



COMMERCIAL CREDIT ACCOUNT APPLICATION

Part 1. For Companies/Trusts (parts 1, 3,4,5,7 to be completed)

Company name:		ACN:	
[guarantees must be completed]			
Trading as		ABN:	
Business address:			Postcode:
Postal address:			Postcode:
Telephone:	Fax:	Mobile:	
Accounts Payable Email:			
ASIC Extract provided?			If not, please detail why:
Trust Deed provided?			If not, please detail why:

Directors

Full names	Private Address	Date of Birth	Tel:
1.			
2.			
3.			
4.			

Part 2. For Sole Traders/Partnerships (parts 2,3,4,5,7 to be completed)

Name(s) of principal(s) in full	Address	Date of Birth	Do you own your own home?
1.			Yes/No
2.			Yes/No
3.			Yes/No
4.			Yes/No
5.			Yes/No
Trading as:		ABN:	
Business address:		ACN:	
Tel:	Fax:	Mobile:	
Postal address:		Postcode:	
Accounts Payable Email:			



Part 3. Trade References

1.Referee:	Account No.:	Tel: Email:
2.Referee:	Account No.:	Tel: Email:
3.Referee:	Account No.:	Tel: Email:
4.Referee:	Account No.:	Tel: Email:
Accountant's firm:		
If Builder or Plumber, License No. (Where applicable):		

Part 4. Business

Property: ☐ Owned ☐ Rented ☐ Leased
Order value: \$ _____ Monthly credit required: \$ _____ Monthly payment via EFT? Yes/No _____
Industry type: _____ Date business commenced: _____
If business has been operational less than a year, please provide bank statements for review.
Bank: _____ Branch: _____



Part 5.

1. The Customer (being defined as a "Sole Trader" or "Partnership" or "Company" or "Trust") and (where the Customer is unincorporated) each Principal or Guarantor of the Customer hereby charges with payment of any monies owed to EMRAILS Pty Ltd ACN 669 016 755 ("EMRAILS") in compliance with the obligations by the Customer to EMRAILS all beneficial interest (freehold and leasehold) in land or personal property held now or in the future by the Customer or each Principal or Guarantor of the Customer. The Customer and, where applicable, each Principal or Guarantor of the Customer agrees that if demand is made upon it, him or her by EMRAILS, the Customer or, if applicable, the Principal or Guarantor will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required by EMRAILS and if they fail to do so within a reasonable time of being requested, the Customer or, if applicable, the Principal or Guarantor irrevocably and by way of security appoints any credit manager or solicitor engaged by EMRAILS to be its, his or her true and lawful attorney to execute and register such instrument. Further, if EMRAILS commences proceedings in any court of competent jurisdiction to keep any caveat acquired pursuant to this clause from lapsing, the Customer or, if applicable, the Principal or Guarantor will not defend or oppose any relief sought by EMRAILS in such proceedings.
2. The law of the State in which this credit application is lodged shall apply to the terms of this application and all transactions howsoever arising therefrom and any proceedings in respect of any cause of action arising out of the same shall at the option of EMRAILS be instituted, heard and determined in a Court of competent jurisdiction in the Capital City of that State and such Court shall be deemed to process territorial jurisdiction to hear and determine such proceedings.
3. I/We supply the information contained in this application for the sole purpose of obtaining a fourteen (14) day from end of month commercial credit account. Should the account be granted, I/we agree to settle purchases within (21) days of the date the invoice is raised by EMRAILS. I/We agree to pay interest, at the rate of 10% per annum calculated monthly on any account not paid by the due date and further agree to pay any collection expenses (on a solicitor and client basis) incurred in attempting to recover or in the recovery of such overdue amount and such interest and expenses may be recovered as a liquidated debt.
4. I/We agree to be bound solely by your Terms and Conditions, as attached, and I/we further agree that any inconsistent Terms and Conditions of purchase that may be incorporated in any order, acceptance of quotation or any other document delivered by me/us shall, unless those Terms or Conditions are agreed to in writing by your duly authorised representative, have no legal effect.
5. I hereby certify that I am authorised to sign this application on behalf of the applicant.
6. A certificate signed by the credit management of EMRAILS or its nominee, stating the sum owing by the Customer at the date specified in the certificate, shall be prima facie evidence that the sum so stated is the sum due and owing to EMRAILS as at that date.
7. EMRAILS may, at any time, without notice, terminate or suspend the Customer's right to purchase Goods upon credit.
8. EMRAILS may, from time to time, nominate or vary the amount of the Customer's maximum Commercial Credit Account and such amount may not be exceeded in any one month as from the month of giving notice of such nomination or variation to the Customer.
9. The Customer shall immediately inform EMRAILS in writing of any changes in the ownership, operation, legal entity or structure of the Customer's business, or of any change in the information provided in this application. Until such notification is received by EMRAILS, the liability for any unpaid amounts will remain with the Customer as disclosed in this application.
10. Upon credit terms being cancelled, all amounts, including interest, owing by the Customer to EMRAILS shall become immediately due and payable.
11. The Customer acknowledges that the Commercial Credit Account and Account Code provided to the Customer are personal to the Customer and shall not be assigned, transferred or made available by it for use by any other corporation, person or organisation. The Customer further acknowledges that any Goods ordered or purchased or services provided by use of the Commercial Credit Account or account Code shall be paid by the Customer.
12. I/We acknowledge that I/ we have received, read, understood and accept:
 - a. EMRAILS's Terms and Conditions of Sale; and
 - b. EMRAILS Construction's Credit Provider Collection Notice for Credit Information and Credit Reporting Policy.

