

Slabmaster Australia Pty Ltd – Trading Terms & Conditions

TERMS & CONDITIONS

These are the terms and conditions on which Slabmaster Australia Pty Ltd is willing to trade with you. Any variation to these terms and conditions must be in writing and signed by an authorised officer of Slabmaster Australia Pty Ltd.

1. Definitions

- 1.1. **"ACL"** means section 3 of the Australian Consumer Law.
- 1.2. **"Agreement"** means the agreement between the Supplier and the Customer for Products and includes Products on Consignment, and any customer credit account application, invoices, delivery docket or any other commercial form provided by the Supplier to the Customer or Distributor.
- 1.3. **"Amount Owing"** means any or all amounts owing by the Customer or Distributor to the Supplier under or in connection with this Agreement.
- 1.4. **"Customer"** means a person, firm, organisation, partnership, corporation or other entity (including trust) whose order for the purchase of the Products is accepted by the Supplier.
- 1.5. **"Director"** means where the Customer is a corporation, all directors of that corporation, and where the Customer is a trust that has a corporate trustee, all directors of the trustee.
- 1.6. **"Distributor"** means a person, firm, organisation, partnership, corporation or other entity (including trust) that has offered to take delivery of Products on Consignment in order to then deliver, or sell, on behalf of the Supplier, the Products on Consignment to any third party, customer or Customer, and includes the Distributor and any servant, agent, partner, contractor or employee of the Distributor.
- 1.7. **"Guarantor"** means that person(s), or entity who agrees herein to be liable for the Amount Owing of the Customer or Distributor to the Supplier, and includes all directors of the Customer or Distributor where the Customer or Distributor is a corporation and all trustees of the trust and all directors of the trustee if there is a corporate trustee of the trust.
- 1.8. **"Price"** means the cost of the Products invoiced by the Supplier to the Customer or Distributor.
- 1.9. **"Products"** means all Products sold and delivered by the Supplier to the Customer, and where the context so permits Products shall include any Products on Consignment.
- 1.10. **"Products on Consignment"** means the Products supplied by the Supplier to the Distributor from time to time pursuant to this Agreement and Terms.
- 1.11. **"PPSA"** means *Personal Property Securities Act (Cth) 2009*.
- 1.12. **"Supplier"** shall mean Slabmaster Australia Pty Ltd, and includes its successors and assigns.
- 1.13. **"Terms"** means these terms and conditions and where the context so permits shall include the Agreement formed between the Supplier and the Customer, Distributor and/or Directors.
- 1.14. **"Transfer Order"** means a document in such a form as the Supplier may require from time to time setting out the details of Products on Consignment delivered to the Distributor.

2. Interpretation

- 2.1. The headings used in these Terms do not form part of these Terms and are for convenience only.
- 2.2. Words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and references to a person shall be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency.

3. Agreement

- 3.1. These Terms and Agreement form the entire agreement on which the Supplier is willing to trade with the Customer or Distributor.
- 3.2. These Terms and Agreement replace any previous agreements or terms and conditions of sale or negotiation, understanding, or communication in relation to the supply of Products.
- 3.3. The Supplier may alter these Terms at any time upon one (1) month's written notice to the Customer or Distributor. All transactions after the date specified in such notice will be subject to the altered terms and conditions.
- 3.4. Unless otherwise agreed in writing by the Supplier, any terms and conditions of the Customer or Distributor deviating from or inconsistent with these Terms are expressly rejected by the Supplier.
- 3.5. Any variations to these Terms not expressly agreed to in writing by the Supplier are expressly rejected by the Supplier.
- 3.6. Any order received by the Supplier from the Customer or Distributor for the supply of Products, and the Customer's or Distributor's acceptance of Products supplied by the Supplier, will constitute acceptance of these Terms.
- 3.7. Upon acceptance of these Terms by the Customer the Terms are irrevocable and can only be varied in accordance with these Terms.
- 3.8. The Supplier's agents or representatives are not authorised to make any representations, or statements on behalf of the Supplier (including any purporting to vary these Terms or enter further agreements) and the Supplier shall not be liable for any unauthorised representations or statements made by the Supplier's agents or representatives.
- 3.9. In the event that the whole or any part or parts of any provisions in these Terms should be held to be void or unenforceable in whole or in part such provision or part thereof shall to that extent be severed from these Terms but the validity and enforceability of the remainder of these Terms shall not be affected.
- 3.10. The failure by the Supplier to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.
- 3.11. Each party must execute any document and perform any action necessary to give full effect to these Terms, whether before, or after performance of these Terms.

4. Credit Account

- 4.1. For the purpose of providing and/or maintaining the Customer or Distributor with a credit account, the Customer or Distributor agrees, to provide documentation to the Supplier which may include (but is not limited to) any or all of the following: evidence that the Customer or Distributor has and remains incorporated, and a copy of the Customer or Distributor's audited Financial Statements (which must not be more than 12 months old).
- 4.2. The Customer or Distributor will provide the Supplier documentation outlined in clause 4.1 within 14 days of the Supplier's written request.
- 4.3. The Customer or Distributor warrants that all statements made and documents provided in connection with this agreement and all representations that the Customer or Distributor has made or may make during the Terms to the Supplier are true and correct.
- 4.4. The Customer or Distributor warrants that the credit account is required for the Customer or Distributor's business or commercial purposes and will not be used for personal, domestic or household purpose.
- 4.5. The Customer or Distributor acknowledges that the Supplier has relied on the correctness of these warranties in clause 4.3 and 4.4 in approving the credit application and continues to rely on these warranties in further dealings with the Customer or Distributor.
- 4.6. Credit extended to the Customer or Distributor for all Products will be provided in the absolute discretion of the Supplier.
- 4.7. Any credit limit approved by the Supplier is approved for the Supplier's internal purposes only and does not limit or restrict the Customer or Distributor's account or liability.
- 4.8. The Supplier will be entitled to set off against any monies owing to the Customer or Distributor by the Supplier on any account whatsoever.
- 4.9. The Customer or Distributor shall not set off against the Price amounts due from the Supplier.

