated on any invoice provided by Grimleys to the Customer; or
  - (b) Grimleys' quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Grimleys reserves the right to change the Price:
  - (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if during the course of the Services, the Goods cease to be available from Grimleys' third party suppliers, then Grimleys reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
  - (c) in the event of increases to Grimleys in the cost of labour or materials which are beyond Grimleys' control.
- 6.3 Variations will be charged for on the basis of Grimleys' quotation, and will be detailed in writing, and shown as variations on Grimleys' invoice. The Customer shall be required to respond to any variation submitted by Grimleys within ten (10) working days. Failure to do so will entitle Grimleys to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Grimleys' sole discretion, a non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Grimleys, which may be:
  - (a) on or before Delivery of the Goods; or
  - (b) by way of instalments/progress payments in accordance with Grimleys' payment schedule; or
  - (c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices; or
  - (d) the date which shall be either seven (7) days, fourteen (14) days, thirty (30) days, forty-five (45) days or sixty (60) days following the date of any invoice given to the Customer by Grimleys.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Grimleys.
- 6.7 Grimleys may in its discretion allocate any payment received from the Customer towards any invoice that Grimleys determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Grimleys may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Grimleys, payment will be deemed to be allocated in such manner as preserves the maximum value of Grimleys' Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 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 Grimleys nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Grimleys an amount equal to any GST Grimleys must pay for any supply by Grimleys 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.
7. **Delivery of Goods**
- 7.1 Delivery (**"Delivery"**) of the Goods is taken to occur at the time that:
  - (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Grimleys' address; or
  - (b) Grimleys (or Grimleys' nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 At Grimleys' sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 7.3 Grimleys may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Any time specified by Grimleys for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. Grimleys will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then Grimleys shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.5 The Customer shall ensure that Grimleys has clear and free access to the nominated site at all times to deliver the Goods. Grimleys shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Grimleys.
8. **Risk**
- 8.1 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.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Grimleys is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Grimleys is sufficient evidence of Grimleys' rights to receive the insurance proceeds without the need for any person dealing with Grimleys to make further enquiries.
- 8.3 If the Customer requests Grimleys to leave Goods outside Grimleys' premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 8.4 In the event that the Customer provides Grimleys with any information and/or measurements relating to the supply of the Goods, Grimleys shall be entitled to rely on the accuracy of any such information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Grimleys accepts no responsibility for any loss, damages, or costs however resulting from the supply of inaccurate measurements or other information.
- 8.5 The Customer acknowledges and accepts that variations of colour and shade are inherent in fabric dye lots. While every effort will be taken by Grimleys to match colour and shade of the Goods, Grimleys shall not be liable for any loss, damage or costs, howsoever arising resulting from any variation in colour and shading between batches of the Goods or sale samples and the final Goods supplied.
- 8.6 Where the Customer has supplied materials for Grimleys to complete the Services, the Customer acknowledges and accepts full responsibility for the suitability of purpose, quality, and any faults inherent in the materials. Grimleys shall not be responsible for any defects in the Services, or any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
9. **Title**
- 9.1 Grimleys and the Customer agree that ownership of the Goods shall not pass until:
  - (a) the Customer has paid Grimleys all amounts owing to Grimleys; and
  - (b) the Customer has met all of its other obligations to Grimleys.
- 9.2 Receipt by Grimleys 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.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:
  - (a) the Customer is only a bailee of the Goods and must return the Goods to Grimleys on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Grimleys and must pay to Grimleys 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 Grimleys and must pay or deliver the proceeds to Grimleys 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 Grimleys and must sell, dispose of or return the resulting product to Grimleys as it so directs;
  - (e) the Customer irrevocably authorises Grimleys to enter any premises where Grimleys believes the Goods are kept and recover possession of the Goods;
  - (f) Grimleys 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 Grimleys;
  - (h) Grimleys may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
10. **Personal Property Securities Act 2009 ("PPSA")**
- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 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 and/or collateral (account) – being a monetary obligation of the Customer to Grimleys for Services – that have previously been supplied and that will be supplied in the future by Grimleys to the Customer.
- 10.3 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 Grimleys 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 10.3(a)(i) or 10.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Grimleys 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 Grimleys;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Grimleys;
  - (e) immediately advise Grimleys 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.
- 10.4 Grimleys 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.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Grimleys, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by Grimleys under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
11. **Security and Charge**
- 11.1 In consideration of Grimleys 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).
- 11.2 The Customer indemnifies Grimleys from and against all Grimleys' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Grimleys' rights under this clause.
- 11.3 The Customer irrevocably appoints Grimleys and each director of Grimleys as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.
12. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 12.1 The Customer must inspect the Goods on Delivery and must within twenty four (24) hours of Delivery notify Grimleys 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 Grimleys to inspect the Goods.
- 12.2 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**).
- 12.3 Grimleys acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

Please note that a larger print version of these terms and conditions is available from Grimleys on request.

