



WESTEC DISTRIBUTION PTY LTD ACN 009 075 012
 U1/146 Balcatta Road, Balcatta WA 6021
 Telephone: (08) 9240 2233 Facsimile: (08) 9240 2077
 Email: sales@westec.com.au

TRADING AGREEMENT

A.
 APPLICANT NAME(the "Applicant")
 COMPANY - SOLE TRADER - PARTNERSHIP - INC ASSOC (Delete those not applicable)
 TRADING AS.....ABN.....ESTABLISHED FOR.....YRS
 IS THE APPLICANT TRADING IN ITS CAPACITY AS A TRUSTEE YES/NO IF YES, NAME OF TRUST.....
 NATURE OF BUSINESS.....TELEPHONE.....FACSIMILE.....EMAIL.....
 TRADING ADDRESS.....POSTCODE.....
 PERIOD AT CURRENT TRADING ADDRESS.....STATE IF TRADING PREMISES ARE MORTGAGED OR LEASED.....
 NAME & TELEPHONE NO. OF MORTGAGEE/LESSOR OF TRADING PREMISES.....
 PERSON(S) IN ACCOUNTS PAYABLE TO CONTACT.....EMAIL.....

B.
 DIRECTOR'S/INDIVIDUAL'S/PARTNER'S/FULL NAME AND ADDRESS: (attach list if insufficient space)

SURNAME	CHRISTIAN NAMES	RESIDENTIAL ADDRESS
.....
.....
.....

C.
 TRADE REFERENCES (Companies/businesses with whom your business is currently trading and level of trade **including contact name and phone number** - no banks or finance companies)

1..... 2.....
 3..... 4.....

D.
 APPROXIMATE MONTHLY CREDIT REQUIRED \$.....

- In this document the expression "Company" defines and means Westec Distribution Pty Ltd ACN 009 075 012 and each related body corporate of Westec Distribution ACN 009 075 012 from time to time. This agreement extends to credit given to the Applicant in the future by the Company or a company which is not now, but is there related body corporate of Westec Distribution Pty Ltd ACN 009 075 012.
- The Applicant hereby applies to have an account opened with the Company on the terms and conditions contained on all three pages of this document and acknowledge having had the opportunity prior to the execution hereof to obtain independent legal advice as to the extent and implications of executing this document.
- In consideration of the Company at the request of the undersigned agreeing to grant this trading terms facility to the Applicant, I/we the undersigned (the "Guarantors") herby jointly and severally guarantee payment to the Company, without any deduction or set off whatsoever, of the price and taxes charges by the Company to the Applicant for the supply of goods and services (the "Price") and the payment of any other monies now or in the future owed by the Applicant to the Company on any account whatsoever ("Other Monies"). The Guarantors further the performance of the covenants and obligations of the Applicant contained within the agreement.
- The Guarantors agree to be bound by the terms and conditions on all three pages of this document and as if they were the principle debtor. This is a continuing guarantee and irrevocable until the Company has been paid the entire Price and Other Monies. This guarantee may be enforced by the Company and its successors.
- As a separate and independent agreement the Guarantors agree to indemnify and keep harmless the Company against any losses, costs (including but not limited to cost on a solicitor/client basis) or damages of whatsoever nature incurred by the Company as a result of the Applicant failing to pay the Company the Price of Other Monies as a result of the failure or default of the Applicant in the performances of their covenants and obligations contained within this agreement or under any other agreement between the Company and the Applicant.
- The Guarantors certify that prior to the execution of this guarantee and indemnity the Guarantors had the opportunity to take independent legal advice in respect of its meaning and effect.
- This document is executed as a Deed. The undersigned signatories warrant they have the authority to execute this document for and on behalf of the Applicant and are also executing this document contemporaneously in their joint and several capacity as Guarantors.

DATE THIS day of 20__

APPLICANT/GUARANTORS
 NAME
 SIGNATURE X
 NAME
 SIGNATURE X.....
 NAME.....
 SIGNATURE X.....

WITNESS
 NAME.....ADDRESS.....
 SIGNATURE X
 NAME.....ADDRESS.....
 SIGNATURE X.....
 NAME.....ADDRESS.....
 SIGNATURE X.....

