

Credit Account Application

To Be Completed By Applicants

Please complete all sections and read the Sales Terms and Conditions of Trade overleaf.

DATE:

CLIENT'S TRADING / BUSINESS NAME: CLIENT'S FULL or LEGAL NAME:

ABN Number: ACN Number:

Phone: Fax:

Mobile: Email:

Billing Address:..... Town/Suburb.....State..... Postcode.....

Postal Address:..... Town/Suburb.....State..... Postcode.....

Requested Credit Limit: Date Established:

Account Contact Name: Contact 2 Name:

Personal Phone: Personal Phone 2:

Email to send Invoices to: Email Address 2:

DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company)

1) Full Name: Home Phone:

Home Address: Town/Suburb.....State..... Postcode.....

2) Full Name: Home Phone:

Home Address: Town/Suburb.....State..... Postcode.....

TRADE REFERENCES

Business Name 1: Address or Account number:

Phone: Fax:

Business Name 2: Address or Account number:

Phone: Fax:

Business Name 3: Address or Account number:

Phone: Fax:

I / We certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and agree with the **TERMS AND CONDITIONS OF TRADE** (overleaf or attached) of Sturdie Trade Services Pty Ltd (ABN 41 131 269 791), of this credit application including payment terms of seven (7) days from date of invoice, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these terms and conditions.

Privacy Statement: All personal information collected by us, including credit reference reports obtained from third parties, is collected to be used for the purposes of account establishment, payment and administration, and for the other purposes set out above. It is not otherwise to be disclosed to any third party, except for our agents and advisors involved in our credit provision and debt collection processes. Your personal information may also be used by us for account servicing and our own direct marketing purposes.

I / We authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director or a shareholder (owning at least 15% of the shares) of the Client and shall be personally liable for the performance of the Client's obligations under this contract.***

SIGNED: _____ SIGNED: _____

Name: _____ Name: _____

Position: _____ Position: _____

Date: _____ DOB: _____ Date: _____ DOB: _____

These Terms & Conditions apply to Sturdie Trade Services Pty Ltd (ABN 41 131 269 791)
We may from time to time agree to supply to you a variety of goods and services (the Goods and/or Services). Any Goods and Services we agree to supply to you will be supplied on these Terms:

1. EXCLUSION OF IMPLIED WARRANTIES

The only conditions and warranties binding on us in respect of the state, quality or condition of the goods and services supplied by us to you, or in respect of any advice, recommendations or information supplied by us (or our employees, servants or agents) to you, are those imposed and required by law to be binding on us (including the *Competition and Consumer Act 2010* (Cth) and applicable State fair trading laws). All other conditions and warranties, whether express or implied by law, in respect of the goods and services which may apart from this clause be binding on us, **are hereby expressly excluded and negated.**

2. LIMITATION OF LIABILITY

2.1 To the fullest extent permitted by law, our liability (if any) arising from a breach of any applicable conditions or warranties will, at our option, be limited to, and completely discharged by, in the case of goods, either the supply by us of equivalent goods or the repair or replacement by us of the goods supplied to you, and in the case of advice, recommendations, information or services, the supplying of the advice, recommendations, information or services again.

2.2 Except to the extent already set out in this clause, we will have no liability (including liability for negligence or recklessness) to any person for any loss or damage (consequential or otherwise) suffered or incurred by any person in relation to any goods, advice, recommendations, information or services supplied by us (or any of our employees, officers or agents). Without limiting the generality of this limitation, we will have no liability for any loss or damage resulting from any failure, defect or deficiency of any kind in any goods, advice, recommendations, information or services. We will not be liable for any loss of profit or special, indirect or consequential damages of any kind.

2.3 Any valid claim by you against us must be presented in writing to us within a reasonable time, and in no event longer than 60 days after the supply of the goods or service. No action may be maintained by you against us unless a timely written claim has been given under this clause, and unless such action is commenced within 9 months after the supply.

