

# Credit Terms

Last updated September 2019

---

Floveyor Pty Ltd (ABN 14 114 153 927) (**Floveyor**).

**THE PARTIES AGREE:****1. DEFINITIONS**

- 1.1 In this Credit Application unless inconsistent with the context or subject matter:
- "Client"** means the Client/client/applicant identified in the Schedule;
  - "Credit Application"** means the Credit Terms and the Schedule;
  - "Credit Limit"** means the credit limit stated in the Schedule, or such other credit limit approved by Floveyor in writing;
  - "Credit Provider"** has the meaning given in section 6G of the Privacy Act 1988 (Cth);
  - "Credit Terms"** means these Credit Terms;
  - "Floveyor"** means Floveyor Pty Ltd ABN 14 114 153 927;
  - "PPSA"** means the Personal Property Securities Act 2009 (Cth) and its regulations as amended and in force from time to time;
  - "PPS Register"** means the Personal Property Securities Register established under the PPSA;
  - "Schedule"** means the schedule to this document headed "Credit Account Application";
  - "Terms and Conditions"** means the Terms and Conditions of Sale provided by Floveyor to the Client.
- 1.2 In this Credit Application unless inconsistent with the context or subject matter:
- (a) A reference to a person includes any other legal entity;
  - (b) A reference to a legal entity includes a person;
  - (c) Words importing the singular number include the plural number;
  - (d) Words importing the plural number include the singular number;
  - (e) A reference to a party includes the party's heirs, executors, successors and permitted assigns;
  - (f) Clause headings are for reference purposes only and must not be used in interpretation;
  - (g) Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
  - (h) A reference to a statute includes all regulations and subordinate legislation and amendments;
  - (i) References to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail;
  - (j) A reference to a monetary amount is a reference to an Australian currency amount;
  - (k) An obligation of two or more parties binds them jointly and each of them severally;
  - (l) An obligation incurred in favour of two or more parties is enforceable by them severally;
  - (m) Reference to time are to local time in Perth;
  - (n) Where time is to be reckoned from a day or event, the day or event must be excluded, and reference to a month means a calendar month;
  - (o) A reference to a business day means any day on which trading banks are open for business in Perth; and

- (p) If any time period specified in this Credit Application expires on a day which is not a business day, the period shall expire at the end of the next business day.

## **2. TERMS AND CONDITIONS**

- 2.1 Unless inconsistent with the context, capitalised terms in these Credit Terms assume the definition provided for such terms in the Terms and Conditions.

## **3. PAYMENT**

- 3.1 Unless otherwise agreed by the parties:
  - (a) Floveyor will issue a Tax Invoice for the fees for Equipment (as indicated in the Order Acknowledgement) to the Client on dispatch of the Equipment to the Client or upon collection of the Equipment by the Client; and
  - (b) the Client will pay Floveyor the amount stated on the Tax Invoice for the Equipment within 30 days of the date of the Tax Invoice.

## **4. CREDIT LIMIT**

- 4.1 Floveyor is not obliged to provide any further Equipment to the Client once the Credit Limit has been reached.
- 4.2 Floveyor may, at its option, provide further Equipment to the Client, where to do so will result in the Credit Limit being exceeded and the Client agrees that Floveyor is expressly authorised to provide those Equipment and this Credit Application will continue to apply in full to all monies owing.
- 4.3 Floveyor is under no obligation to advise the Client when the Credit Limit has been reached or exceeded.

## **5. RIGHT TO REFUSE FURTHER CREDIT OR VARY THE CREDIT LIMIT**

- 5.1 Floveyor may at any time, for any reason whatsoever:
  - (a) vary the Credit Limit of the Client to increase or decrease the Credit Limit; or
  - (b) refuse further credit to the Client,  
without any liability to the Client whatsoever.

## **6. WARRANTIES**

- 6.1 The Client warrants to Floveyor that as at the date of this Credit Application and for the duration of the Agreement:
  - (a) the information contained in this Credit Application is true and correct and it has disclosed all relevant information to Floveyor to assess the creditworthiness of the Client;
  - (b) it has the legal right and power to enter into this Credit Application;
  - (c) the execution, delivery and performance of this Credit Application by the Client has been duly and validly authorised by all necessary corporate action on its part;
  - (d) this Credit Application is a valid and binding Agreement on the Client, enforceable in accordance with its terms; and
  - (e) it has the capacity to make payment in accordance with this Credit Application.

