

# Permatech

## TERMS AND CONDITIONS

### 1 General

The whole of the Agreement between Babb Family Trust Trading as Permatech, ABN 92 534 985 776 ("Permatech") and the Customer or Applicant referred to in the Credit Application ("Customer") are those set out in these Terms and Conditions as amended from time to time and those, if any, which are implied and which cannot be excluded by law ("Terms"). Any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By receiving delivery and/or supply of all or a portion of the goods, materials and/or parts and/or labour and/or services supplied by Permatech under these Terms ("Goods"), the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others.

### 2 Credit Terms

- 2.1 Payment is due on or prior to thirty (30) days from end of month from date rendered in respect of the supply of the Goods unless otherwise stated in writing by Permatech. Permatech may charge interest at a rate equivalent to two percent (2%) in excess of the rate of interest prescribed for the time being by the Supreme Court in the state of supply.
- 2.2 Permatech's express or implied approval for extending credit to the Customer may be revoked or withdrawn by Permatech at any time.
- 2.3 Permatech is entitled to set-off against any money owing to the Customer amounts owed to Permatech by the Customer on any account whatsoever.
- 2.4 Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs referred to in Clause 2.5, and then to principal.
- 2.5 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by Permatech for enforcement of obligations and recovery of monies due from the Customer to Permatech.

### 3 Quotations and Pricing

- 3.1 Prices charged for Goods will be according to a current quotation for those Goods. Otherwise, they will be determined by Permatech by reference to its standard prices in effect at the date of delivery (whether notified to the Customer or not and regardless of any prices contained in the order). Permatech will use its best endeavours to notify the Customer of price changes but bears no liability in respect of this.
- 3.2 Any quotation by Permatech shall not constitute an offer. Quotations will remain valid for fourteen (14) days from the date of the quotation.
- 3.3 Any quotation, acceptance of quotation, purchase order or other document which requires signature may be signed in electronic form, and such signature shall be binding upon the person affixing that signature.
- 3.4 Unless otherwise specified by Permatech, the prices exclude;

3.4.1 Any statutory tax, including any GST, duty or impost levied in respect of the Goods and which has not been allowed for by Permotech in calculating the price.

3.4.2 Costs and charges in relation to insurance, packing (other than the standard packing of Permotech), crating, delivery (whether by road, rail, ship or air) and export of the Goods.

3.5 Where the Customer requests a Proof of Delivery be supplied to them, Permotech may in its discretion charge a fee for the provision of this.

#### **4 Minimum Order Value**

For an order less than a minimum value, as determined by Permotech from time to time, Permotech reserves the right either not to accept an order or to charge the Customer a handling fee.

#### **5 Delivery and Supply**

5.1 Any times quoted for delivery and/or supply are estimates only and Permotech shall not be liable for failure to deliver/supply, or for delay in delivery/supply. The Customer shall not be relieved of any obligation to accept or pay for Goods, by reason of any delay in delivery/supply or dispatch. Permotech reserves the right to stop supply at any time if the Customer fails to comply with the Terms.

5.2 Permotech may refuse to supply any order by the Customer for Goods in its absolute discretion and may make acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.

5.3 If the Customer directs that delivery of the Goods be staggered over different times or to different addresses from those specified in the Credit Application, then the Customer:-

5.3.1 shall be liable for any additional cost, charge and expense incurred by Permotech in complying with the Customer's direction; and

5.3.2 shall pay for the whole of the invoiced value of the Goods notwithstanding the staggered deliveries.

5.3.3 Such action shall be deemed to be delivery to the Customer.

5.4 The Customer is deemed to accept delivery of the Goods where it is either delivered to the Customer's premises or when Permotech notifies the Customer that the Goods are available for collection.

5.5 If the Customer is unable or fails to accept delivery of the Goods, Permotech may deliver it to a place of storage nominated by the Customer and, failing such nomination, to a place determined by Permotech. Such action shall be deemed to be delivery to the Customer. The Customer shall be liable for all cost, charge and expense incurred by Permotech on account of storage, detention, double cartage/delivery or similar causes.