3. THIRD PARTY GOODS AND SERVICES

3.1 The terms set out in this clause 3 have priority over any other terms.

3.2 From time to time we may provide Goods and Services (**Third Party Products**) from third-party manufacturers and software publishers (the **Principals**).

3.3 We do not warrant the performance or integrity of any Third Party Products. We merely pass through to you whatever end-user warranty the Principals provide with their Third Party Products.

3.4 We are not responsible for any acts or omissions of the Principals, for any obligations undertaken or representations that they may make, or for any other products or services they may supply to you, either directly or through us.

3.5 We have no control over the intellectual property in the Third Party Products, and therefore do not take any responsibility for any liability arising as a result of the Third Party Products. We do not indemnify you for claims by third parties that

may arise as a result of such Third Party Products infringing any intellectual property of any third party. We will pass through to you any indemnity or cover provided by the Principal in respect of the Third Party Products.

3.6 Your sole and exclusive remedy for any breach of warranty or other liability is as stated in the Principal's end-user terms and conditions.

4. BINDING CONTRACT TO SUPPLY

4.1 Upon Acceptance, you will be bound to purchase the Goods and Services. You may not cancel an order for Goods and Services after Acceptance without our written consent, which we can withhold at our complete discretion.

4.2 If we agree to cancel an order for Goods or Services, you must:

(a) Pay to us any expense, cost or loss incurred or suffered by us as a result of the cancellation of the order; and

(b) Complete the purchase of any Goods that we have made or purchased as a result of your order, and pay to us our fee for any Services that we have commenced to supply.

4.3 Where you are constituted or more than one person or entity, you will be jointly and severally liable for all obligations and payments due under these Terms.

4.4 You must give us not less than 14 days' prior written notice of any proposed change of your ownership or name and/or any other change to your details (including but not limited to, changes in your physical or postal address, telephone number, facsimile number, email address or contact person). You will be liable for any loss incurred by us as a result of your failure to comply with this clause 4.4.

5. SUPPLY

We agree to supply, and you agree to purchase, Goods and Services in the manner and at the times provided in these Terms.

6. DELIVERY

6.1 In the absence of a specific delivery charge, we will charge our usual fees for the delivery of Goods.

6.2 The delivery times made known to you are estimates only. We will use reasonable endeavors to meet the proposed delivery times, but we will not be liable to you for any loss you suffer as a result of any delay in delivery caused by any reason.

6.3 Delivery of Goods will be ex-our premises, and you will pay all freight and insurance costs ex-our premises.

6.4 In our sole discretion, delivery of Goods will take place when:

(a) You take possession of Goods at your address;

(b) You take possession of Goods at the nominated delivery address; or

(c) Your nominated carrier takes possession of Goods, in which event the carrier will be deemed to be your agent.

6.5 We will be conclusively presumed to have delivered Goods in accordance with these Terms if the Goods are delivered to your carrier ex-our premises, or the consignment address, whether or not we obtain a receipt or signed delivery docket for the Goods.

6.6 If delivery cannot be achieved, we may store Goods or redeliver Goods to you, and you must pay or indemnify us for all costs and expenses incurred in doing so.

6.7 You will not be relieved of your obligation to accept and to pay for any part of an order as a result of any extensions, partial consignments or suspensions of delivery.

6.8 You will take delivery of Goods tendered notwithstanding that the quantity delivered may be either greater or lesser than the quantity purchased provided that:

(a) The discrepancy in quantity will not exceed 5%; and

(b) The price will be adjusted pro-rata to the discrepancy.

6.9 We will not be responsible for any loss or damage to Goods in transit. We will render you such reasonable assistance as may be necessary to press claims on any carrier provided you have notified us and the carrier in writing immediately upon the loss or damage being discovered on receipt of the Goods.

6.10 In the event we agree you may return Goods, those Goods will be at your risk until such time as the Goods reach our place of business. The expense of return will be borne by you.

6.11 You warrant that you will arrange for appropriate insurance for Goods in transit, the cost of which will be borne by you.