To be signed by Principals/Directors

	Name:	Driver's Licence No:	State:
1.			
2.			
3.			
4.			

PART 6. HEAD OFFICE USE ONLY

Account Approved/Rejected:

Total Account Credit Limit:

\$

Authorised by:

Date:



Part 7. DEED OF GUARANTEE AND INDEMNITY

Level 12, 468 St Kilda Rd, Melbourne, Victoria 3004
Phone: (03) 9465 1287 Fax: (03) 9464 4292
ABN 59 669 016 755

BY 1. _____
2. _____
3. _____
(full names and addresses of guarantors) ("the Guarantors")

OPERATIVE PART

1. In consideration of EMRAILS agreeing to provide credit and Goods and services from time to time to _____ (Company Name)
of _____ (Company Address) ('the Debtor') the Guarantors jointly and severally guarantee to EMRAILS the payment by the Debtor for all Goods and services as have been or may be supplied from time to time to the Debtor and notwithstanding that the Guarantors shall not have notice of any neglect or omission on the part of the Debtor to pay for such Goods and/or services according to the terms agreed upon by EMRAILS and the Debtor.
 2. This Deed shall be construed as a continuing guarantee and indemnity and the Guarantors acknowledge that the obligations under and pursuant to this Deed on the part of the Guarantors shall not be exonerated in whole or in part and the rights, interests and benefits of EMRAILS shall not be prejudiced nor adversely affected by any one or more of the following:
 - 2.1 neglect or forbearance by EMRAILS in endeavouring to obtain the due and punctual performance or observance by the Debtor of the obligations of the Debtor under any credit facility with P&G EMRAILS or any terms and conditions that apply to the provision of Goods and services to the Debtor and the payment of money by the Debtor to P&G EMRAILS (including EMRAILS's Terms and Conditions of Sale) (Terms and Conditions);
 - 2.2 time or other indulgence given by EMRAILS to the Debtor;
 - 2.3 any arrangement between EMRAILS and the Debtor whereby the terms of any Credit Facility are extended or any Terms and Conditions are varied;
 - 2.4 any Credit Facility or any Terms and Conditions or any provision or part of a provision of those documents being or becoming void, defective or informal or otherwise unenforceable for any reason;
 - 2.5 any provision or part of a provision of this Deed being or becoming void, defective or informal or otherwise unenforceable for any reason;
 - 2.6 the exercise by EMRAILS of any of its remedies at law and in equity against the Debtor for breach of the provisions of any Credit Facility or any Terms or Conditions;
 - 2.7 any change in the composition of members or directors of the Debtor; or
 - 2.8 the liquidation (or any other related Insolvency Event) of the Debtor.
 3. The obligations of the Guarantors shall not be determined or discharged wholly or in part by the death of one or more of the Guarantors.
 4. The Guarantors waive all rights of surety (legal, statutory, equitable or otherwise) which are inconsistent with the provisions of this Deed.
 5. The Guarantors waive, in favour of EMRAILS, all rights against the Debtor and EMRAILS and their respective assets insofar as it is necessary to give full effect to the provisions of this Deed.
 6. If the Debtor is wound up the Guarantors shall not prove in liquidation in competition with or in priority to EMRAILS and the Guarantors authorise EMRAILS to prove for all monies owed by the Debtor to the Guarantors on any account.
- Indemnity
7. The Guarantors shall indemnify EMRAILS and keep indemnified EMRAILS against all losses sustained or incurred by EMRAILS as a result of any failure on the part of the Debtor to carry out its obligation under any Credit Facility or Terms and Conditions or any other amounts owed by the Debtor to the Company including all legal fees and expenses incurred by the Company in enforcing the terms of this Guarantee.
 8. EMRAILS may, at any time, or from time to time, issue a notice to the Guarantors specifying the nature and extent of the amount in respect of which the Debtor is, for the time being, in default.
 9. No monies payable by the Guarantors to EMRAILS shall be dealt with by EMRAILS otherwise than for the purpose of indemnifying EMRAILS of the amount of loss suffered directly for or in connection with the default of the Debtor.

