

# PERMARK INDUSTRIES (AUSTRALIA) PTY LTD

## SYDNEY

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NSW 1470

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## AUCKLAND

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## MELBOURNE

Permark Industries (Aust.) P/L  
PO Box 292 DRUMMOYNE  
NSW 1470

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## CREDIT ACCOUNT APPLICATION FORM

### ENTITY DETAILS:

APPLICANT'S FULL LEGAL NAME: .....  
(i.e. not trading name "the Customer")

Years in Business: .....

Trading as: .....

Postal Address: .....

Telephone: .....

Physical Address: .....

Fax: .....

Contact Name & Position: .....

ABN No: .....

Email: .....

### Estimated Annual Purchases:

< \$5000

\$5,000 - \$20,000

\$20,000 +

I/We have read and agree to be bound by the terms and conditions of trade as printed overleaf or attached. I/We warrant to Permark Industries (Australia) Pty Ltd that the above information is to the best of my/our knowledge, information and belief true and correct and that I/we am/are duly authorised to enter into this application and future contracts on behalf of the customer. I/we also acknowledge that pursuant to clause 13 of the terms and conditions of trade that, where the applicant is a company, I/we am/are also signing this application form in my/our personal capacity as a director and incurring personal liability.

Signed ..... Print Name .....

Dated this ..... day of ..... 20 ..... Designation

### CASH SALES

We require cash sales to be paid in full with order placement, please select your preferred payment option below – (we will provide a GST invoice)

#### Direct Credit

BANK: NAB  
BRANCH: 255 George St, Sydney  
ACCOUNT NAME: Permark Industries (Australia) PTY LTD  
BSB No: 082057  
ACCOUNT NUMBER: 468740725 (Please use Invoice No as our reference)

#### Credit Card (Visa/Mastercard/Diners) ...

Card No: .....

Exp: ...../..... MM/YY)

Name on Card: .....

#### Cheque

# TERMS & CONDITIONS OF TRADE

## 1. DEFINITIONS

- 1.1 "Permark" shall mean Permark Industries Ltd or Permark Industries (Australia) Pty Ltd (as the case may be), or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Permark.
- 1.3 "Goods" shall mean:
- 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by Permark to the Customer; and
- 1.3.2 all Goods supplied by Permark to the Customer; and
- 1.3.3 all inventory of the Customer that is supplied by Permark; and
- 1.3.4 all Goods supplied by Permark and further identified in any invoice issued by Permark to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
- 1.3.5 all Goods that are marked as having been supplied by Permark or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Permark; and
- 1.3.6 all of the Customer's present and after-acquired Goods that Permark has performed work on or to or in which goods or materials supplied or financed by Permark have been attached or incorporated.
- 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods and Services" shall mean all goods, products, services and advice provided by Permark to the Customer.
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between Permark and the Customer and includes all disbursements eg charges Permark pay to others on the Customer's behalf subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions received by Permark from the Customer for the supply of Goods and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Permark subject to the Privacy Act 1988 to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by Permark to any other party.
- 3.2 The Customer authorises Permark to disclose any information obtained to any person for the purposes set out in clause 3.1.

## 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Goods and Services shall be deemed to be sold at the current amount as such Goods and Services are sold by Permark at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of Permark between the date of the contract and delivery of the Goods and Services.
- 4.3 The price of the Goods and Services will be plus the rate of Goods and Services Tax applicable at the time of invoice

## 5. PAYMENT

- 5.1 Payment for Goods and Services shall be made in full on or before the 20<sup>th</sup> day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Permark in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.

## 6. QUOTATION

- 6.1 Where a quotation is given by Permark for Goods and Services:
- 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
- 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
- 6.1.3 Permark reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods and Services.

## 7. RISK

- 7.1 The Goods and Services remain at Permark's risk until delivery to the Customer.
- 7.2 Delivery of Goods and Services shall be deemed complete when Permark gives possession of the Goods and Services directly to the Customer or possession of the Goods and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.