7. SUPERVISION AND PERSONNEL

7.1 Unless otherwise agreed in writing, we will maintain control over our personnel when providing the Goods and Services. You and your personnel must at all times co-operate with us and our personnel.

7.2 You will not approach our personnel and offer them employment or otherwise engage them to provide Goods and Services of the same or similar nature to the Goods and Services for a period of no less than 12 months following the termination of these Terms.

7.3 You acknowledge that any of your officers or personnel who contact us in respect of the provision of any goods or services are authorised to do so.

8. SUBCONTRACT

8.1 We may subcontract the provision of some or all of the supply of Goods and Services to other persons.

8.2 We will ensure all subcontractors appointed by us to supply Goods and Services under these Terms are subject to terms similar to these Terms.

8.3 If we have disclosed to you that the supply of some or all of the Goods and Services will be supplied by a particular subcontractor, the Supply Charges that we are entitled to are subject to change due to corresponding changes imposed by our subcontractor.

9. USE OF YOUR SITE

9.1 You will give us sufficient possession of your site to enable us to supply the Goods and Services.

9.2 We acknowledge that others may have access to your site and we agree to co-operate with these people.

10. EXTENSION OF TIME

- 10.1 If we are delayed in the supply of Goods and Services we will notify you as soon as we are aware of an actual or expected delay.
- 10.2 We will give you details of the circumstances giving rise to the delay, the anticipated duration of the delay, and the steps that we intend to take to minimise the delay.
- 10.3 On receipt of a notice of delay, you will extend the time for the supply of the Goods and Services by a reasonable period if the delay is beyond our reasonable control and we have used (or are using) all reasonable efforts to minimise the delay.

11. HOW WE WILL CHARGE

- 11.1 We will invoice you for the Goods and Services at the rates and in the manner set out in our quote.
- 11.2 In consideration of us agreeing to provide the Goods and Services, you agree to promptly pay our Supply Charges within our Trading Terms.
- 11.3 If you have not paid our Supply Charges within our Trading Terms, we will immediately cease to provide further goods and services to you until such time as all of our Supply Charges have been fully paid.
- 11.4 Our Supply Charges are, unless otherwise explicitly stated, quoted exclusive of applicable GST. GST will, where applicable, be added to our Supply Charges.
- 11.5 The making of a payment by you will, in the absence of prior written notice to us, constitute approval of the Goods and Services supplied by us.
- 11.6 If you dispute any Supply Charge made by us, in whole or in part, you will promptly notify us of the dispute, but will not delay in paying the Supply Charge within the agreed terms.
- 11.7 We will give you advance notice of any changes to our Supply Charges. You must pay for the Goods and Services at our current Supply Charges as notified by us.
- 11.8 Any allegation of overcharging or undercharging must be notified to the other party within 12 months of the date of invoice.

12. PRICE QUOTES

- 12.1 All prices quoted by us are subject to acceptance by you of Goods or Services or both as set out in and pursuant to these Terms.
- 12.2 All prices quoted are based on the following:
- (a) Labour, material, storage and transport costs and costs incurred in fulfilling statutory requirements (if any); and
 - (b) Supply by us to you during normal business hours (being 9am to 5pm) on a Business Day.
- 12.3 We reserve the right to alter any quoted prices (whether or not the quote has already been accepted) should there be any change to the costs referred to at clause 12.2(a) above or if our supply is requested or required by you to occur outside of normal business hours.

13. APPLICATION OF PAYMENTS

- Any payments tendered by you will be applied as follows:
- (a) First, as reimbursement for any collection costs incurred by us;
 - (b) Second, to satisfy any other obligation that is not secured;
 - (c) Third, in payment of any interest charged to you in accordance with these Terms;

- (d) Fourth, to satisfy an obligation that is secured, but not by a PMSI;
- (e) Fifth, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI; and
- (f) Sixth, to satisfy or partly satisfy the oldest portion of our Supply Charges that is secured by a PMSI using funds or proceeds from any source

or, despite the foregoing, any manner we see fit.