WARNING THIS IS AN IMPORTANT DOCUMENT IF ANY OF TIME APPLICANTS OR GUARANTORS DO NOT UNDERSTAND THIS DOCUMENT THEY SHOULD SEEK INDEPENDENT LEGAL ADVICE

GENERAL TERMS AND CONDITIONS

1 DEFINITIONS

In these Conditions:

- "ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act*;
- "consumer" is as defined in the ACL and in determining if the Buyer is a consumer, the determination is made if the Buyer is a consumer under the Contract;
- "Contract" means any contract for the provision of goods or services by Westec to the Buyer;
- "Buyer" means the person, jointly and severally if more than one, acquiring goods from Westec;
- "Westec" means Westec Distribution Pty Ltd (ABN 17 009 075 012);
- "goods" means goods supplied by Westec to the Buyer;
- "GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;
- "PPSA" means the *Personal Property Securities Act 2009* (Cth) as amended;
- "Services" means the services supplied by Westec to the Buyer;
- "Tender" or "Quote" means a written (by electronic or other means) representation by Westec as to the offer price for the goods or services contemplated;
- "Conditions" means these Terms and Conditions of Trade.

2 BASIS OF CONTRACT

- 2.1.1 Unless otherwise agreed by Westec in writing, the Conditions apply exclusively to every Contract and cannot be varied or replaced by any other terms, including the Buyer's terms and conditions of purchase (if any).
- 2.1.2 In submitting a Tender or Quotation, Westec offers to provide the goods and/or services described at the stated prices subject to the terms and conditions printed herein.
- 2.2 Unless otherwise specified in writing, any Quotation will require written revalidation after (30) days from the date of issue.
- 2.3 Where these Conditions accompany a Tender or Quotation then these Conditions should be read in conjunction with our Tender or Quotation. These Conditions may include additional terms in Westec's Tender or Quotation, which will override these Conditions to the extent of any inconsistency.
- 2.4 No order placed pursuant to any Quotation is binding on Westec until accepted by Westec in writing.
- 2.5 Westec reserves the right to refuse any order.
- 2.6 Availability of goods may be affected by prior sale.
- 2.7 Westec may vary or amend these Conditions by written notice to the Buyer at any time. Any variations or amendments will apply to orders placed after the notice date.

3 PRICES

- 3.1 Prices quoted for the supply of goods or services include GST and other taxes or duties imposed on or in relation to the goods and services. Where GST exemption is applicable, a GST exemption certificate must be provided in writing at the time of order, otherwise GST will be charged.
- 3.2 Prices published in any price lists are subject to change without notice.
- 3.3 All prices quoted are based on the quantity specified and do not necessarily operate pro-rata for any greater or lesser quantities.
- 3.4 If the Buyer requests any variation to the Contract, Westec may increase the price to account for the variation.
- 3.5 Where there is any change in the costs incurred by Westec in relation to goods or services, Westec may vary its price for the goods or services to take account of any such change, by notifying the Buyer.

4 PROPERTY AND RISK

- 4.1 Until Westec receives full payment in cleared funds for all goods and services supplied by it to the Buyer, as well as all other amounts owing to Westec by the Buyer:
 - (a) title and property in all goods remain vested in Westec and do not pass to the Buyer;
 - (b) the Buyer must hold the goods as fiduciary bailee and agent for Westec;
 - (c) the Buyer must keep the goods separate from its goods and maintain Westec's labelling and packaging;
 - (d) the Buyer must hold the proceeds of sale of the goods on trust for Westec in a separate account with a bank to whom the Buyer has not given security however failure to do so will not affect the Buyer's obligation to deal with the proceeds as trustee;
 - (e) in addition to its rights under the PPSA, Westec may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of Westec, and for this purpose the Buyer irrevocably licences Westec to enter such premises and also indemnifies Westec from and against all costs, claims, demands or actions by any party arising from such action.
- 4.2 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Buyer immediately on the goods being delivered to the Buyer or taken from Westec's premises.
- 4.3 The Buyer assumes all risk and liability for loss, damage or injury to persons or to property of the Buyer, or third parties arising out of the use, installation or possession of any of the goods sold by Westec, unless recoverable from Westec on the failure of any statutory guarantee under the ACL.