General



10. As security for any and all money owing to EMRAILS pursuant to this Guarantee from time to time, the Guarantors hereby grants a security interest in favour of EMRAILS in all of their present and after-acquired property, including all legal and equitable interests held in any and all real property held now or in the future by the Guarantors. The Guarantors agree, on request by EMRAILS, to immediately do all things reasonably required by EMRAILS to perfect the charge and security interest (including to execute a mortgage or other instrument of security, or consent to a caveat), and if they fail to do so within a reasonable time of being so requested, the Guarantors irrevocably and by way of security appoint any solicitor engaged by EMRAILS to be their true and lawful attorney to execute and register such instruments. Further, if EMRAILS commences proceedings in any court of competent jurisdiction to keep any security interest, charge or mortgage acquired pursuant to this clause from lapsing or being declared invalid, the Guarantors will not defend or oppose any orders sought by EMRAILS in such proceedings.
11. The Guarantors acknowledge that EMRAILS has advised them to seek independent legal advice as to the effect of the provisions of this Guarantee, prior to completion of the Guarantee.
12. The Guarantors agree to pay all stamp duty assessed on this Deed by the State Revenue Office.
13. This Deed shall be construed and shall take effect as a Deed made in the State or Territory in which the branch of EMRAILS that the Debtor usually trades with is located and in accordance with the laws of the State or Territory.
14. If the Debtor is a trustee, the Guarantors warrant that the Debtor has full authority under the terms of the trust Deed to enter into any Credit Facility or Terms and Conditions.
15. Any notice to be served by EMRAILS on the Debtor or the Guarantors must be in writing and may be signed on behalf of EMRAILS by an authorised officer of EMRAILS and is deemed duly served if given—
 - 15.1 by mail 2 business days after it is posted to the party's last known address;
 - 15.2 by hand, at the time it is left at the party's last known place of residence or business;
 - 15.3 by email, at the time of transmission to the party's last known email address, or such earlier time if acknowledged by the receiving party.
16. The Guarantors acknowledge that they have read, understood and accept EMRAILS's Credit Provider Collection Notice for Credit Information and Credit Reporting Policy.
17. The Guarantors agrees that:
 - if EMRAILS considers it relevant to assess the Guarantee, EMRAILS may obtain from a credit reporting agency a credit report containing personal credit information about the Guarantors;
 - if EMRAILS considers it relevant to collecting overdue payments in respect to the Guarantee, EMRAILS may receive from a credit reporting agency a credit report containing personal credit information about the Guarantors in relation to collecting overdue payments;
 - EMRAILS 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 the Guarantors.

The Guarantors understand that this information can include information about credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act*. The individuals understand that the information may be used to assess any Guarantee, to notify other credit providers of defaults by them, to exchange information with other credit providers as to the status of the Guarantee where they are in default with other credit providers and to assess their credit worthiness.

Date: _____ 20 _____



Signed sealed and delivered by the said)
)
.....)
in Victoria in the presence of:)

.....Signature of Guarantor

.....Signature of Witness
.....Print name of Witness
.....Address of Witness

Signed sealed and delivered by the said)
)
.....)
in Victoria in the presence of:)

.....Signature of Guarantor

.....Signature of Witness
.....Print name of Witness

Signed sealed and delivered by the said)
)
.....)
in Victoria in the presence of:)

.....Signature of Guarantor

.....Signature of Witness
.....Print name of Witness
.....Address of Witness

Signed sealed and delivered by the said)
)
.....)
in Victoria in the presence of:)

.....Signature of Guarantor

.....Signature of Witness
.....Print name of Witness

Credit Provider Collection Notice for Credit Information

EMRAILS Pty Ltd (which, for the purpose of this Credit Provider Collection Notice includes any of its Related Bodies Corporate, as that term is defined in the Corporations Act 2001 (Cth)) (EMRAILS, we, us, our) treats your credit information in accordance with EMRAILS's Credit Reporting Policy. This policy explains:

- how we manage your credit information and credit eligibility information,
- how you may:
 - access your credit eligibility information held by us;
 - seek correction of your credit information or credit eligibility information held by us;
 - complain about a failure by us to comply with the credit reporting provision of the Privacy Act 1988 (Cth) (Privacy Act) or the Credit Reporting Code and how we will deal with such complaints; and
 - whether it is likely that EMRAILS will disclose your credit information or credit eligibility information to entities that do not have an Australian link and, if so, the countries in which those entities are likely to be located.

Disclosure to Credit Reporting Bodies

If EMRAILS considers it necessary in assessing your or your company's credit application, and to regularly review your ongoing worthiness for commercial credit, EMRAILS may obtain from, or disclose to a credit reporting body (as defined in the Privacy Act) (including CreditorWatch) as defined in the Privacy Act, credit reports or information containing both commercial and consumer credit information about you. If you fail to meet your payment obligations in relation to consumer credit or commit a serious credit infringement, EMRAILS may be entitled to disclose this to CreditorWatch. You can obtain a copy of CreditorWatch's policy about the management of your credit related personal information on its website.

You have the right to:

- request CreditorWatch not to use your credit reporting information for the purposes of pre-screening of direct marketing by a credit provider; and
- request CreditorWatch not to use or disclose credit reporting information about you, if you believe on reasonable grounds that you have been or likely to be a victim of fraud.



Contacting Us

If you would like further information regarding our Credit Reporting Policy, or if you have concerns about the information that we currently hold about you or any aspect of the Credit Reporting Policy, please contact our Privacy Officer at:

Telephone	1800 804 276
Email	rails@EMRAILS.com.au
Post	Level 12, 468 St Kilda Rd, Melbourne, Victoria 3004



TERMS AND CONDITIONS OF SALE

EMRAILS Pty Ltd ("EMRAILS") will supply Goods and services to the Customer on the terms and conditions herein. No agreement for the supply of Goods or services will exist between EMRAILS and the Customer except on the terms and conditions herein or as otherwise specifically agreed in writing between EMRAILS and the Customer. The terms and conditions herein exist to the exclusion of any general conditions of purchase which the Customer may submit to EMRAILS.