14. NO WITHHOLDING OR OFFSET

You may not withhold from any payment or offset against any payment due to us any amount in respect of any amount owed by or claim against us.

15. PAYMENTS AND INTEREST CHARGES

- 15.1 If you fail to pay us any amount under these Terms, we may:
- (a) Immediately terminate the supply/service arrangement between us by providing you with written notice of termination;
 - (b) Terminate any credit facilities extended to you; and
 - (c) Initiate legal action for recovery of any outstanding amounts owed by you and costs incurred (including but not limited to legal costs on a solicitor and own client basis).
- 15.2 Time is of the essence in respect of the payment of amounts due to us by you.
- 15.3 You will pay interest on amounts due to us that are over the payment terms at the rate of 2.5% per month accrued daily and compounded monthly from the date payment is due to the date on which payment is received by us.
- 15.4 You will be liable to us for all costs and expenses (including legal costs) incurred by us in the collection of any overdue account, or incurred by us due to any breach or default of these terms, and will pay the same to us immediately upon notice or demand.

16. DISCLOSE ALL RELEVANT INFORMATION

- 16.1 You must disclose all relevant information to us relating to the terms, conditions and circumstances in which we are to supply the Goods and Services. Without limitation, you will disclose to us:
- (a) Accurate, complete and sufficient information concerning the Goods and Services to allow us to comply with all laws and regulations concerning the supply of the Goods and Services; and
 - (b) All foreseeable hazards associated with the supply of the Goods and Services by us.
- 16.2 You confirm that all information provided by you, including the Reference Materials, are true, accurate and complete in all material respects, and may be relied on by us in the supply of the Goods and Services.
- 16.3 You indemnify us against all losses, costs, penalties and expenses which we pay or incur as a result of you failing to fully discharge the obligations in this clause 15.

17. CLIENT'S EQUIPMENT

- 17.1 You acknowledge that your security and monitoring equipment has been selected by you in accordance with your requirements.
- 17.2 You understand and accept that:

- (a) We are not an insurer and that any insurance must be obtained by you at your own cost;
- (b) The fees payable by you for Services are based solely on the value of the Services provided;
- (c) We do not represent that your equipment, our control room equipment or the connecting telecommunications link or lines may not be circumvented or will in all cases carry out the function for which they are designed, or are fit or suitable for any purpose.

18. BASIC SECURITY MONITORING

- 18.1 The standard response in the event of an alarm condition occurring is to notify:
- (a) During business hours, being 8:00am to 6:00pm weekdays (excluding public holidays): the nominated business hours contact person; or
 - (b) After hours, weekends and public holidays: the nominated after hours contact person.
- 18.2 You are responsible for providing us with up-to-date contact phone numbers for the nominated contact persons.

19. PATROL SERVICE

- 19.1 You acknowledge that the patrol service is a shared service with our other customers. There may be interruptions or delays caused by emergencies or unforeseen circumstances. These interruptions or delays may prevent or delay us from performing the number of inspections during the service period. We will not be liable for any non-performance due to these circumstances or causes.
- 19.2 Hours during which patrol response is provided vary from location to location.
- 19.3 It is neither implied nor intended that patrol response is available 24 hours per day, seven days per week.

20. UNDERGROUND LOCATIONS

- 20.1 Prior to commencing any work, if requested by us you must advise us of the precise location of all underground services on the site and clearly mark the same. The underground mains and services you must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, Telstra cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 20.2 While we will take care to avoid damage to any underground services, you agree to indemnify us in respect of all and any liability, claim, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 20.1.

21. RETENTION OF TITLE TO GOODS

All rights, title and interest in all Goods supplied by us will remain with us, and does not pass to you, until all monies payable by you to us (including any interest, freight or insurance charges) have been paid in full.