## 8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 2009)

- 8.1 Retention of Title
- 8.1.1 Ownership of, or title in, the goods will not pass to the customer until the customer has paid to Permark the invoiced price for all goods in the customer's possession at the time of payment.
- 8.1.2 The customer agrees with Permark that they will treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors.
- 8.2 Personal Property Securities Act
- 8.2.1 Definitions
- a. PPSA means the Personal Property Securities Act 2009 (Cth) as amended from time to time;
- b. A term used in the clause 8.2 has the same meaning as in the PPSA.
- 8.2.2 In consideration of Permark supplying goods to the customer, at the request of the customer, the customer, by signing these Terms of Trade:
- a. Grants to Permark, at Permark's discretion, a security interest or purchase money security interest (PMSI) in the goods.
- b. Agrees that any of the goods or proceeds of sale of the goods coming to existence after the date of these Terms of Trade will come into existence subject to:
- (i) the security interest or PMSI granted in these Terms of Trade; and
- (ii) the terms of these Terms of Trade;
- without the need for any further action or agreement by any party;
- c. Agrees that the customer has received valuable consideration from Permark and that it is sufficient; and
- d. Agrees that the security or PMSI has attached or will attach to all goods supplied now or in the future to the customer when the customer takes possession of the goods and that the attachment of the security interest or PMSI has not in any way been deferred or postponed from the date of these Terms of Trade.
- 8.2.3 Permark may, by notice to the customer at any time, require the customer to take all steps that Permark considers necessary or desirable to:
- a. Ensure that these Terms of Trade or any security interest or PMSI arising under them, are enforceable against the customer or any third party; and
- b. Protect, perfect, record, or better secure the position of Permark under these Terms of Trade as first ranking security.
- 8.2.4 Registration of notices:
- a. Permark reserves the right to register a financing statement in respect of any goods supplied by Permark to the customer under these Terms of Trade [and in respect of which credit has been extended by Permark to the customer].
- b. The cost and expense of registering a financing statement or a financing change statement is to be paid by the customer and may, where applicable, be debited against the customer's credit account with Permark.
- c. The customer:
- (i) waives the right to receive a copy of any notice, verification statement confirming registration of a financing statement or a financing change statement relating to the security interest or PMSI under these Terms of Trade, unless the notice of statement is required by law and cannot be excluded; and
- (ii) agrees to comply with any notice from Permark under this clause 8.2 at its cost and expense.
- d. The customer agrees:
- (i) not to allow any person to register a financing statement over any of the goods supplied by Permark without the prior written consent of Permark; and
- (ii) that it must immediately notify Permark if it becomes aware of any person taking steps to register a financing statement in relation to the goods.
- e. The customer agrees to perfect and maintain any security interest or PMSI that it may have in the goods under the PPSA.

- 8.2.5 The customer must not allow the goods to become accessions or commingled with other goods unless Permark has first perfected any security interest or PMSI that Permark has in relation to the goods.
- 8.2.6 If Permark perfects any security interest or PMSI that Permark has in relation to the goods, the customer must not do anything that could materially adversely affect:
- a. Permark's business; or
- b. In the opinion of Permark, Permark's security position under these Terms of Trade.
- 8.2.7 The customer irrevocably grants to Permark the right to enter on the customer's property or premises, without notice, and without being in any way liable to the customer or to any third party, if Permark has cause to exercise any of Permark's rights under section 110 of the PPSA, and the customer indemnifies Permark from any claims made by any third party as a result of that exercise.
- 8.2.8 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of these Terms of Trade, Permark and the customer agree that each of the provisions of the PPSA which section 115 of the PPSA permits parties to contract out of, other than sections 117, 118, 134(1) and 135, do not apply to the enforcement of that security interest.
- 8.2.9 Despite any statement to the contrary by the customer, every payment to Permark in respect of the goods must be taken as a payment:
- a. First, of the amounts held by the customer in trust or subject to a security interest, to the extent that the security interest is not a PMSI;
- b. Secondly, of amounts subject to a security interest, to the extent that it is a PMSI;
- c. Thirdly, for any goods that the customer has sold but for which it has not received the proceeds; and
- d. Fourthly, for whatever goods the customer has not sold as Permark elects.
- 8.2.10 Permark and the customer may not disclose any information of a kind referred to in section 275(1) that is not in public domain.
- 8.2.11 If the customer becomes insolvent, without prejudice to any other rights of Permark:
- a. The customer's right to sell the goods in the ordinary course of business in accordance with the PPSA and any other rights of the customer in respect of the goods immediately cease; and
- b. The customer must immediately return to Permark the goods in which title has not passed as provided for under clause 8.1(1).