1. PROVISION OF GOODS AND SERVICES

- 1.1 EMRAILS reserves the right to accept or decline in whole or in part any order and or signed EMRAILS's quotation for Goods or services placed by the Customer.
- 1.2 The agreement between EMRAILS and the Customer for the supply of Goods or services commences on the date that EMRAILS agrees to supply the Goods or services ordered by the Customer. This will not necessarily be at the time the order is initially received by EMRAILS.
- 1.3 EMRAILS will supply such services (including installation of Goods supplied by EMRAILS) as agreed between the parties in an order with these terms and conditions

2. PRICES AND PAYMENT

- 2.1 The Customer must pay the price set out in the EMRAILS's quotation and or invoice which is current, in respect of Goods, at the time the Goods are delivered by EMRAILS to the Customer or collected by the Customer or such other price as is otherwise agreed between EMRAILS and the Customer, and in respect of services, when the services are performed by EMRAILS.
- 2.2 Prices do not include any charge, duty, impost or sales tax which is levied upon EMRAILS in relation to the Goods or services. If EMRAILS requests the Customer to do so, the Customer must pay any such charge, duty, impost or sales tax or other expenditure which is levied upon EMRAILS in relation to the Goods or services, including any that are introduced after the Customer places its order. Any charge, duty, impost or sales tax payable will be shown as a separate amount on the tax invoice provided by EMRAILS.
- 2.3 Prices do not include delivery charges except where EMRAILS's quotation had been signed. Any delivery charge payable by the Customer will be advised to the Customer when the Customer places its order. Any delivery charge payable by the Customer will be shown as a separate amount on the tax invoice provided to the Customer.
- 2.4 EMRAILS will establish a trading account for the Customer with agreed terms of payment or will sell on a cash sale basis. The Customer must pay EMRAILS in accordance with the terms of the account or prior to EMRAILS commencing manufacture of the Goods or providing the services for a cash sale.
- 2.5 If the Customer fails to pay an amount to EMRAILS when it becomes due, whether in accordance with a tax invoice or the terms of an account, EMRAILS may:
 - 2.5.1 charge interest on the amount owing from the date it becomes due at 10% per annum;
 - 2.5.2 suspend further deliveries of Goods or provision of services to the Customer until all amounts due, including any interest payable, have been received by EMRAILS; and
 - 2.5.3 terminate its agreement with the Customer in relation to Goods or services which have not been delivered or collected.
- 2.6 The Customer may pay EMRAILS any costs that EMRAILS incurs in recovering any amounts which the Customer owes to EMRAILS.
- 2.7 The Customer must supply EMRAILS with a purchase order number at the time of placing the order. EMRAILS does not take any responsibility for the inclusion of the Customer's purchase order number upon any documentation produced by EMRAILS. The Customer is liable to pay the amount of a tax invoice regardless of whether the Customer's purchaser order number is included on the tax invoice.
- 2.8 For all amounts due by the Customer to EMRAILS from time to time, the Customer grants a security interest in favour of EMRAILS in all of its present and after-acquired property, including all legal and equitable interests of whatsoever nature held in any and all real property.
- 2.9 The Customer agrees, on request by EMRAILS, to execute any documents and do all things reasonably required by EMRAILS to perfect the charge and security interest given in clause 2.8 including registering a caveat or mortgage security over any real property. The Customer indemnifies EMRAILS on an indemnity basis against all costs and expenses incurred by EMRAILS in connection with the preparation and registration of any such steps needed to perfect and enforce the security interest and charge and/or prepare or register the mortgage documents.
- 2.10 The Customer consents unconditionally to EMRAILS lodging a caveat or caveats noting its interest in any real property in support of the mortgage security granted to EMRAILS pursuant to clause 2.8.
- 2.11 A statement in writing signed by an authorised officer of EMRAILS setting out the moneys due or owing to EMRAILS at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.
- 2.12 The provisions of clause 5.14 apply to the security interest granted by the Customer to EMRAILS pursuant to clause 2.8 above.

3. CANCELLATION OR SUSPENSION OF ORDERS

- 3.1 EMRAILS may suspend and/ or cancel an order due to a default, an Insolvency Event or a Force Majeure Event of these Terms and Conditions of sale.
- 3.2 Unless otherwise agreed in writing, the Customer cannot cancel an accepted Order (in whole or part) or return delivered Goods. If EMRAILS permits a return, the Customer must reimburse EMRAILS all resulting losses, costs, and expenses, including restocking fees, return freight and handling, damage to returned Goods, third-party costs, bank charges, and any incidental expenses.
- 3.3 For Goods to be returned to EMRAILS, they must be undamaged and packed and wrapped appropriately. EMRAILS may reject any proposed return of Goods that does not meet these criteria.
- 3.4 The Customer may not request the cancellation of an order or the return of Goods, where the Goods have been specifically produced, processed, manufactured or purchased by EMRAILS at the Customer's request.
- 3.5 Unless otherwise agreed in writing, the Customer may not suspend an order (in whole or part) or delay or defer delivery. If EMRAILS agrees to any suspension, delay or deferral, it may adjust the price and require reimbursement of all resulting losses, costs and expenses, including storage, restocking and incidental costs. The Customer indemnifies EMRAILS against any liability or loss arising from such suspension, delay or deferral, including claims by the Customer or by third parties in accordance with this clause 3.5.