5. Price

- 5.1. The prices of Products shall be indicated on the Supplier's price list, invoice, delivery docket or other commercial form provided by the Supplier to the Customer or Distributor in respect of Products, plus any transportation, freight, postage, packaging, handling, insurance and GST (where applicable, GST will be charged at the appropriate rate at the date of invoice).
- 5.2. The price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that the taxes and duties are expressly included in any quotation given by the Supplier.
- 5.3. The Customer or Distributor must immediately check all prices, and any disputes in relation to those prices must be communicated to the Supplier, in writing, within three (3) business days of the invoice date. In the event that no communication is received from the Customer or Distributor within that three (3) business day period, the prices are deemed to be accepted by the Customer or Distributor.
- 5.4. Notwithstanding any prior acknowledgment by the Supplier of the Price, the prices specified may at the Supplier's option be subject to the Supplier's own prices and charges in effect at the time of delivery. For example, the Supplier shall be entitled to alter the price in the invoice or price as a consequence of currency fluctuations, taxes, customs duty, GST, sales tax or other government imposts. Further, the Supplier is entitled to revise its prices and related charges without prior notice being given to the Customer or Distributor. The Supplier may also revise its prices and any related charges in circumstances where the Supplier incurs further costs or such charges as a result of non-disclosure of information by the Customer or Distributor to the Supplier, unforeseen Customer or Distributor site problems or incorrect physical dimensions, weights or distances given by the Customer or Distributor and relied on by the Supplier.
- 5.5. In this clause the expressions "GST", "Input tax credit", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the *A New Tax System (Products and Services Tax) Act 1999*.
- 5.6. With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable by Customer or Distributor under these Terms are exclusive of GST.
- 5.7. If GST is imposed on any supply made under or in accordance with these Terms, the recipient of the taxable supply must pay the Supplier an additional amount equal to the GST payable on or for taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply subject to the provision of a tax invoice.

6. Payment

- 6.1. If the Customer or Distributor has a pre-approved credit account with the Supplier, then unless otherwise agreed, in writing by the Supplier, the payment terms are thirty (30) days from the date of the invoice and/or statement.
- 6.2. If the Customer or Distributor does not have a pre-approved credit account with the Supplier, then unless otherwise agreed in writing by the Supplier, the Customer or Distributor shall pay for all Products delivered at the time of delivery of the Products.
- 6.3. The Customer or Distributor agrees that the Supplier may debit the Customer or Distributor's credit card, as provided in this Agreement, in accordance with terms of payment between the Supplier and the Customer or Distributor, to satisfy any part or all of the Amount Owing by the Customer or Distributor to the Supplier for Products.