# Brett Grimley Sales Pty Ltd T/A Grimleys – Terms & Conditions of Trade

- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Grimleys makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Grimleys' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, Grimleys' liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Grimleys is required to replace the Goods under this clause or the CCA, but is unable to do so, Grimleys may refund any money the Customer has paid for the Goods.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, Grimleys' 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 Grimleys at Grimleys' sole discretion;
  - (b) limited to any warranty to which Grimleys is entitled, if Grimleys did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
  - (b) Grimleys 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.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Grimleys 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) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) 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;
  - (d) the Customer failing to follow any instructions or guidelines provided by Grimleys;
  - (e) fair wear and tear, any accident, or act of God.
- 12.10 Grimleys may in its absolute discretion accept non-defective Goods for return in which case Grimleys may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 12.11 Notwithstanding anything contained in this clause if Grimleys is required by a law to accept a return then Grimleys will only accept a return on the conditions imposed by that law.
- 12.12 Subject to clause 12.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.
- 13. Intellectual Property**
- 13.1 Where Grimleys has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Grimleys. Under no circumstances may such designs, drawings and documents be used without the express written approval of Grimleys.
- 13.2 The Customer warrants that all designs, specifications or instructions given to Grimleys will not cause Grimleys to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Grimleys against any action taken by a third party against Grimleys in respect of any such infringement.
- 13.3 The Customer agrees that Grimleys may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Grimleys has created for the Customer.
- 14. Default and Consequences of Default**
- 14.1 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 Grimleys' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes Grimleys any money the Customer shall indemnify Grimleys from and against all costs and disbursements incurred by Grimleys in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Grimleys' contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies Grimleys may have under this Contract, if a Customer has made payment to Grimleys, 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 Grimleys under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 14.4 Without prejudice to Grimleys' other remedies at law Grimleys shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Grimleys shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Grimleys becomes overdue, or in Grimleys' opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by Grimleys;
  - (c) 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 15. Cancellation**
- 15.1 Without prejudice to any other remedies Grimleys may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Grimleys may suspend or terminate the supply of Goods to the Customer. Grimleys will not be liable to the Customer for any loss or damage the Customer suffers because Grimleys has exercised its rights under this clause.
- 15.2 Grimleys may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Grimleys shall repay to the Customer any money paid by the Customer for the Goods. Grimleys shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Grimleys as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 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.
- 16. Privacy Policy**
- 16.1 All emails, documents, images or other recorded information held or used by Grimleys is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. Grimleys acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Grimleys acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Grimleys that may result in serious harm to the Customer, Grimleys will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 16.2 Notwithstanding clause 16.1, privacy limitations will extend to Grimleys in respect of Cookies where the Customer utilises Grimleys' website to make enquiries. Grimleys agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to Grimleys when Grimleys sends an email to the Customer, so Grimleys may collect and review that information ("collectively Personal Information")
- If the Customer consents to Grimleys' use of Cookies on Grimleys' website and later wishes to withdraw that consent, the Customer may manage and control Grimleys' privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 16.3 The Customer agrees that Grimleys may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) 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
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 16.4 The Customer consents to Grimleys being given a consumer credit report to collect overdue payment on commercial credit.
- 16.5 The Customer agrees that personal credit information provided may be used and retained by Grimleys for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 16.6 Grimleys may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 16.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 16.3 above;
  - (b) name of the credit provider and that Grimleys is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) 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);
  - (f) 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 Grimleys has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Grimleys, 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).
- 16.8 The Customer shall have the right to request (by e-mail) from Grimleys:
- (a) a copy of the Personal Information about the Customer retained by Grimleys and the right to request that Grimleys correct any incorrect Personal Information; and
  - (b) that Grimleys does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 16.9 Grimleys 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 Contract or is required to be maintained and/or stored in accordance with the law.
- 16.10 The Customer can make a privacy complaint by contacting Grimleys via e-mail. Grimleys 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).
- 17. Unpaid Seller's Rights**
- 17.1 Where the Customer has left any item with Grimleys for repair, modification, exchange or for Grimleys to perform any other service in relation to the item and Grimleys has not received or been tendered the whole of any monies owing to it by the Customer, Grimleys shall have, until all monies owing to Grimleys are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 17.2 The lien of Grimleys shall continue despite the commencement of proceedings, or judgment for any monies owing to Grimleys having been obtained against the Customer.
- 18. Service of Notices**
- 18.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 19. Trusts**
- 19.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Grimleys may have notice of the Trust, the Customer covenants with Grimleys as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - (c) the Customer will not without consent in writing of Grimleys (Grimleys will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.
- 20. Other Applicable Legislation**
- 20.1 At Grimleys' sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building Industry Fairness (Security of Payment) Act 2017 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 20.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 20.1 (each as applicable), except to the extent permitted by the Act where applicable.
- 21. General**
- 21.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 21.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 21.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which Grimleys has its principal place of business, and are subject to the jurisdiction of the Melbourne Courts in Victoria.
- 21.4 Subject to clause 12, Grimleys 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 Grimleys of these terms and conditions (alternatively Grimleys' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.5 Grimleys may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 21.6 The Customer cannot licence or assign without the written approval of Grimleys.
- 21.7 Grimleys may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Grimleys' sub-contractors without the authority of Grimleys.
- 21.8 The Customer agrees that Grimleys may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Grimleys to provide Goods to the Customer.
- 21.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party.
- 21.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.