4. DELIVERY OF GOODS

- 4.1 The method of transport used in the delivery of Goods to the Customer will be at EMRAILS's option unless the Customer requests a particular method of transport.
- 4.2 EMRAILS may either:
 - 4.2.1 Make the Goods ordered by the Customer available for collection at EMRAILS's premises;
 - 4.2.2 Deliver the Goods ordered by the Customer to the Customer's premises or a site nominated by the Customer; or
 - 4.2.3 Arrange for a cartage contractor to deliver the Goods ordered by the Customer to the Customer's premises or to a site nominated by the Customer.
- 4.3 Goods ordered by the Customer for collection will not be held at EMRAILS's premises after the collection date. The collection date will be agreed by the Customer and EMRAILS at the time the customer places its order. EMRAILS reserves the right to deliver the Goods ordered to the Customer's premises or site nominated by the Customer with all costs of delivery by EMRAILS or a cartage contractor to be borne by the Customer.
- 4.4 EMRAILS reserves the right to vary delivery details. EMRAILS will advise the Customer of any variation, either orally or in writing.



- 4.5 Where additional delivery costs are incurred by EMRAILS as a result of delay, for example, but not limited to, because the Goods are not unloaded within one hour of delivery, because of unexpected labour costs or because of the nature of the particular Goods ordered by the Customer, those costs must be borne by the Customer. The Customer must also bear the cost of obtaining any permit or licence required or other additional cost for the transportation of Goods, for example, but not limited to, Goods in excess of unregulated lengths.
- 4.6 Any dates and times for delivery which EMRAILS advises to the Customer are estimates only. To the extent permitted by law, EMRAILS will not be liable to the Customer for any loss or damage whatsoever (including any consequential loss) for breach of the agreement containing the terms and conditions herein or otherwise caused directly or indirectly by any delay or failure to deliver the Goods ordered by the Customer for any reason whatsoever. The Customer will not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.
- 4.7 EMRAILS will have the right to extend the estimated delivery or collection date for such period as is reasonably necessary. If it is necessary for EMRAILS to make such an extension, the Customer must accept and pay for the Goods notwithstanding the delay in their delivery or collection.
- 4.8 EMRAILS reserves the right to supply by instalments and each instalment shall be deemed to have been sold under a separate agreement.
- 4.9 The Customer must notify EMRAILS within 2 days of delivery or collection if the Customer believes that the Goods supplied do not accord with those ordered by the Customer. The Customer must also notify EMRAILS within 7 days of receiving a tax invoice if the tax invoice contains any disputed charge/s. Failure to notify EMRAILS within 2 days will be deemed to be an acceptance by the Customer of the Goods or the charges and the Customer must pay the full price for the Goods supplied.
- 4.10 In the event that the Customer's premises are unattended when EMRAILS or a cartage operator delivers the Goods, the signature of the person who delivers the Goods on the delivery docket shall be prima facie evidence that the Goods were delivered.
5. PASSING OF RISK AND RETENTION OF TITLE
- 5.1 The risk of any loss or damage to or deterioration of Goods from any cause whatsoever passes from EMRAILS to the Customer:
- 5.1.1 when the Customer collects the Goods, once the Goods are fully loaded on the Customer's transport;
- 5.1.2 when EMRAILS delivers the Goods to a site nominated by the Customer and the Customer unloads the Goods, when the Customer begins unloading the Goods; or
- 5.1.3 when EMRAILS delivers the Goods and unloads them at a site nominated by the Customer, when EMRAILS has finished unloading the Goods.
- 5.2 Title to and ownership of the Goods remains with EMRAILS until the Customer has paid for the Goods in full, including payment for any charge, duty, impost, sales tax or delivery charges in cash or cleared funds ("Amount Outstanding").
- 5.3 Until title to and ownership of the Goods passes to the Customer, the Customer holds the Goods for EMRAILS as bailee (in respect of which each party acknowledges that a fiduciary relationship exists between them). The Customer must not create any form of encumbrance or Security Interest over the Goods which is inconsistent with EMRAILS's title to and ownership of the Goods or PPSA Proceeds.