22. PPSA FURTHER ASSURANCES

- 22.1 The PPSA applies to these Terms.
- 22.2 You must:
- (a) Do anything (including making amendments to these Terms or executing a new security document) for the purpose of:

- (i) ensuring that a Security Interest created under, or provided for by, these Terms:
 - a. attaches to the collateral that is intended to be covered by that Security Interest;
 - b. is enforceable, perfected, maintained and otherwise effective; and
 - c. has the priority contemplated by these Terms;
 - (ii) enabling us to prepare and register a financing statement or financing change statement if we in our absolute discretion deem necessary;
 - (iii) enabling us to exercise any of its powers in connection with any Security Interest created under or provided by these Terms; and
- (b) Provide any information requested by us in connection with these Terms to enable us to exercise any of our powers or perform our obligations under the PPSA.

22.3 You agree that a Security Interest arises under these Terms in all present and future Goods supplied by us to you and all proceeds of the Goods in the form of a PMSI.

22.4 The Security Interest arising under this clause 22 attaches to the Goods when the Goods are collected by you or dispatched from our premises and not at any later time.

22.5 You must not change your name (including but not limited to any entity name or trading name), your address or place of incorporation or any other details required to be contained in a financing statement under the PPSA without our prior written consent.

22.6 Except if section 275(7) of the PPSA applies, we and you agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available and you agree not to provide any authorisation for the disclosure of such information.

22.7 You agree that:

- (a) We are under no obligation to dispose of or retain any PPSA personal property we seize within a reasonable time under section 125 of the PPSA;
- (b) You will not complain of any damage, cost or inconvenience caused by us in taking apparent possession of any PPSA personal property under section 126 of the PPSA;
- (c) Following a default, you have no rights to redeem the PPSA personal property under section 142 of the PPSA; and
- (d) You have no rights to reinstate these Terms following a default under section 143 of the PPSA.

22.8 You waive your rights to receive:

- (a) A notice of our proposal to remove PPSA personal property which has become an accession under section 95 of the PPSA;
- (b) A notice of our proposal to exercise its rights in accordance with land law under section 118(1)(b) of the PPSA;
- (c) A notice of our action (such action arising under section 120(2) of the PPSA) in relation to an interest in collateral under section 121(4) of the PPSA;
- (d) A notice of our seizure of certain PPSA personal property under section 123(2) of the PPSA;

- (e) A notice of our proposal to dispose of any PPSA personal property under section 130 of the PPSA;
- (f) Details of the amounts paid to other secured parties in a statement of account provided by us under section 132(3)(d) of the PPSA;
- (g) A statement of account under section 132(4) of the PPSA;
- (h) A notice of our proposal to retain PPSA personal property under section 135 of the PPSA; and
 - (i) A copy of, or notice of, any verification statement confirming registration of a financing statement or a financing change statement relating to any Security Interest under, or provided for by these Terms.

22.9 You waive any rights you may have to:

- (a) Object to our proposal to purchase PPSA personal property under section 129(2)(b) of the PPSA; and
- (b) Object to our proposal to retain PPSA personal property under section 134(2)(b) of the PPSA.

22.10 Anything that is required by us to be done under this clause 22 will be done by you at your own expense. You agree to reimburse our costs in connection with any action taken by us under or in connection with this clause 22.

22.11 The terms *attaches, collateral, financing change statement, financing statement, perfected and personal property* as used in this clause 22 have the meaning given to them in the PPSA.

23. OWNERSHIP OF WORK PRODUCT

23.1 Subject to clause 23.2, and unless otherwise agreed in writing by us, all Work Product designed, developed or produced by us in connection with the supply of the Goods and Services will be and remain our exclusive property.

23.2 You are entitled to retain one copy of the Work Product for your own use and records, as well as such additional copies as may be required by laws or regulations relating to the Goods and Services.

23.3 In the event that you do not pay our Supply Charges in full, the actual or implied licence to use any Work Product will terminate. You are required to return all original and copies of such Work Product to us within 7 days of being requested to do so.