5 DELIVERY

- 5.1 Any time or date or month stated by Westec for anticipated or promised delivery of the goods is a bona fide estimate only and not a contractual commitment.
- 5.2 Westec will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Buyer or any third party for failure to meet any estimated date.
- 5.3 The Buyer must accept delivery of the goods at the agreed delivery point. If delivery is attempted and is unable to be completed, the Buyer is deemed to have taken delivery of the goods. The Buyer is liable for storage charges payable monthly on demand.
- 5.4 The Buyer indemnifies Westec against any loss or damage suffered by Westec, its sub-contractors or employees as a result of delivery, except where the Buyer is a consumer and Westec has not used due care and skill.
- 5.5 If agreed that the Buyer will collect the goods from Westec, the Buyer must collect the goods within 7 days of being advised they are ready. If the Buyer does not collect the goods within this time, the Buyer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.
- 5.6 Any agreement or undertaking by Westec is contingent upon its ability to secure or supply the goods.
- 5.7 Delivery may be made in one or more lots. Each lot shall form a separate contract on delivery and be accepted and paid for accordingly notwithstanding late delivery or non delivery of any other lot.

6 FORCE MAJEURE

Westec is not liable in any way howsoever arising under the Contract to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, lockouts, strikes, fire riots, tempest, accidents to machinery, war, non-availability of materials or default by any manufacturer for or sub-contractor to Westec. If an event of force majeure occurs, Westec may suspend or terminate the Contract by written notice to the Buyer.

7 TERMS OF PAYMENT

- 7.1 The Buyer will only be granted a Credit Account if he/she has completed a formal Westec Credit Application form and has had that application accepted in writing by Westec.
- 7.2 Payment by Credit Account Buyers must be made in full by the end of the month immediately following the date of Westec's invoice.
- 7.3 Westec may elect to issue statements to Buyers, but such election shall not affect the aforesaid payment obligation.
- 7.4 Should payment not be received in the due time then any credit facilities may be withdrawn without notice.
- 7.5 Payment by cash buyers. In the case of cash buyers, payment should be made strictly net cash before supply takes place.
- 7.6 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 7.7 The time for payment is of the essence.
- 7.8 Payment terms may be revoked or amended at Westec's sole discretion immediately upon giving the Buyer written notice.
- 7.9 Unless subject to the provisions of any appropriate Commonwealth or State legislation to the contrary, no claim in relation to the goods will be recognised unless such claim is made in writing within (7) days after receipt of the goods.

8 PAYMENT DEFAULT

- 8.1 If the Buyer defaults in payment by the due date of any amount payable to Westec, then all money which would become payable by the Buyer to Westec at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Buyer, and Westec may, without prejudice to any of its other accrued or contingent rights:
 - (a) charge the Buyer interest on any sum at the rate for the time being charged by the National Australia Bank to its customers on overdraft in excess of \$100,000 for the period from the due date until the date of payment in full;
 - (b) charge the Buyer for, and the Buyer must indemnify Westec from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Contract or to recover any goods;
 - (c) cease or suspend supply of any further goods or services to the Buyer;
 - (d) by written notice to the Buyer, terminate any uncompleted contract with the Buyer.

- 8.2 Clauses 8.1(c) and (d) may also be relied upon, at Westec's option:
- (a) where the Buyer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (b) where the Buyer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Buyer.

9 PERSONAL PROPERTY SECURITIES ACT

- 9.1 Notwithstanding anything to the contrary contained in these Conditions, the PPSA applies to these Conditions.
- 9.2 For the purposes of the PPSA:
- (a) terms used in this clause 9 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Conditions are a security agreement and Westec has a Purchase Money Security Interest in all present and future goods supplied by Westec to the Buyer and the proceeds of the goods;
 - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Buyer at any particular time; and
 - (d) the Buyer must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by Westec on the Personal Property Securities Register.
- 9.3 The security interest arising under this clause 9 attaches to the goods when the goods are collected or dispatched from Westec's premises and not at any later time.
- 9.4 Where permitted by the PPSA, the Buyer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 9.5 Westec and the Buyer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Conditions.
- 9.6 To the extent permitted by the PPSA, the Buyer agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Buyer or which place obligations on Westec will apply only to the extent that they are mandatory or Westec agrees to their application in writing; and
 - (b) where Westec has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 9.7 The Buyer must immediately upon Westec's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Contract; and
 - (b) procure from any person considered by Westec to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Westec may at any time require.
- 9.8 Westec may allocate amounts received from the Buyer in any manner Westec determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied.