- 6.4. Payment for Products must be made by cash, or by cheque, or by bank cheque, or by direct credit, or by credit card, or by any other method as agreed to between the Customer or Distributor and the Supplier.
- 6.5. Payments will be applied to outstanding invoices of the Customer or Distributor at the sole discretion of the Supplier. The Supplier reserves the right to charge a credit card handling fee at its discretion and at rates advised by the Supplier from time to time.
- 7. Overdue Accounts**
- 7.1. If the Customer or Distributor fails to pay within 30 days from the date of the invoice and/or statement, interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 7.2. The Supplier may commence legal proceedings against the Customer or Distributor for the recovery of any account which is overdue by 90 days or more from the date of the invoice and/or statement.
- 7.3. The Customer or Distributor shall pay any legal costs (on a solicitor/client indemnity basis), lodgement and withdrawal of any caveat(s), stamp duties and other expenses payable on these Terms or any credit application, guarantee or other security documents signed by the Customer together with all collection costs including legal fees (on a solicitor/Customer indemnity basis) and dishonoured cheque fees suffered or incurred by the Supplier in connection with the supply of Products by the Supplier.
- 7.4. The Supplier may withdraw the Customer's credit facilities at any time or vary the Customer's credit limit without notice to the Customer.
- 8. Default and Termination**
- 8.1. In the event of:
- any default or failure by the Customer in making due and punctual payment to the Supplier of the Amount Owing by the Customer;
 - an administrator, liquidator or provisional liquidator is appointed in respect of the Customer, or a receiver and manager, administrator or controller is appointed in respect of any assets or groups of assets of the Customer or Distributor (**Insolvency Event**);
 - the Customer or Distributor and/or Director(s) goes into bankruptcy or is wound up;
 - the Customer or Distributor becomes, admits in writing that it is, or is declared by a court to be unable to pay its Amount Owing as and when they fall due;
 - there is a breach by the Customer or Distributor of any of these Terms,
 - the Customer or Distributor offers the Products for sale to any third party, then all monies payable by the Customer or Distributor to the Supplier shall become immediately due and payable notwithstanding the due date of payment shall not have expired, and the Supplier may without prejudice to any other rights it may have do any or all of the following:
 - withdraw any credit account which may have been extended to the Customer or Distributor;
 - withhold any further deliveries of Products;
 - in respect of Products already delivered onto the Customer or Distributor's premises enter onto those premises and recover and resell the Products;
 - recover from the Customer or Distributor the cost of materials or Products acquired for the purposes of future deliveries;
 - any discount, markdown, reduction or special price, previously offered by the Supplier to the Customer or Distributor may be withdrawn, or cancelled, and the price shall become the Supplier's standard price as at the date of the original sale; and/or
 - cease to supply Products to the Customer or Distributor.
- 8.2. The Customer or Distributor agrees to pay to the Supplier all losses, damages, costs and other expenses whatever suffered by the Supplier as a result of any Customer or Distributor event noted above.
- 8.3. The Supplier may terminate the Agreement with immediate effect without notice to the Customer or Distributor.
- 8.4. The right of termination is in addition to any other rights under the Agreement.
- 9. Security Obligations**
- 9.1. For the purpose of securing past, present and future obligations under this Agreement, the Customer or Distributor in both personal capacity and as a Trustee for every Trust of which the Customer or Distributor is a Trustee and/or Trust Beneficiary, hereby charge in favour of the Supplier all legal, equitable and beneficial interest in personal and real property which it, he or she now or might subsequently acquire a legal or beneficial interest in, and authorise and consent the Supplier to lodge and maintain a security interest, including but not limited to a registration of its security interest on the Personal Property Securities Register and lodge and maintain a Caveat upon title of the Customer's or Distributor's real property.
- 9.2. The Customer or Distributor shall not object to the lodgement or upholding of the said security interest and/or caveat or take any steps to have any such security interest and/or caveat removed from the respective register.
- 9.3. At the cost of the Customer or Distributor, the Customer or Distributor shall from time to time at the written request of the Supplier execute any deed, dealing, assurance or other document which the Supplier shall in its absolute discretion require the Customer or Distributor to execute and do all such other acts, matters and things as the Supplier shall consider reasonable for the purpose of preserving, perfecting or protecting its security interest and/or caveat.
- 9.4. The Customer or Distributor indemnifies the Supplier from and against all of the Supplier's costs and disbursements including legal costs on a solicitor and own Customer or Distributor basis incurred in exercising the Supplier's rights under this clause 9.
- 10. Orders**
- 10.1. No contract for the supply of Products shall exist between the Supplier and the Customer or Distributor unless the Customer or Distributor's order for Products has been accepted by the Supplier. The Supplier may accept or refuse any order for Products in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer or Distributor (based on the Customer or Distributor credit account application).
- 10.2. Any order received by the Supplier from the Customer or Distributor for the supply of Products, and the Customer or Distributor's acceptance of Products supplied by the Supplier, will constitute acceptance of these Terms.
- 10.3. If the Customer or Distributor changes an order causing a delivery delay or the Customer or Distributor cancels an order less than 14 days prior to a scheduled delivery, the Customer or Distributor will pay to the Supplier a fee equal to 5% of the list price of any Product affected.
- 10.4. If the Customer or Distributor cancels an order for any Products not included in our current price list, the Customer or Distributor may be subject to an additional charge.
- 10.5. If the Customer or Distributor cancels an order or refuse to accept all or any of the Supplier's Products in an order other than in circumstances permitted by these Terms, the Customer or Distributor will be liable for any resulting damage or loss suffered by the Supplier.
- 10.6. If the Products have been or are in the process of being manufactured or produced specifically for the Customer or Distributor, the Customer or Distributor will pay to the Supplier the full price of the Products and any costs incurred by the Supplier (including, without limitation, any GST) less the current scrap value of the product as determined by the Supplier.
- 11. Product Description**
- 11.1. The Customer or Distributor agrees that it is solely responsible for ensuring that the type of Product ordered is suitable for its intended use.
- 11.2. The Customer or Distributor agrees that it does not rely on the information, skill or judgment of the Supplier in relation to the suitability of the Products for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier in relation to the Products is provided without any liability by the Supplier whatsoever.
- 11.3. The Customer or Distributor will have in place all necessary insurance for the supply of the Products by the Supplier in order to cover any loss, damage or costs suffered or incurred by either the Customer or Distributor or the Supplier as a result of the supply of the Products.
- 11.4. The Customer or Distributor acknowledges that the Supplier may immediately cancel any particular supply of Products to which these Terms apply at any time before the particular Products to which these Terms relates are provided by giving written notice to the Customer or Distributor. The Supplier will not be liable for any loss or damage whatsoever arising from such cancellation.
- 12. Statutory Guarantees**
- 12.1. Clauses 12.2 and 12.3 only apply if the Customer or Distributor is deemed a "Consumer" for the purposes of section 3 of the ACL.
- 12.2. The Supplier's Products come with guarantees that cannot be excluded under the ACL. The Customer or Distributor is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer or Distributor is also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure.
- 12.3. To the extent the Supplier's Products are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier may limit its liability to repair or replacement of the Products or the payment of the cost of repairing or replacing the Products, in accordance with section 64A of the ACL.
- 13. Delivery**
- 13.1. Products will be delivered or deemed to be delivered when they are delivered to the delivery place nominated by the Customer or Distributor, including to any third party's address.
- 13.2. It is the Customer or Distributor's sole responsibility to ensure that there is an authorised representative and/or agent available to accept the Products upon delivery.
- 13.3. The Customer or Distributor authorises the Supplier to deliver the Products to the place nominated by the Customer or Distributor and to leave the Products at such place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer or Distributor after delivery of the Products to the nominated delivery place.
- 13.4. The Customer or Distributor shall pay to the Supplier packing, crating and delivery charges in accordance with the Supplier's current rates, as at the date of dispatch. If there is no current rate, then a reasonable delivery charge shall be paid by the Customer or Distributor.
- 13.5. The Supplier will not be obliged to obtain a signed delivery docket or other acknowledgement from any person at the nominated place for delivery but if a signed delivery docket or other acknowledgement is obtained from someone believed by the Supplier to be authorised by the Customer or Distributor to sign or otherwise take delivery, then such delivery docket or other acknowledgement shall be conclusive evidence of the Customer or Distributor's acceptance of the Products delivered.
- 13.6. Any notified times for delivery are estimates only and the Supplier shall not be liable to the Customer or Distributor for any failure to deliver or for delay in delivery of Products occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of the Supplier.
- 13.7. The Customer or Distributor will not be relieved of any obligation to accept or pay for Products by reason of any delay in delivery.
- 13.8. The Supplier reserves the right to deliver Products by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment or deliver any instalment on time shall not be a repudiation of the contract and will not entitle the Customer or Distributor to determine the contract in whole or in part.
- 13.9. The Supplier shall not be liable to the Customer or Distributor for any loss or damage attributable to failure by the Supplier to deliver the Products.