## **7. PERSONAL INFORMATION**

- 7.1 Floveyor is bound by the Australian Privacy Principles in the Privacy Act 1988 (Cth) in dealing with Personal Information provided by the Client.

## **8. NO ASSIGNMENT**

- 8.1 The Client must not transfer or assign its rights under this Credit Application to anyone else, without the prior written consent of Floveyor, which may be granted or

withheld by Floveyor in its sole, absolute and unfettered discretion. The Client must provide any information Floveyor requires to consider whether to grant its consent.

- 8.2 Any change in 50% or more of the shareholding of the Client will constitute a deemed assignment which requires Floveyor's prior written consent in accordance with clause 8.1.
- 8.3 The Client acknowledges and agrees that Floveyor may transfer, assign or otherwise dispose of its interest in this Credit Application upon giving written notice to the Client.

## 9. PERSONAL PROPERTY SECURITIES

9.1 The Client acknowledges and agrees that notwithstanding any other provision of this Credit Application or the Agreement:

- (a) the PPSA applies to any supply of Equipment by Floveyor to the Client;
- (b) the Equipment are used by the Client only for commercial purposes and are not used by the Client for personal, domestic or household purposes;
- (c) the Equipment the Client is receiving from Floveyor is not to be used as inventory;
- (d) by agreeing to and/or accepting or adopting this Credit Application the Client grants to Floveyor:
  - i) a purchase money security interest in the Equipment (on the basis that the Equipment are sold on retention of title terms); and
  - ii) a security interest over all present and after-acquired property of the Client ("Client's Property"),

to secure Floveyor's interest in the Equipment and all monies owing or payable by the Client under this Credit Application and any other moneys payable by the Client to Floveyor from time to time on any account whatsoever. The Client agrees that Floveyor may apply any payments received from the Client as Floveyor sees fit, and notwithstanding any prior application, Floveyor may apply amounts received at Floveyor's discretion.

- (e) if a purchase money security interest is not able to be claimed by Floveyor in respect of the Equipment for any reason, Floveyor will have a security interest in the Equipment;
- (f) the Client agrees that Floveyor's security interest in Equipment and the Client's property covered by this Credit Application may be registered on the PPS Register and the Client agrees to do all things necessary and required by Floveyor to effect registration of Floveyor's security interest on the PPS Register in order to give Floveyor's security interest the best priority possible and anything else Floveyor requests the Client to do in connection with the PPSA without delay;
- (g) the Client warrants that all information provided by the Client to Floveyor, including but not limited to the Client's details, including the entity, name, ACN or ABN and address set out in the Schedule is correct in all respects and must not change its name, address or other details set out in the Schedule without providing Floveyor with at least 20 business days prior written notice;
- (h) the Client agrees that it will not grant a security interest or other encumbrance in the Equipment whether under the PPSA or any other law to a third party unless it has obtained the prior written consent of Floveyor, which Floveyor may refuse to provide or grant in its absolute and unfettered discretion. Floveyor may request and the Client must provide any information that Floveyor requires, acting reasonably, in order to fully consider whether to grant its consent;
- (i) Floveyor's security interest in the Equipment and the Client's Property extends to any proceeds in all present and after acquired property including

without limitation book debts and accounts receivable arising from the selling or hiring of the Equipment and/or the Client's Property by the Client;

- (j) it has received value as at the date of first delivery of the Equipment and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to Floveyor under this Credit Application;
- (k) the Equipment are located in Australia at the date of the supply of the Equipment and the Client warrants that the Equipment will remain located in Australia for the duration of the Agreement;
- (l) neither Floveyor or the Client will disclose any information to any interested person unless required to do so under the PPSA;
- (m) the Client waives its right under the PPSA:
  - i) to receive a copy of any verification statement, financing change statement, or any notice that Floveyor intends to sell the Equipment and/or the Client's Property or to retain the Equipment and/or the Client's Property on enforcement of the security interest granted to Floveyor under this Agreement or any other notice under the PPSA unless the notice is required to be given by the PPSA and cannot be contracted out of;
  - ii) to object to a proposal by Floveyor to dispose of or purchase or retain the Equipment and/or the Client's Property in satisfaction of any obligation owed by the Client to Floveyor;
  - iii) to receive a statement of account following the sale of the Equipment and/or the Client's Property; or
  - iv) to redeem the Equipment and/or the Client's Property;
- (n) it will not give (or allow any person to give) to Floveyor a written demand requiring Floveyor to register a financing change statement under the PPSA or enter into (or allow any other person to enter into) the PPS Register a financing change statement under the PPSA; and
- (o) a default under any other security agreement under which it has granted a security interest to any other party in respect of the Equipment is deemed to be a breach of this Credit Application.