#### **6 Property**

6.1 Until full payment has been made for all Goods, and any other sums in any way outstanding from the Customer to Permotech from time to time:-

6.1.1 All sums outstanding become immediately due and payable by the Customer to Permotech if the Customer makes default in paying any other sums due to Permotech, becomes bankrupt, or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional

liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.

6.1.2 The property in the Goods shall not pass to the Customer and the Customer shall hold the Goods as bailee for Permotech (returning the same to Permotech on request). The Goods shall nevertheless be at the risk of the Customer from the time of delivery/supply and the Customer must insure the Goods from the time of delivery/supply.

6.1.3 The Customer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of Permotech provided that there shall be no right to bind Permotech to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by the Customer for the Goods (or any portion of them) shall be held on trust for Permotech pursuant to the fiduciary relationship.

6.1.4 In the event that the Customer incorporates or transforms the Goods (or any portion of them) into any other goods or products produced by the Customer (or a third party), then the Customer must hold a proportion of any payment ("relevant proportion") received by the Customer for such goods or products on trust for Permotech. The Customer expressly acknowledges that the relevant proportion shall be equal to the dollar value of the Goods incorporated or transformed and the Customer further acknowledges that any part payment (not exceeding the relevant proportion) received by the Customer for such goods or products is received as payment first of the relevant proportion.

6.1.5 Permotech is irrevocably authorised to enter any premises where the Goods are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods without liability for trespass or any resulting damage.

6.2 Unless otherwise agreed, Permotech retains the right of possession of any pallets used for delivery of the Goods and the Customer agrees to indemnify Permotech in respect of any pallets not returned to Permotech in good order and condition (as determined by Permotech) within fourteen (14) days of delivery of the Goods.

## **7 Availability of Stock**

Any order that cannot be fulfilled on its receipt will automatically be back ordered and processed when stock becomes available unless it is the Customer's stated standard policy not to accept back orders or the Customer specifically marks its order, "Do Not Back Order". Deliveries at any time are subject to availability of stock and Permotech will not be liable for any charges due to product unavailability.

## **8 Freight**

Subject to Clause 3.4 and unless otherwise agreed, Permotech will ship and charge the Customer all freight charges that are incurred.

## **9 Returns, Cancellations and Claims**

9.1 The Customer shall not return any Goods to Permotech without obtaining prior authorisation from Permotech. A list of the Goods returned including product descriptions, quantity, date of return and the Customer's name and address must also be enclosed. Freight charges must be paid by the Customer unless the Goods are returned through

Permatech's approved carrier and by prior arrangement. All Goods must be returned in the original packaging and the Customer shall be responsible for all damage incurred during return shipment. A credit note will be issued by Permatech only after Goods returned are either collected by Permatech's authorised representative or agent or returned to it by the Customer as set out above. The Customer shall not deduct the amount of any anticipated credit from any payment due to Permatech but must await receipt of a credit note.

9.2 All goods returned must be of merchantable and reasonable quality such that the goods are complete in their original packaging, not shop-soiled, are not price ticketed.

9.3 If Permatech accepts the return of any Goods that have been ordered, Permatech may charge the Customer ten per cent (10%) of the invoice price as a handling fee with freight costs and risk remaining the responsibility of the Customer.

9.4 No cancellations or partial cancellation of an order by the Customer shall be accepted by Permatech unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by Permatech, will indemnify Permatech against all loss, without limitation. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment.

9.5 All complaints, claims, or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with the Customer's purchase order must be submitted by the Customer to Permatech in writing within seven (7) business days of the date of the invoice rendered for the supply of the Goods. Otherwise, the Customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged in transit, or do not comply with the Customer's purchase order.