14. Personal Property Securities Act 2009 (PPSA)

- 14.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2. Upon assenting to Terms in writing the Customer or Distributor acknowledges and agrees that these Terms:
- constitute a security agreement for the purposes of the PPSA; and
 - create a security interest in:
 - all Products and /or collateral (account) – being a monetary obligation of the Customer or Distributor to the Supplier previously supplied (sold or otherwise) by the Supplier to the Customer or Distributor (if any); and
 - all Products and /or collateral (account) – being a monetary obligation of the Customer or Distributor to the Supplier that will be supplied (sold or otherwise) in the future by the Supplier to the Customer.
- 14.3. Upon assenting to Terms in writing the Customer or Distributor acknowledges and agrees that these Terms:
- 14.4. The Customer or Distributor undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA;
 - correct a defect in a statement referred to in clause 14.1.; and/or
 - comply with section 275 of the PPSA.
 - indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Products charged thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products in favour of a third party without the prior written consent of the Supplier; and
 - immediately advise the Supplier of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.
- 14.5. The Supplier and the Customer or Distributor agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.
- 14.6. The Customer or Distributor hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.7. The Customer or Distributor waives its rights as a grantor and/or an Amount Owing or under sections 142 and 143 of the PPSA.
- 14.8. Unless otherwise agreed to in writing by the Supplier, the Customer or Distributor waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.9. The Customer or Distributor shall unconditionally ratify any actions taken by the Supplier under clauses 14.3 to 14.7.
- 14.10. The Customer or Distributor must not dispose or purport to dispose of, or create or purport to create or permit to create any security interest in the Products other than with the express written consent of the Supplier.

15. Products on Consignment

- 15.1. The Distributor must sign the Transfer Order upon delivery and send it to the Supplier immediately by facsimile or email.
- 15.2. The Products on Consignment will be stored and retained separately by the Distributor for display purposes only (unless sold) so as to be readily identifiable as the property of the Supplier;
- 15.3. The Distributor will not dispose of the Products on Consignment except in the ordinary course of the Distributor's business;
- 15.4. The Distributor will not allow or cause the Products on Consignment to become an accession to any other property or to lose their separate identifiable character or to be co-mingled with other goods, in any way, either by any process of its own or by a third party, except with the Supplier's prior written consent.
- 15.5. The Distributor cannot claim any lien over the Products on Consignment.
- 15.6. The Distributor will not create any absolute or defeasible interest in the Products on Consignment Stock in relation to any third party, except with the Supplier's prior written consent.
- 15.7. The Distributor will notify the Supplier of the sale of Products on Consignment and will reorder new Products as required.
- 15.8. The Distributor will be invoiced by the Supplier for any Consignment Stock that was delivered to the Distributor by the Supplier, but is no longer in the possession of the Distributor. For example, upon delivery or sale of the Products on Consignment, or upon a site inspection of the Distributor's premises by the Supplier.
- 15.9. The Supplier will invoice the Distributor and the Distributor must make payment within thirty (30) days of the date of invoice.
- 15.10. The Distributor shall not represent to any third parties that it is in any way acting for the Supplier and the Supplier will not be bound by or liable under any contracts or arrangements with third parties.
- 15.11. The Supplier will not accept the return of any Products on Consignment that have been in any way rendered unsaleable whilst in the possession of the Distributor
- 15.12. If at any time the Supplier determines that the PPSA applies to any agreement that incorporates this Agreement, the Terms and Conditions or the supply of any Products on Consignment (Arrangements), then the Distributor must promptly upon request from the Supplier do anything

(including obtaining consents, making amendments to the Arrangements or executing new Arrangements);