- 5.4 If the Customer disposes of any of the Goods prior to paying for them in full and before full title to such Goods has transferred from EMRAILS to the Customer, whether the Goods are disposed of in their original form as supplied to the Customer by EMRAILS or in a modified form, then ("Sale"):
- 5.4.1 if the Customer receives PPSA Proceeds in the form of cash from such Sale:
- (a) that part of those proceeds in an amount equal to the Amount Outstanding or if the proceeds of sale or dealing are less the Amount Outstanding, the whole of the proceeds of such Sale ("EMRAILS's Entitlement") must be held by the Customer in a separate identifiable account on trust for EMRAILS;
- (b) the Customer must account to EMRAILS for EMRAILS's Entitlement; and
- 5.4.2 if the Customer receives PPSA Proceeds in a form other than cash from such Sale, all such proceeds must be held by the Customer on trust for EMRAILS and the Customer must comply with clause 5.7 in respect of such proceeds, and references to Goods in such clauses must be read as PPSA Proceeds,
- and the Customer must continue to do so until all of its liabilities to EMRAILS have been satisfactorily discharged.
- 5.5 If the Customer does not pay for the Goods in full, EMRAILS or its authorised agents may repossess the Goods and may enter the Customer's premises at any time and without notice to search for, inspect or repossess the Goods. EMRAILS or its authorised agents may repossess Goods to which title has not passed to the Customer whether such Goods are in their original form as supplied to the Customer by EMRAILS or in a modified form or mixed with other products of the Customer.
- 5.6 EMRAILS will not be liable to the Customer for any loss or damage suffered by the Customer as a result of EMRAILS or its authorised agents taking any action in accordance with clause 5.5 hereof.
- 5.7 Until full title to the Goods transfer from EMRAILS to the Customer, the Customer must:
- 5.7.1 store the Goods separately to enable them to be readily:
- (a) identified as EMRAILS's property; and
- (b) cross referenced to particular invoices;
- 5.7.2 not supply or sell the Goods to any person other than in the ordinary course and usual course of its business;
- 5.7.3 on 24 hours' notice from EMRAILS, allow EMRAILS to enter the premises where the Goods are stored to inspect the Goods and provide to EMRAILS, at the time of such entry (whenver required), the consent of any party whose consent is required for that entry;
- 5.7.4 keep all records that relate to the Goods separately identifiable and readily distinguishable from those that relate to any other Goods in its possession; and
- 5.7.5 keep the Goods adequately insured against theft, damage and destruction (and if the Customer fails to insure the Goods), EMRAILS may do so and the Customer must reimburse EMRAILS for the cost of insurance).
- 5.8 If any Goods are used in a manufacturing process or mixed with other materials (whether by the Customer or a third party) to create an article which those Goods are not reasonably separable and which constitute Commingled Goods for the purposes of the PPSA ("Article") before all of the Customer's liabilities to EMRAILS have been discharged and before full title to those Goods has transferred from EMRAILS to the Customer, then:
- 5.8.1 the Customer must hold, in a separate identifiable account on trust for Genus, that part of the proceeds received by the Customer from any sale, dealing or other disposition of the Article as relates to the relevant Goods ("EMRAILS's Proportion"), determined in accordance with clause 5.8.2;
- 5.8.2 EMRAILS's Proportion is deemed to be the amount equal, in dollar terms, to the lesser of:
- (a) the proceeds received by the Customer from the sale or disposition of the Article; and
- (b) the amount owing by the Customer to EMRAILS for the relevant Goods at the time of the sale or disposition of the Article by the Customer; and
- 5.8.3 the Customer must account to EMRAILS for EMRAILS's Proportion.
- 5.9 The Customer has no right to sell, deal with or otherwise dispose of the Goods (whether under clauses 5.4 or 5.8) or otherwise if:
- 5.9.1 an Insolvency Event has occurred in respect of the Customer;
- 5.9.2 the Customer has breached any term of these terms and conditions and has failed to remedy such breach within 5 business days after receiving notice from EMRAILS requiring the breach to be remedied; or
- 5.9.3 the agreement between EMRAILS and Customer for the sale and purchase of Goods pursuant to these terms and conditions is terminated for any reason.