10 RETURNS FOR CREDIT

- 10.1 Subject to clause 10.4, unless otherwise agreed in writing, Westec will not accept any goods returned for credit for reasons other than incorrect supply by Westec, or damage or failure to perform to specifications.
- 10.2 Goods being returned for credit are to be clearly consigned to the address of Westec in Western Australia in accordance with the following procedures:
- (a) Approval must first be obtained from Westec who will provide a Returned Goods Authority number.
 - (b) Goods must be in the original carton and complete with all accessories and in a saleable and undamaged condition and marked with Westec's Returned Goods Authority number.
 - (c) The Westec invoice number and Returned Goods Authority number and date must be stated on the Claim form.
 - (d) The reason for return of the goods (eg: faulty, damaged, wrongly delivered) must be stated on the claim form.
 - (e) Westec shall in each case determine at the discretion of the Sales Manager whether it should bear the relevant cost of freight.
- 10.3 If Westec accepts damaged or faulty goods returned for credit, Westec may, at its option, replace the goods, or refund the price of the goods.
- 10.4 Except for the return of faulty or incorrectly supplied goods, a 20% restocking charge will be applied for all goods returned for credit.
- 10.5 If the Buyer is a consumer, nothing in this clause 10 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

11 LIABILITY

- 11.1 Except as the Conditions specifically state, or as contained in any express warranty provided in relation to the goods or services, the Contract does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 11.2 If the Buyer is a consumer nothing in these Conditions restricts, limits or modifies the Buyer's rights or remedies against Westec for failure of a statutory guarantee under the ACL.
- 11.3 If the Buyer on-supplies the goods to a person who is a consumer:
- (a) if the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) is the absolute limit of Westec's liability to the Buyer;
 - (b) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of Westec's liability to the Buyer, howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Buyer or any third party.
- 11.4 If clause 11.2 or 11.3 does not apply, then other than as stated in these Conditions or any written warranty statement Westec is not liable to the Buyer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Buyer or any third party.
- 11.5 Westec is not otherwise liable for any indirect or consequential losses or expenses suffered by the Buyer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, other than to the extent of any liability imposed by the ACL.
- 11.6 The Buyer acknowledges that:
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Westec in relation to the goods or services or their use or application.
 - (b) it has not made known, either expressly or by implication, to Westec any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Buyer.
- 11.7 Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

12 WAIVER

Westec's failure to enforce any of these Conditions shall not be construed as a waiver of any of Westec's rights.

13 CANCELLATION OR ASSIGNMENT

- 13.1 If Westec is unable to deliver or provide the goods or services, then it may cancel the Buyer's order (even if it has been accepted) by written notice to the Buyer.
- 13.2 No purported cancellation or suspension of an order or any part of it by the Buyer is binding on Westec once the order has been accepted. Westec may accept a cancellation by the Buyer and reserves the right to charge a cancellation fee of 20% of the value of the goods.
- 13.3 Assignment by the Buyer of its rights or obligations will require written authorisation by a duly authorised officer of Westec.

14 SPECIFICATIONS

Any specification, illustration or description accompanying any Quotation is indicative and may not completely represent the goods. Westec reserves the right to incorporate minor modifications thereto without notice and without incurring any liability.

15 CONSTRUCTION

- 15.1 These Conditions and any contract containing them shall be construed in accordance with the laws of the State of Western Australia. The parties agree to the non-exclusive jurisdiction of the courts of Western Australia, the Federal Court of Australia, and of the courts entitled to hear appeals from those Courts.
- 15.2 If any Condition is unenforceable it shall be read down to be enforceable or, if it cannot be read down, the condition shall be severed from the Conditions without affecting the enforceability of the remaining conditions.
- 15.3 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

Signature: (Applicant)

FOR OFFICE USE ONLY

Credit Limit of \$.....Recommended and accepted by.....date...../...../.....Trade Reference Check 1/2/3/4...../...../.....