- for the purposes of ensuring that any Security Interest created under, or provided for by, the Arrangements:
 - attaches to the Collateral that is intended to be covered by that Security Interest;
 - is enforceable, Perfected, maintained and otherwise effective; and
 - has the priority contemplated by those Arrangements; or
 - to enable the Supplier to prepare and register a Financing Statement or Financing Change Statement; or
 - to enable the Supplier to exercise any of its powers in connection with any Security Interest created under, or provided by, the Arrangements.
 - The Distributor must provide any information requested by the Supplier in connection with the Arrangements to enable it to exercise any of its powers or perform its obligations under the PPS Law.
- 15.13. Except if section 275(7) of the PPSA applies, each of the Supplier and the Distributor agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available to a person or entity not a party to this Agreement.
- 15.14. The Distributor agrees that:
- the Supplier is under no obligation to dispose of or retain any Products on Consignment the Supplier seizes within a reasonable time under section 125 of the PPSA;
 - following a default, the Distributor has no rights to redeem the Products on Consignment under section 142 of the PPSA;
 - the Distributor has no rights to reinstate this Agreement following a default under section 143 of the PPSA; and
 - despite the Distributor paying for particular Consignment Stock itemised in an invoice or order or otherwise in respect of moneys owing under or in connection with the Arrangements, any payments received by the Supplier from the Distributor shall be applied in the following order:
 - first, to satisfy any obligations owed by the Distributor to the Supplier which are unsecured, in the order in which the obligations were incurred;
 - second, to satisfy any obligations owed by the Distributor to the Supplier that are secured but which are not secured by a Purchase Money Security Interest, in the order in which those obligations were incurred; and
 - third, to satisfy any obligations owed by the Distributor to the Supplier that are secured by a Purchase Money Security Interest, in the order in which those obligations were incurred.

16. Title and Risk of Products

- 16.1 The Products shall be at the sole risk of the Customer or Distributor as soon as they are delivered by the Supplier to the Customer or Distributor.
- 16.2 Property in and title to Products being sold to the Customer or Distributor will not pass to the Customer or Distributor until such time as the Price and all other amounts which are owed or which may become payable to the Supplier by the Customer or Distributor have been paid for in full to the Supplier and the Customer or Distributor has complied with these Terms and until then:
- the Customer or Distributor will hold the Products as trustee and agent for the Supplier;
 - the Products must be stored separately and in a manner enabling them to be identified as Products of the Supplier and cross-referenced to particular invoices and the Customer or Distributor acknowledges that if it should process or mix the Products with other products or items such that the Products are no longer separately identifiable then the Customer or Distributor and the Supplier will be owners in common of the new product;
 - the Customer or Distributor may sell the Products in the ordinary course of its business as trustee and agent of the Supplier and will hold the proceeds of sale in a separate account on trust for the Supplier and account to the Supplier for those proceeds; and
 - the Supplier may require the Customer or Distributor to return the Products to the Supplier or its authorised representative on demand and the Supplier may enter upon the premises of the Customer or Distributor or any other premises occupied or controlled by the Customer or Distributor to inspect or repossess the Products.
- 16.3 If the Supplier determines, in its absolute discretion, that the PPSA applies to any transaction, the Customer or Distributor agrees that:
- It grants a first ranking security interest and purchase money security interest in the Products for the purposes of the PPSA, as security for all Amount Owing now or in the future, which is a continuing security despite any settlement of account or other matter or thing until a final discharge is given to the Supplier (where applicable), and that it waives the right to receive any verification statement;
 - It will do all things necessary to enable the Supplier to register and perfect its security interest in the Products and, if requested by the Supplier, will not take possession of the Products unless the Supplier has registered a financing statement designating a purchase money security interest over them;
 - the Supplier may appropriate (or re-appropriate despite any prior appropriation) monies received in respect of the Customer or Distributor in its absolute discretion toward any part of the Amounts Owing, including in order to maximise the extent to which it can have recourse to its security interest in the Products held by the Customer or Distributor;
 - to notify the Supplier of any change in writing of the Customer or Distributor's details set out in the credit application; and
 - the terms of this clause 16.3 prevail over any other term in the Agreement to the extent of any inconsistency with respect to Products.
- 16.4 Unless agreed in writing by the Supplier, the Supplier will not accept any return of Products that are being sold to the Customer or Distributor.
- 16.5 The Customer or Distributor shall insure the Products against theft or any damage until such Products have been paid for, or until they are sold by the Customer or Distributor whichever occurs first, and the Supplier will be entitled to call for details of the insurance policy. If the Customer or Distributor does not insure the Products or fails to supply details of its insurance policy the Customer or Distributor will reimburse the Supplier for the cost of any insurance which the Supplier may reasonably arrange in respect of the Products supplied to the Customer or Distributor.

16.6 The Customer or Distributor agrees to store the Products in such a manner as to identify that the Products remain the property of the Supplier until the conditions in clause 16.3 are met, and the Customer or Distributor agrees to keep complete records as to the use and sale to third parties of such Products.

17. Assignment

17.1 The Supplier may at any time assign, novate or otherwise dispose of or deal with its rights and obligations under these this Agreement and/or Terms by notice in writing to the Customer or Distributor. The Customer or Distributor agrees that any order for Products submitted by the Customer or Distributor to the Supplier after the date of a notice of assignment will be deemed to be an acceptance of such assignment.

17.2 The Customer or Distributor must not assign any rights or benefits under this Agreement and/or Terms and conditions unless the Customer or Distributor has obtained the Supplier's prior written consent.

