

## **Terms and Conditions**

### **1. Application of Conditions**

- 1.1. The Customer and Guarantor agree to be bound by these Terms and Conditions which take effect when this application is approved by the Company.

### **2. Supply of Goods and Services**

- 2.1. The Company agrees to supply the Goods and Services to the Customer for the value of the Credit Amount.

### **3. Payment**

- 3.1. The Customer must pay all Account Monies to the Company within thirty (30) days from the last day of the month of which the goods and services were supplied and invoiced to the Customer.

### **4. Quotations and Invoices**

- 4.1. All quotations are valid for 14 days and is subject to withdrawal or variation by the Company at any time.
- 4.2. No order based upon a quotation is binding upon the Company until it is accepted by the Customer in writing. The acceptance must be within 14 days from date of quotation.
- 4.3. The Company reserves the right to correct any accidental error, omission or description in a quotation or invoice without prejudice.

### **5. Insurance, Risk and Retention of Title**

- 5.1. Any goods, vehicles, plant, or equipment owned by the Customer but in control or possession of the Company remains at the risk of the Customer and must be or remain insured by the Customer.
- 5.2. Goods are at the risk of the Customer from the time of acceptance of delivery to the Customer or to another person on the Customer's behalf.
- 5.3. Title to any Goods does not pass to the Customer until payment in full of the purchase price for those goods. The Customer in the meantime takes custody of the Goods and retains them as the fiduciary agent and bailee of the Company.
- 5.4. The Customer gives to the Company the right to enter the Customer's premises for the purpose of searching for, taking possession of and removing the Goods if the Customer is found to be in default as defined under this Agreement. It is a condition of the Company's right to enter the Customers premises that the Company complies with all applicable site rules when doing so.

### **6. Personal Property Securities Act 2009 (Cth) ("PPSA")**

- 6.1. The Customer consents to the Company registering any security interest it may have in the Goods supplied to the Customer on the Personal Property Security Register ("PPSR") and the Customer agrees to do all things necessary to allow the Company to attend to such registration on the PPSR in accordance with the PPSA.

- 6.2. The Customer waives its rights to receive any notice under the PPSA unless the notice is required under the PPSA and cannot be excluded.

- 6.3. The Customer grants a charge over all property including any proceeds arising from the sale of property, as security for the payment of all monies that may be owing to the Company from time to time. For the purposes of this clause 6.3, the term "property" takes the definition prescribed under the PPSA.

### **7. Guarantee and Indemnity**

- 7.1. The Guarantor requests the Company to approve this credit facility. This guarantee is given in consideration of the Company approving this credit facility. If there is more than one Guarantor then the Guarantors agree to be jointly and severally liable under this guarantee.
- 7.2. The Guarantor guarantees the performance of these conditions by the Customer.
- 7.3. The Guarantor guarantees to the Company all Monies Owing to the Company by the Customer regardless of whether such monies became owing under this Agreement or not.
- 7.4. The Guarantor agrees to indemnify the Company against any liability, cost or damages which may be incurred by the Company as a result of a breach of this Agreement by the Customer.
- 7.5. The Company may enforce this guarantee against the Guarantor without first being required to exhaust any remedy it may have against the Customer.

### **8. Limitation of Liability**

- 8.1. To the extent permitted by law all implied warranties, conditions, terms and guarantee in relation to the sale or delivery of Goods and/or Services, statutory or otherwise, are hereby excluded.
- 8.2. Where liability cannot be excluded the Company's liability will be limited to, in case of the Goods, the replacement of the Goods, the supply of equivalent Goods, or the payment of the cost of replacing the Goods, or in the case of Services, the supply of the Services again or the payment of the cost of having the Services supplied again. The choice of remedy is at the sole discretion of the Company.
- 8.3. The Customer discharges and releases, to the extent permitted by law, the Company from all liability arising from:
- 8.3.1. defect, malfunction or failure as a result of: force majeure; improper use; unauthorised repairs; fair wear and tear; the Customer's own negligence, abuse or misuses; alteration of the Goods or the Company's work by the Customer; and/or,
- 8.3.2. any claim for loss of profits or liquidated damages.

### **9. Warranties**

- 9.1. The Customer is entitled to have Goods repaired or replaced if the Goods fail to be of acceptable quality. If any Goods are expressly warranted by the manufacturer

or supplier then the Company will have no liability in respect of breach of this warranty.

9.2. Any warranties as to acceptable quality in relation to:

9.2.1. Repairs, maintenance, painting, sand blasting expire on 90 days from delivery to or collection by the Customer or from the invoice date. The Company reserves the right to decide which calculation of warranty expiration date is to be used.

9.2.2. Assembly overhauls and full recondition expire 12 months from delivery to or collection by Customer or from the invoice date. The Company reserves the right to decide which calculation of warranty expiration date is to be used.

## 10. Liability for Delay

10.1. The Company is not liable for any delay in delivery or supply of the Goods or Services where the delay is caused by circumstances beyond the Company's reasonable control, provided however that the Company takes reasonable steps to minimise and mitigate any such delays.

## 11. Default

11.1. The Customer is in default of this Agreement if it:

11.1.1. repudiates its obligations under this Agreement;

11.1.2. breaches any term of this Agreement;

11.1.3. enters into arrangements or composition with its creditors, commits an act of bankruptcy or being a company enters into liquidation or has an appointment of a receiver of administrator in respect of the whole or any part of its undertaking or assets;

11.1.4. fails to pay any Monies Owing to the Company when due and payable.

11.2. If the Customer is in default then all Monies Owing become immediately due and payable and the Company may cancel or repudiate this Agreement and is entitled to recover damages from the Customer and Guarantor including, but not limited to, the value of any Goods and/or Services supplied or the costs and expenses incurred in relation to supplying the Goods and/or Services or any consequential loss including loss of future profits which the Company would have made in relation to this Agreement.

## 12. Definitions

12.1. **Account Monies** means all monies owing from time to time by the Customer to the Company as payment for any Goods or Services supplied to the Customer or any other person at the request of the Customer;

12.2. **Agreement** means this Application for Credit – 30 Day Account and its attached Terms and Conditions;

12.3. **Company** means RGM Maintenance Pty Ltd ACN 100509484;

12.4. **Customer** means the person or persons, or entity named in this Agreement;

12.5. **Credit Amount** means the amount stated in this Agreement and any additional amounts provided by the Company by way of Goods and/or Services from time to time in accordance with this Agreement;

12.6. **Goods** mean includes all parts, chattels, materials, supplies, and stock supplied as part of providing the Services or sold to the Customer;

12.7. **Guarantor** means the person or persons named in this Agreement;

12.8. **Monies Owing** means all monies owing under this Agreement including, but not limited to, the Account Monies and any interest incurred under this Agreement.

12.9. **Services** means any services provided by the Company to the Customer.

## 13. General

13.1. Applicable Law

13.1.1. This Agreement is governed by and construed in accordance with the law of the State of Queensland.

13.2. Severability

13.2.1. If any provision of this Agreement or its application is or becomes unenforceable, illegal, or void the remaining provisions are not affected, and each provision of this Agreement is enforceable to the greatest extent permitted by law.

13.3. No waiver

13.3.1. Failure by the Company to exercise any power or right under this Agreement cannot be such to be construed or deemed a waiver of the relevant power or right unless it is in writing.