## 9. PAYMENT ALLOCATION

- 9.1 Permark may in its discretion allocate any payment received from the Customer towards any invoice that Permark determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Permark, payment shall be deemed to be allocated in such manner as preserves the maximum value of Permark's purchase money security interest in the Goods and Services.

## 10. DISPUTES AND RETURN OF GOODS

- 10.1 No dispute relating to the Goods and Services will be considered unless made within seven (7) days of delivery.
- 10.2 No Goods will be accepted for return without the prior approval of Permark. A 15% restocking fee may apply and any Goods considered for return must be unused, undamaged and still in original packaging. No returns will be considered for special orders.

## 11. WARRANTY

- 11.1 With respect to Goods manufactured by Permark, Permark will repair or replace free on reasonable notice any equipment or parts proving defective due to inferior material or workmanship, fair wear and tear excepted, subject to the following conditions:
- 11.1.1 This warranty shall not apply in respect of defects notified to Permark later than six (6) months from the date of delivery of such equipment or parts;
- 11.1.2 This warranty shall not apply to:
- a. Any defect arising from misuse or neglect.
- b. Any equipment repaired or altered or fitted with parts by anyone other than Permark other than on its specific instructions.
- c. Any goods or services in respect of which any payment by the customer is in arrears.
- d. Any consequential loss or damage or loss of profit including any loss or damage caused by the negligence of Permark.
- 11.1.3 With respect to Goods not manufactured by Permark then a manufacturer's warranty will apply if applicable.

## 12. LIABILITY

- 12.1 The Trade Practices Act and or Similar State Legislation may imply warranties or conditions or impose obligations upon Permark which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Permark, Permark's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 12.2 Except as otherwise provided by clause 12.1 Permark shall not be liable for:
- 12.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by Permark to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by Permark to the Customer; and
- 12.2.2 The Customer shall indemnify Permark against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Permark or otherwise, brought by any person in connection with any matter, act, omission, or error by Permark its agents or employees in connection with the Goods and Services.

## 13. PERSONAL LIABILITY OF COMPANY DIRECTORS OR TRUSTEES

- 13.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this application, in consideration for Permark agreeing to supply Goods and Services and grant credit to the Customer at their request, also sign this application in their personal capacity and jointly and severally personally undertake as principal debtors to Permark the payment of any and all monies now or hereafter owed by the Customer to Permark and indemnify Permark against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in these terms and conditions of trade. The signatories and Customer shall be jointly and severally liable under the terms and conditions of trade for payment of all sums due hereunder.

## 14. MISCELLANEOUS

- 14.1 Permark shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 14.2 Failure by Permark to enforce any of the terms and conditions shall not be deemed to be a waiver of any of the rights or obligations Permark has under the terms and conditions.
- 14.3 If any provision of these terms and conditions of trade shall be invalid, void or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.4 Tooling and Film held by Permark on behalf of the customer shall be kept for a minimum period of 2 years from last use. After this time tooling and film is rendered as obsolete, and will subsequently be disposed of without notification to the customer. Within that 2 year period Permark will return Tooling and Film upon request.
- 14.5 The Laws of Australia and it's States shall apply to these terms and conditions of trade.

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