18. Recovery

18.1 If the Customer or Distributor owes money to the Supplier on any Agreement and/or account in excess of the Supplier's Terms and/or the Supplier has terminated the Agreement with the Customer or Distributor, the Supplier may take all steps necessary (including legal action) to recover the Products, including:

- a) entering any site occupied by the Customer or Distributor without prior notice to the Customer or Distributor;
- b) may recover and resell the Products; or
- c) if the Products cannot be distinguished from similar products which the Customer or Distributor has or claims to have paid for in full, the Supplier may in its absolute discretion seize all products matching the description of the Products and hold same for a reasonable period so that the respective claims of the Supplier and the Customer or Distributor may be ascertained. The Supplier must promptly return to the Customer or Distributor any products that are the property of the Customer or Distributor and the Supplier is in no way liable or responsible for any loss or damage to those Products or for any loss, damage or destruction to the Customer or Distributor's business howsoever arising from the seizure of any of the products.

19. Claims

19.1 Subject to clause 19.7, all claims by the Customer or Distributor relating to failure by the Supplier to comply with an order of the Customer or Distributor whether due to shortfall, defect, incorrect delivery or otherwise must be made by written notice to the Supplier within 7 days of the date of delivery. If the Customer or Distributor fails to provide such notice within 7 days then the Customer or Distributor shall be deemed to have accepted the Products and shall not be entitled to make any claim against the Supplier.

19.2 The Supplier will accept the return of Products only if the Products are not in accordance with the Customer or Distributor's order, the Customer or Distributor's proof of purchase is returned, the Products are unused and it is returned to the Supplier within seven (7) days of delivery.

19.3 The Supplier will charge the Customer or Distributor a handling fee of \$500 for any Products which the Supplier has correctly supplied to order but the Customer or Distributor wishes to return and the Supplier agrees to the return of the Products.

19.4 The Customer or Distributor agrees that it will make no claim against the Supplier for any delay in delivery or any faulty product delivered to the Customer or Distributor as a direct or indirect result of events beyond our control.

19.5 These Terms shall not exclude, or limit the application of any provisions of any statute including any implied condition or warranty the exclusion of which would contravene any statute (including the ACL) or cause any part of this clause to be void or unenforceable. To the extent permitted by law all conditions, warranties and undertakings are expressly excluded.

19.6 Subject to clause 19.5 the Supplier shall not be liable for any direct or indirect loss whatsoever including consequential loss, loss of profits, loss of opportunity or loss of use.

19.7 The Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- a) The Customer or Distributor failing to properly maintain or store any Products;
- b) The Customer or Distributor using the Products for any purpose other than that for which they were designed;
- c) The Customer or Distributor continuing the use of any the Products after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- d) The Customer or Distributor failing to follow any instructions or guidelines provided by the Supplier; or
- e) Fair wear and tear, any accident or act of God.

20. Intellectual Property

20.1 Where the Supplier has designed, drawn, written, prepared or manufactured for the Customer or Distributor, then the copyright (or any other attaching intellectual property right) in those designs and drawings, prototypes, productions, documents and Products shall remain vested in the Supplier, and shall only be used by the Customer or Distributor at the Supplier's discretion.

20.2 Where the Customer or Distributor has supplied drawings, designs or concepts for Products to be supplied by the Supplier, the Customer or Distributor warrants that all designs or instructions provided to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer or Distributor's order, and the Customer or Distributor agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

21. Your Obligations

21.1 Should there be any variation to any of the information supplied by the Customer or Distributor to the Supplier concerning the structure or nature of the Customer's or Distributor's business (such as a conversion to or from a Company or Trust), or key information in the Customer or Distributor credit account application that the Supplier has relied upon, the Customer or Distributor shall forthwith notify the Supplier in writing. If this information is not provided, and the Supplier suffers loss as a result, the Customer or Distributors

and Director agrees to compensate the Supplier for an amount that is no less than the amount of loss that the Supplier suffered.

21.2 If, at any time:

- a) The Customer or Distributor and/or it's the directors of the Customer or Distributor believe that the Customer or Distributor may not or may be unable to perform or comply with your obligations under these terms and conditions;
- b) The Customer or Distributor are unable to pay your accounts as they fall due for payment;
- c) a cheque or bill of exchange received from the Customer or Distributor is dishonoured;
- d) the Customer or Distributor become insolvent or you have an administrator appointed; or
- e) the Customer or Distributor's account is overdue and is not settled within our trading terms,

the Customer or Distributor agrees that:

- a) the Customer or Distributor will immediately notify the Supplier that one or more of the above notifiable events has occurred and the Customer or Distributor will keep the Supplier notified on a monthly basis until such notifiable event no longer exists;
- b) the Supplier has no obligation and will cease to deliver to the Customer or Distributor any Products the Customer or Distributor has purchased while a notifiable event exists;
- c) the Supplier may close the Customer or Distributor's credit account;
- d) the Supplier may request payment in advance for all products the Customer or Distributor has ordered from the Supplier; and
- e) the Supplier has no obligation to respond to any offer the Customer or Distributor make to purchase any of the Supplier's Products while a notifiable event exists.