- 5.10 Until the full title of the Goods transfers from EMRAILS to the Customer, the Customer must not create or grant an interest in or in respect of the PPSA Proceeds in any way, including by:
- 5.10.1 mortgaging, charging, or otherwise granting any Security Interest; or
- 5.10.2 debt factoring or receivables financing,
- to any other person without the prior written consent of EMRAILS.
- 5.11 Whenever the doing of anything by a Customer is dependent upon the consent, approval or satisfaction of EMRAILS, EMRAILS may withhold its consent or approval or given it conditionally or unconditionally and may be satisfied or unsatisfied in each case in its absolute discretion.
- 5.12 The Customer agrees that EMRAILS may require the Customer, as a condition of consent under clause 5.11 to undertake in writing to EMRAILS to immediately remit to EMRAILS the amounts received in connection with any PPSA Proceeds as determined by EMRAILS, or to procure that any third party agrees to do so.
- 5.13 If clause 5.7 applies, then the Customer must return the Goods to EMRAILS immediately upon written demand by EMRAILS. If EMRAILS does not return the Goods to EMRAILS within 24 hours of receipt of such demand, then without limiting any other rights or remedies EMRAILS may have:
- 5.13.1 EMRAILS may, as agent of the Customer, enter the Customer's premises or any other premises where the Goods are located and do all things necessary to retake possession of the Goods without liability for trespass or any resulting damage to the Customer;
- 5.13.2 EMRAILS may keep, sell, resell or otherwise deal with any of the Goods repossessed under clause 5.13.1 in any manner whatsoever on such terms as EMRAILS may determine;
- 5.13.3 the Customer is liable for all costs associated with the exercise by EMRAILS of its rights under this clause 5.13, which costs are payable to EMRAILS on demand; and
- 5.13.4 the Customer indemnifies and must keep indemnified EMRAILS against all actions, claims, proceeds, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against EMRAILS or which EMRAILS may pass, sustain or incur as a direct or indirect result of the exercise by EMRAILS of its rights under this clause 5.13.
- 5.14 To the extent permitted by law, the parties agree that:
- 5.14.1 unless defined below or in clause 12, terms used in these terms and conditions have the meaning given to them in the PPSA;
- 5.14.2 the provisions of clause 5 and clause 2.8 create Security Interests granted by the Customer in favour of EMRAILS for the purposes of the PPSA;
- 5.14.3 EMRAILS may register its Security Interests on the PPSR;
- 5.14.4 the Customer must at its own expense do anything including executing any new document or agreement, obtaining consents and supplying information that:
- (a) EMRAILS requires to:
- (i) ensure that any Security Interests are enforceable, perfected and otherwise effective;
- (ii) register or give any notification in connection with any Security Interest in order to confer the priority EMRAILS requires; or
- (iii) exercise rights in connection with the Security Interest; or
- (b) EMRAILS considers necessary to ensure that its rights and obligations are not adversely affected, or that its position is improved;
- 5.14.5 the Customer must notify EMRAILS immediately of any change in its name, address and any other information provided to EMRAILS to enable EMRAILS to register a financing change statement under the PPS Law if required;
- 5.14.6 the subject matter referred to in section 275(1) of the PPS Law is confidential and each party must not disclose any such information to a third party; and
- 5.14.7 to contract out of sections 95, 96, 117, 118, 121 (4), 125, 130, 132(3)(d), 132(4), 135, 142, 143 and 157 of the PPSA. For the avoidance of doubt, the Customer and EMRAILS contract out of the Customer's right to (and the Customer waives its rights to):
- (a) not have the Goods damaged when EMRAILS (or any person on its behalf) removes an accession under Part 3.3 of the PPSA;
- (b) refuse permission to remove an accession under section 94 of the PPSA;
- (c) receive notice of the removal of an accession under section 95 of the PPSA;
- (d) apply to the court for an order concerning the removal of an accession under section 97 of the PPSA;
- (e) apply to the court for an order concerning the removal of an accession under section 97 of the PPSA;
- (f) received notice of EMRAILS' proposal to retain charged property under section 134(2) of the PPSA;
- (g) object to EMRAILS's proposal to dispose of or retain any charged property under section 137 of the PPSA; and
- (h) receive any notice of a verification statement pursuant to section 157 of the PPSA.
6. DESCRIPTION OF PRODUCTS AND SAMPLES
- 6.1 All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained in catalogues, price lists or other advertising matter of EMRAILS are approximate only and are only intended by EMRAILS to be a general description. EMRAILS reserves the right to produce Goods with such minor modifications from its drawings and specifications as it sees fit.
- 6.2 EMRAILS will not be liable to the Customer for any loss or damage suffered by the Customer as a result of the Customer relying upon any specifications, illustrations, drawings, data, dimensions, weights or the characteristics of any samples.
7. TOOL, EQUIPMENT, PATTERNS, DESIGNS AND SYSTEMS OF MANUFACTURE
- 7.1 Any tools, equipment, patterns, designs and systems of manufacture acquired and used by EMRAILS in producing Goods remain the property of EMRAILS and are not to be used without EMRAILS's authority.
- 7.2 EMRAILS may charge a Customer for the use of any tool, equipment, pattern, design or system of manufacture used to fulfil a Customer's order. If EMRAILS does so, such a charge is deemed to be a charge for the use of the tool equipment, pattern, design or system of manufacture only.
- 7.3 EMRAILS may hire out a tool or equipment to a Customer. The charge for the hire and the term of the hire will be agreed between EMRAILS and the Customer.
- 7.4 EMRAILS will invoice the Customer for the hire charge and any delivery charge after the tool or equipment has been delivered to the Customer or collected by the Customer. The Customer must pay the amount invoiced within the specified time after the invoice date. Clauses 2.7 to 2.10 apply to the hire of tools and equipment.
8. CUSTOMERS' SPECIFICATIONS OR MATERIALS AND SPECIAL PRODUCTS
- 8.1 If the Customer requests EMRAILS to produce Goods in accordance with the Customer's own designs, specifications or drawings (special products), then provided the special products are produced in accordance with those designs, specifications or drawings, EMRAILS will not be responsible for any failure of, unfitness of or damage caused by the special products.
- 8.2 If the Customer requests EMRAILS to process the Customer's materials, then EMRAILS does not give any warranty that the materials supplied by the Customer are suitable for such processing.
- 8.3 EMRAILS will not be liable for any failure of or unfitness of or damage caused by the Customer's materials at any time during or after processing by EMRAILS.
- 8.4 The Customer must bear any additional expense or the cost of any delay in relation to the processing which is caused by any defect in the Customer's materials.