24. CONSUMABLES

24.1 We agree to procure and provide to you such Consumables as may reasonably be required by you or us in connection with the supply of the Goods and Services.

24.2 You agree to reimburse us at our cost, or on the other basis agreed between us, for all Consumables procured by us in the supply of the Goods and Services.

24.3 Unless specifically incorporated into our Supply Charges, you will reimburse us for any other out-of-pocket costs and expenses reasonably incurred by us in connection with the provision of the Goods and Services.

25. DURATION AND TERMINATION

25.1 If these Terms are stated to be for a fixed period, or in respect of the supply of certain discrete Goods or Services, then these Terms will terminate on the expiry of that period or

completion of the supply. However, we may accept or reject any particular supply order from you (at our discretion).

25.2 Subject to clause 25.1, either of us may terminate these Terms by giving the other party written notice of termination of no less than 30 days.

25.3 If you ask us to supply further Goods and Services after the termination of these Terms and we commence to supply the Goods and Services without first agreeing with you different terms to these Terms, then these Terms will regulate the supply of those further Goods and Services.

25.4 Either of us may terminate these Terms immediately by written notice to the other party, if that other party:

- (a) Commits a breach of any of the material provisions of these Terms, or is in default of any warranty or obligation under these Terms, and the defaulting party fails to remedy such breach or default within 21 days of receiving written notice specifying such breach or default;
- (b) Commits any act constituting an act of bankruptcy; or
- (c) Suffers a receiver, administrator or liquidator to be appointed to any of its assets or property or any part thereof,

unless that default is waived in writing by the other party, but without prejudice to any other rights or remedies available to the other party.

25.5 The expiry or termination of these Terms will be without prejudice to any rights that have already accrued under these Terms.

26. SECURITY AND CHARGE

26.1 Despite anything to the contrary in these Terms or any other rights that we may have, where you are the owner of land, realty or any other asset capable of being charged, you agree to mortgage and/or charge all of your interest in the said land, realty or any other asset to us or our nominee to secure all amounts and other monetary obligations payable under these Terms. You acknowledge and agree that we (or our nominee) will be entitled to lodge a caveat or lien to secure our interest, which will be withdrawn once all payments and other monetary obligations payable under these Terms have been met.

26.2 You agree to irrevocably nominate, constitute and appoint us or our nominee as your attorney to perform all necessary acts to give effect to the provisions of clause 26.1.

27. MATERIALS MANAGEMENT

27.1 You may collect your Reference Materials within the period of 21 days following termination of these Terms, after which time we may destroy or discard the remainder.

27.2 If we are required to store any of your Reference Materials you will be charged the costs of storage and retrieval from storage.

27.3 All Reference Materials in our possession, both during and following the term of these Terms, are held by us at your risk, and you should obtain insurance to cover the perceived value of your Reference Materials.

28. RISK OF LOSS

28.1 Unless otherwise agreed between us in writing, you are responsible for any loss or damage to any Goods supplied by us as from the time of supply, and any loss, damage or injury to your

site, your property or your personnel during the supply of the Goods and Services.

28.2 You warrant to us that you have insurance to cover any loss or damage to property subject to clause 28.1.

29. NATURE OF RELATIONSHIP

We will supply the Goods and Services as an independent contractor and neither us nor any of our personnel will (unless otherwise agreed by us) be, or be deemed to be in partnership or in a joint venture relationship with you, or your employee, servant or agent.

30. COMPETITION AND CONSUMER ACT

30.1 These Terms will be read subject to the *Competition and Consumer Act 2010* (Cth) and to any implied terms, conditions or warranties imposed by that Act or any other applicable legislation insofar as it prevents either expressly or impliedly the exclusion or modification of any such term, condition or warranty, and our liability will be limited to the maximum extent permitted by law.

30.2 You agree that you have inspected and tested any Goods prior to purchase, and that at time of purchase you were of the view that the Goods were of acceptable quality.

30.3 You accept that facilities for the repair of Goods will not be available unless expressly notified by us, and that you were aware of this fact at the time of purchase of the Goods.