For the purpose of these terms and conditions, you are insolvent if:

- a) a receiver or receiver and manager or an agent for a mortgagee in possession has been appointed over all of your assets and undertakings;
- b) the Customer or Distributor has passed an effective resolution for your voluntary winding-up;
- c) an order has been made by a Court of competent jurisdiction for the Customer or Distributor to be wound up;
- d) a compromise arrangement (excluding a voluntary administration) has been made legally binding on the Customer or Distributor and the Customer or Distributor's creditors;
- e) the Customer or Distributor and/or the director(s) of the Customer or Distributor have presented a debtor's petition and it has been accepted by the Registrar in Bankruptcy;
- f) the Customer or Distributor has entered into a composition, deed of assignment or deed of arrangement of the Bankruptcy Act (or equivalent) with the Customer or Distributor's creditors; or
- g) a legally binding sequestration order has been made against the Customer or Distributor and/or the director(s) of the Customer or Distributor's estate.

22. Privacy

22.1 The Customer or Distributor and/or Director acknowledge that the information provided in this application is the basis for valuation by the Supplier of the financial standing and credit worthiness of the Customer or Distributor and each of them and do hereby:

- a) confirm that the information provided in this application is true and correct;
- b) authorise the Supplier to make such enquiries and receive such information (including personal information and/or sensitive information) from the bankers and business referees mentioned in the application and otherwise from anyone as the Supplier may consider necessary;
- c) acknowledge that the Supplier has informed us, in accordance with the Privacy Act 1988, that certain items of personal information and/or sensitive information, including an opinion, about us are permitted to be kept on a credit information file and might be disclosed to third parties including credit reporting agencies;
- d) in accordance with the Privacy Act 1988:

- (1) agree to the Supplier obtaining from a business which provides information (including personal information and/or sensitive information) about the commercial credit worthiness of persons, information concerning our commercial activities or commercial credit worthiness and using such information for the purpose of assessing this application;
- (2) authorise the Supplier to exercise our rights of access to our credit information files and credit reports;
- (3) agree that the Supplier may give to and seek from any credit providers (whether or not named in this application) reports and information that have any bearing on our credit worthiness, credit standing, credit history or credit capacity for any of the following purposes:
 - (i) to assess an application by us for credit or commercial credit;
 - (ii) to notify other credit providers of a default by us;
 - (iii) to exchange information with other credit providers as to the status of our account where we are in default with the Supplier or other credit provider;
 - (iv) to assess our credit worthiness, credit standing or credit history at any time; and/or
 - (v) to assess whether to continue supply credit to the Customer or Distributor.

e) agree that these authorisations shall continue to have effect for the duration of the period during which credit or commercial credit is provided or sought by the Customer or Distributor from the Supplier; and/or

f) are aware that we are generally entitled to access personal information and/or sensitive information that the Supplier's holds about us is except where access can or must be denied or limited by the Privacy Act 1988.

22.2 The Supplier is committed to the protection of the Customer's or Distributor's privacy, and its policies, process and systems have been developed with this intent. However, sometimes human error and/or clerical errors may occur. If the Customer or Distributor thinks that the Supplier has made an error, the Customer or Distributor should put the request to the Supplier in writing. The Customer or Distributor shall have the right to request, in writing, from the Supplier: (a) a copy of the information about the Customer or Distributor retained by the Supplier and the right to request that the Supplier correct any incorrect

information; and (b) that the Supplier does not disclose any personal information about the Customer or Distributor for the purpose of direct marketing.

22.3 The Supplier will destroy personal information upon the Customer or Distributor's request, in writing, or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.

22.4 The Customer or Distributor can make a privacy complaint by contacting the Supplier, in writing. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer or Distributor is not satisfied with the resolution provided, the Customer or Distributor can make a complaint to the Information Commissioner at www.oaic.gov.au.

23. Force Majeure

23.1 The Supplier shall not be liable for any failure or delay in supply or delivery of the Products where such failure or delay is wholly or partly due to any cause or circumstances whatsoever outside the reasonable control of the Supplier including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, Government restrictions or interventions, transport delays, fire, acts of God, pandemic or epidemic, breakdown of delivery vehicle, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

24. Service of Notices

24.1 Notice, including any documents relating to legal proceedings, to be given by the:

- a) Customer or Distributor to the Supplier may be delivered personally or sent to the Supplier at its registered business address in accordance with the records held with the Australian Securities and Investment, and unless the contrary is proved shall be taken as delivered on the fifth (5) business day following posting.
- b) Customer or Distributor by the Supplier may be delivered personally, or sent to the Customer or Distributor's last known address provided by the Customer or Distributor to the Supplier and unless the contrary is proved shall be taken as delivered on the fifth (5) business day following posting.

25. Dispute Resolution

25.1 If a dispute arises between the Supplier and the Customer or Distributor then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute.

25.2 Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.

25.3 Any information or documents disclosed by either party under this clause 25 must be kept confidential and used resolve the dispute, and cannot be produced, evidenced and/or relied upon in any court or tribunal proceeding.

25.4 In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be: (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

26. Governing Law

26.1 These terms and conditions are governed by, and you agree to submit to, the laws applicable in the state of New South Wales, Australia.

DIRECTOR, SECRETARY OR AUTHORISED REPRESENTATIVE SIGNATURE/S

Director/ Secretary/ Authorised Representative

(Print Name)

Director/ Secretary/ Authorised Representative

(Signature)

/ /2021

The above signatory warrants that he/she is a director/secretary or a person authorised to execute this application on behalf of the Customer and/or Distributor and is authorised to execute this application.