9. LIMITATION OF LIABILITY

- 9.1 Subject to the law, EMRAILS's obligations to the Customer in respect of a breach of any term, warranty or condition of the terms and conditions herein (whether implied by statute or otherwise) shall, at EMRAILS's option, be limited to:
- 9.1.1 in the case of Goods, the repair of the Goods, the replacement of the Goods or paying for the cost of repair or replacement of the Goods; and
 - 9.1.2 in the case of services, the resupply of serves or paying for the cost of resupplying services.
- 9.2 Subject to law, EMRAILS will not be liable to the Customer or any other persons under any circumstances for any direct, incidental or consequential loss or damage (including loss or damage caused by negligence or wilful acts or default of EMRAILS, its employees or agents) whatsoever arising from a breach of any of the terms and conditions herein or any other statutory implied warranty, term or condition in relation to the Goods and services.
- 9.3 Subject to law, EMRAILS will not be liable for any costs, claims, damages or demands arising from personal injury, loss or damage to Goods whatsoever occurring to the Customer or its employees or agents by reason of:
- 9.3.1 the Goods or their design, production or processing; or
 - 9.3.2 the loading and delivery of the Goods or any failure to delivery or delay in delivering the products; or
 - 9.3.3 any act or omission by EMRAILS, its servants and agents;
 - 9.3.4 any statement or misrepresentation made by an employee or agent of EMRAILS; or
 - 9.3.5 any tool or equipment hired out by EMRAILS to the Customer; and in no case shall EMRAILS be liable for consequential loss or damage.
- 9.4 EMRAILS will not be responsible for the consequences or any technical advice given by its employees in relation to the design, specifications, installation or use of Goods or the provision of the services.

10. INDEMNITIES

- 10.1 A Customer, its servant, agent or employee who enters EMRAILS's premises for the purposes of ordering or collection Goods does so at his own risk. EMRAILS will not be liable for any damage caused by any acts or omissions whatsoever and the Customer indemnifies EMRAILS against all claims, demands or suits made by any person attending the premises of EMRAILS with or on behalf of a Customer, its servant, agent or employee.
- 10.2 Where, in order to deliver (or repossess) Goods, EMRAILS or a cartage contractor enters upon the Customer's premises, the Customer must provide full and safe access to its premises. The Customer will be liable for and must indemnify EMRAILS against the costs of any loss, damage to property and injury to any person which occurs directly or indirectly because of the Customer's failure to ensure full and safe access to the Customer's premises.
- 10.3 The Customer must indemnify EMRAILS against any claim, demand or suit arising out of any loss or damage caused by or during the processing of materials supplied by the Customer to EMRAILS or the provision of any services by EMRAILS.
- 10.4 The Customer must indemnify EMRAILS against any liability for infringement of any patent or registered design.
- 10.5 The Customer must indemnify EMRAILS against any claim, demand or suit arising out of any loss or damage caused by or during the processing of materials supplied by the Customer to EMRAILS.
- 10.6 The Customer must indemnify EMRAILS against any claim, demand or suit arising out of any loss or damage caused by a tool or equipment, or the use of a tool or equipment, hired out by EMRAILS to the Customer.

11. GENERAL MATTERS

- 11.1 EMRAILS may vary or waive the terms and conditions herein. EMRAILS will notify the Customer in writing of any variation or waiver.
- 11.2 EMRAILS will make every reasonable effort to perform its obligations under any agreement entered into with a Customer in accordance with the terms and conditions herein. If EMRAILS is unable to perform its obligations or performance is prevented, restricted or affected by a Force Majeure Event, including strike, lockout, industrial dispute (other than a strike, lockout or industrial dispute of the Customer), raw material shortage, breakdown of plant transport or equipment, or any other cause beyond EMRAILS's reasonable control, EMRAILS will not be liable to the Customer for any delay in its performance.
- 11.3 The law applicable to this agreement between EMRAILS and the Customer containing the terms and conditions herein is the law of the relevant State or Territory. EMRAILS and the Customer submit to the jurisdiction of the relevant State or Territory Courts.

12. DEFINITIONS

Under these terms and conditions:

- "Business day" means any day which is not a Saturday, Sunday or declared public holiday in the relevant State or Territory.
- "Customer" means the person, partnership, corporation or other legal entity which places an order with EMRAILS for the supply of products.
- "Force Majeure Event" means any event or circumstance beyond a party's reasonable control, which prevents or delays performance of its obligations, including acts of God, natural disasters, war, terrorism, strikes, or government actions.
- "Goods" means the products requested by the Customer in its order/ signed EMRAILS's quotation and includes, but is not limited to, products produced by EMRAILS which the Customer requests EMRAILS to produce according to a design, drawing or specification provided to EMRAILS by the Customer and Goods and materials which the Customer requests EMRAILS to process, purchase or supply.
- "Insolvency Event" means, in respect of the Customer, any one or more of the following events or circumstances:
- (a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
 - (b) having a controller or analogous person appointed to it or any of its property;
 - (c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provisions of the Corporations Act 2001 (Cth) or any other law;
 - (d) seeking protection from its creditors under any law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or
 - (e) any analogous event or circumstances to those described in paragraph s(a) to (d) above; or
- "Order" means a request by a Customer to EMRAILS for EMRAILS to supply the Customer with Goods.
- "Price list" means any services associated with EMRAILS's supply of Goods and includes, but is not limited to, delivery of Goods.
- "PPSA" means the Personal Property Securities Act 2009 (Cth);
- "PPSA Proceeds" means all proceeds (within the meaning of section 31 of the PPSA) arising from any sale of, disposal of or other dealing of any nature with the Goods including any debts or accounts, cash or cash equivalent;
- "PPS Law" means the PPSA and any amendment made at any time to any other law as a consequence of the PPSA; and
- "Security Interest" has the meaning given in section 12 of the PPSA.
- "services" means the services requested by the Customer in its order/signed EMRAILS quotation.