30.4 We will agree a time with you for the provision of Services. You agree that the agreed time is reasonable.

31. FORCE MAJEURE

31.1 We will not be liable for any delay or failure to perform our obligations pursuant to these Terms if such delay is due to Force Majeure. If a delay or failure of our obligations is caused or anticipated due to Force Majeure, the performance of the obligations will be suspended.

31.2 If our delay or failure to perform obligations due to Force Majeure exceeds 90 days, either party may immediately terminate these Terms with notice in writing to the other party.

32. CAPACITY, SUCCESSORS AND ASSIGNS

32.1 Each party to these Terms expressly acts, covenants and binds on behalf of itself and on behalf of its related parties (including heirs, successors, permitted assigns, associated entities and legal personal representatives).

32.2 These Terms will apply to and bind the successors and assigns of the parties.

32.3 Notwithstanding clause 32.2, neither these Terms nor any right or obligation under these Terms are assignable in whole or in part by you,

whether by operation of law or otherwise, without our prior written consent.

33. WAIVER

33.1 Any waiver or forbearance by us in regard to these Terms will operate only if in writing and will apply only to the specified instance.

33.2 No failure or delay on our part in exercising any right, power or privilege under these Terms will operate as a waiver of any such right, power or privilege.

34. INVALID PROVISIONS

If any provision of these Terms are deemed or held to be illegal, invalid or unenforceable, these Terms will be considered divisible and inoperative as to such provision to the extent it is deemed to be illegal, invalid or unenforceable. In all other respects these Terms will remain in full force and effect.

35. NOTICES

All notices must be in writing and must be given by personal delivery, postal delivery, facsimile transmission or email. A notice will be deemed to be given and received on the next Business Day after personal delivery, 5 Business Days after posting, or on receipt of electronic confirmation of delivery of the message by facsimile transmission or email.

36. APPLICABLE LAW

These Terms will be governed by and construed in accordance with the laws of the State. The parties irrevocably submit to the jurisdiction of the courts of the State.

37. INTERPRETATION

37.1 In these Terms unless the context indicates a contrary intention:

- (a) The singular includes the plural and conversely;
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) A reference to dollars and \$ is to Australian currency;
- (d) A reference to a 'month' means a calendar month; and
- (e) A reference to a right or obligation of any 2 or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.

38. DICTIONARY

In these Terms, the following expressions have the meanings:

38.1 **Acceptance** means the acceptance by you of an offer from us to supply Goods or Services (whether verbal, by instruction, or in writing), or

acceptance by us of an order from you to acquire Goods or Services;

38.2 **Business Day** means a weekday (excluding a public holiday in the State);

38.3 **Force Majeure** means a circumstance beyond reasonable control which results in us being unable to observe or perform on time an obligation under these Terms, including but not limited to acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, and workers' strikes;

38.4 **Goods and Services** means the goods and/or services to be supplied under these Terms;

38.5 **GST** has the same meaning as 'goods and services tax' in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

38.6 **PMSI** means a purchase money security interest as that term is defined in the *PPSA*;

38.7 **PPSA** means the *Personal Property Securities Act 2009* (Cth);

38.8 **Reference Materials** means the materials provided by you to us for the purposes of us supplying the Goods and Services;

38.9 **Security Interest** means:

- (a) Any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power, or title retention arrangement;
- (b) A security interest as defined in the *PPSA*; or
- (c) Any document to grant or create anything referred to in either clause 38.9(a) and 38.9(b) and any other thing which gives a creditor priority to any other creditor with respect to any asset or an interest in any asset;

38.10 **Supply Charges** means our fees and charges for the supply of the Goods and Services;

38.11 **State** means the state or territory in which Sturdie Trade Services Pty Ltd has supplied (or is supplying) the Goods and/or Services operates, and if not known then South Australia; and

38.12 **Work Product** means all intellectual property in and associated with the Goods and Services, and the product or outcome of our supply of the Goods and Services.