9.6 The Customer shall not withhold of any other sums that are due and payable to Permatech, and shall not claim a right of set-off against such sums on the basis of a complaint in respect of alleged faulty goods, or any claim under clause 9.5, and the Customer's account shall not be credited for any claim unless and until any amounts allowed by Permatech have been ascertained and admitted.

### **10 Privacy Act 1988 (Cth) ("*Privacy Act*")**

To enable Permatech to assess the Customer's application for credit, the Customer authorises Permatech:-

10.1 To obtain from a credit reporting agency a consumer or commercial credit report containing personal information about the Customer and its guarantors pursuant to Section 18K(1) of the *Privacy Act*; and

10.2 To obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities, and

10.3 To give to a credit reporting agency information including identity particulars and application details and in accordance with Section 18N(1) of the *Privacy Act* the Customer authorises Permatech to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about its 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 Customer understands that information can be used for the purposes of assessing its application for

credit (Section 18L(4) of the *Privacy Act*), assisting it to avoid defaulting on its credit obligations, assessing its credit worthiness and notifying other credit providers and credit reporting agencies of a default by it under these Terms.

### **11 Notification**

The Customer must notify Permotech in writing within seven (7) days of:-

11.1 Any alteration of the name or ownership of the Customer.

11.2 The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.

11.3 Any change in the ownership of the business name of the Customer. The Customer agrees that it shall be liable to Permotech for all Goods supplied to the new owner by Permotech until notice of any such change is received.

### **12 Warranties**

12.1 No warranties except those implied and that by law cannot be excluded are given by Permotech in respect of Goods supplied. Where it is lawful to do so, the liability of Permotech for a breach of a condition or warranty is limited to the repair or replacement of the Goods, the supply of equivalent Goods, the payment of the cost of repairing or replacing the Goods or acquiring equivalent Goods, as determined by Permotech.

12.2 The Customer acknowledges and warrants that it has relied on its own skill and judgment or, alternatively, on the skill and judgment of tradesmen and professional advisers retained by it to provide advice and assistance on the suitability of the Goods for specific purposes and procedures and, in this respect, shall indemnify Permotech from and against any suit, claim, demand or compensation which, but for these Terms, the Customer may have had against Permotech.

12.3 All descriptions, specifications, illustrations, drawings and data furnished by Permotech or otherwise contained in catalogues, price lists or other advertising materials of Permotech, are approximate only and are intended to be by way of general description only of the Goods and are not guaranteed but are subject to change without notice. They shall not form part of the contractual description thereof unless agreed to in writing by Permotech in which case such descriptive specifications shall be subject to trade tolerances.

12.4 Research and development are a continuous function of Permotech and or its suppliers who reserve the right to make product modifications at any time. It is the Customer's responsibility to check the current product design prior to purchase.

12.5 The Customer warrants to Permotech that it is purchasing Goods as the principal and not as an agent.

### **13 Force Majeure**

Permotech shall be released from its obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Goods impossible, where all money due to Permotech shall be paid immediately and, unless prohibited by law, Permotech may elect to terminate the Agreement.

### **14 Equitable Charge**

The Customer as beneficial owner and/or registered proprietor now charges in favour of Permotech all of the Customer's estate and interest in any real property (including but not

limited to any applicable land owned by the Customer named or described as the Customer's Street Address in the Credit Application if applicable) ("Land") to secure payment of accounts rendered by Permotech to the Customer for the delivery and/or supply of the Goods including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by Permotech and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat.

### **15 Failure to Act**

Permotech's failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or Permotech's failure to exercise any right or remedy available under these Terms or at law, or Permotech's failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of Permotech's right to demand timely payment of future obligations or strict compliance with the Terms.

### **16 Legal Construction**

16.1 These Terms shall be governed by and interpreted according to the laws of the state of supply and Permotech and the Customer consent and submit to the jurisdiction of the Courts of that state.

16.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.

16.3 No amendment, including addition or deletion, to these Terms shall be effective unless in writing and signed by an authorised representative of the Customer and Permotech.