THIS GUARANTEE AND INDEMNITY is given by the Guarantor/s in favour of **Slabmaster Australia Pty Ltd, and includes their successors and assigns (Supplier).**

INTRODUCTION

- A. The Guarantor/s have asked the Supplier to supply Products to the Customer or Distributor and to extend (or continue to extend) credit to the Customer or Distributor.
- B. The Supplier has agreed to the request of the Guarantor/s in consideration of their agreement as follows:

IT IS AGREED:

- 1. The Guarantor/s guarantee to the Supplier the punctual payment of the Amount Owing by the Customer or Distributor (on any account and in any capacity whatsoever and including liabilities in respect of the Products) to the Supplier. The Guarantor/s acknowledge and agree that the Amount Owing includes any legal and other costs and expenses incurred or to be incurred by the Supplier in seeking payment from the Customer or Distributor or in enforcing this Guarantee and Indemnity against the Guarantor/s.
- 2. If there is more than one (1) guarantor, the Guarantors are jointly and severally liable to the Supplier for the Amount Owing.
- 3. For the purpose of securing past, present and future obligations under this Agreement, the Guarantor/s hereby charge in favour of the Supplier all legal, equitable and beneficial interest in real property which it, he or she now or might subsequently acquire a legal or beneficial interest in, and authorise and consent the Supplier to lodge a Caveat upon title of the Guarantor/s real property. The Guarantor/s shall not object to the lodgement or upholding of the said caveat or take any steps to have any such caveat removed from the Land Titles Office register.
- 4. The obligations of the Guarantor/s under this Guarantee and Indemnity are principal obligations and are not affected by:
 - a) any variation which may be agreed by the Supplier and the Customer or Distributor in respect of the Terms on which the Products are delivered and paid for;
 - b) any waiver, extension of time or indulgence given by the Supplier to the Customer or Distributor or a Guarantor;
 - c) any right or claim which the Customer or Distributor may assert to resist making payment of any part of the Amount Owing;
 - d) any increase in the amount of the Amount Owing;
 - e) any failure or omission by the Supplier to give notice to the Guarantor/s of any default by the Customer or Distributor; or
 - f) any act, omission, matter or other thing whatsoever.
- 5. This Guarantee and Indemnity is a continuing obligation of each Guarantor/s for the amount of the Amount Owing which may be owing from time to time and binds the successors and assigns of the Guarantor/s and will not be affected by:
 - a) the death, incapacity, bankruptcy, of a Guarantor or the Customer or Distributor; or
 - b) a Guarantor or the Customer or Distributor which is a company becoming an externally administered company pursuant to the *Corporations Act 2001* (Cth).
- 6. If the obligation of any Guarantor in respect of any part of the Amount Owing is unenforceable, the Guarantor's obligations in respect of the balance of the Amount Owing will not be affected by such unenforceability.
- 7. If any payment or other transaction relating to or affecting the Amount Owing is:
 - a) void, voidable or unenforceable in part or in whole; or
 - b) is claimed to be void, voidable or unenforceable and that claim is upheld, conceded or compromised in whole or in part; the liability of each of the Guarantor/s is the same as if:
 - c) that payment or transaction (or the void, voidable or unenforceable part of it); and
 - d) any release, settlement or discharge made in reliance on anything referred to in paragraph (b) above has not been made and the Guarantor/s must immediately take all action and sign all documents necessary or required by the Supplier to pay to or restore to the Supplier the Amount Owing in full.
- 8. If all or any of the Amount Owing is:
 - a) not recoverable from the Customer or Distributor; or
 - b) not recoverable from a Guarantor under this Guarantee and Indemnity;each of the Guarantor/s, as a separate and principal obligation, indemnifies the Supplier against any loss, liability, expense or outgoing suffered, paid or incurred by the Supplier in relation to such amounts and must pay the Supplier an amount equal to such amounts.
- 9. For the avoidance of doubt it is expressly acknowledged by the Guarantor/s that the Guarantor/s' obligations extend to and may include Amount Owing and other obligations of the Customer or Distributor which have arisen before or after the date of this Guarantee.

ACKNOWLEDGMENT
- 10. Each of the Guarantor/s hereby acknowledge, affirm and agree that he/she:
 - a) had an opportunity to and sought independent legal advice before entering into the Guarantee and Indemnity;
 - b) the nature of the Guarantee and Indemnity;
 - c) the liability which the Guarantor would incur by executing the Guarantee and Indemnity; and
 - d) the manner in which such liability could be enforced.

ASSIGNMENT AND NOVATION
- 11. The Supplier may at any time assign, novate or otherwise dispose of or deal with its rights and obligations under these this Guarantee by notice in writing to the Guarantor/s. The Guarantor/s agrees that any order for Products submitted by the Customer or Distributor to the Supplier after the date of a notice of assignment will be deemed to be an acceptance of such assignment.

LAWS TO GOVERN PROVISIONS OF THE GUARANTEE AND INDEMNITY
- 12. This Guarantee and Indemnity shall be governed by and construed in accordance with the laws of New South Wales.

Guarantor 1
(Print Name) _____
Guarantor 1
(Signature) _____

/ /20

Witness
(Print Name) _____

Witness
(Signature) _____

/ /20

Guarantor 2
(Print Name) _____

Guarantor 2
(Signature) _____

/ /20

Witness
(Print Name) _____

Witness
(Signature) _____

/ /20