9.2 The parties agree that Floveyor is not required to respond to a request made under Section 275 of the PPSA and that neither party will disclose information of the kind set out in Section 275(1) of the PPSA.

### 9.3 Further Supplies

The parties acknowledge and agree that any supply of Equipment of any kind by Floveyor to the Client which is not specifically set out in the Schedule but for which Floveyor has or later issues a Tax Invoice or any other documentation to the Client is deemed to form part of the Agreement and Credit Application and is subject to the terms of the Agreement and Credit Application.

### 9.4 Enforcement

- (a) The enforcement provisions contained in this Credit Application are in addition to any rights available to Floveyor under the PPSA and apply to the maximum extent permitted by law.
- (b) Without limitation to clause 9.4(a) and any other provision of this Credit Application section 125, 129(2), 142 and 143 of the PPSA are contracted out of.

### 9.5 Power of Attorney

The Client irrevocably nominates constitutes and appoints Floveyor and/or its officers and/or its nominees severally to be the true and lawful attorneys of the Client on behalf of and in the name of the Client to do all things necessary and sign all such documents as may be necessary to deal with the Equipment in accordance with the

enforcement provisions of this Credit Application, the PPSA or otherwise, if the Client is in default of this Credit Application or the Agreement.

9.6 Interpretation

A term used in this clause 9 is taken to have the meaning defined under the PPSA.

**10. TERMINATION**

10.1 Floveyor may in its absolute discretion at any time, by written notice to the Client, immediately terminate this Credit Application upon giving written notice to the Client:

- (a) if the Client breaches the Agreement or this Credit Application;
- (b) if the Client becomes insolvent;
- (c) if the Client commits an act of bankruptcy or is made bankrupt;
- (d) if the Client makes a composition or other arrangement with creditors;
- (e) if the Client assigns assets for the benefit of creditors generally;
- (f) being a company, if the Client enters into a deed of company arrangement or has a controller, administrator, receiver or receiver and manager appointed;
- (g) being a company, if the Client goes into liquidation; or
- (h) being a partnership, if the Client has a receiver or a receiver and manager appointed; or
- (i) if Floveyor, in its absolute discretion, suspects that one of the above events may occur in the future in respect of the Client.

10.2 Upon termination of this Credit Application, all amounts payable by the Client to Floveyor in respect of any Purchase Order shall become immediately due and payable.

**11. GENERAL**

11.1 Floveyor may vary the terms of this Credit Application at any time and will notify the Client of the variation by providing 30 days written notice to the Client at the Client's Address for Service. The variation will not apply retrospectively to any existing Purchase Orders already placed.

11.2 Any notice required to be given in accordance with this Credit Application is deemed to be sufficiently given if provided to the Client's Address for Service or Floveyor's Address for Service (as the case may be) and, if it is:

- (a) delivered by hand, upon which the time of giving notice will be the time of delivery;
- (b) sent by pre-paid post, upon which the time of giving notice will be two (2) business days after the date of postage;
- (c) sent by email, upon which the time of giving notice will be the time shown on the email generated by the sending machine identifying proof of transmission to the designated email address.

11.3 The following will constitute proof of receipt:

- (a) if sent by registered post, proof of posting by registered post;
- (b) if sent by email, proof of sending.

11.4 This Credit Application is governed by the laws of Western Australia and the Commonwealth of Australia which are in force in Western Australia.

11.5 The parties submit to the jurisdiction of the Courts of Western Australia, relevant Federal Courts and Courts competent to hear appeals from them.

11.6 Subject to the terms of the Agreement, this Credit Application contains the entire understanding and agreement between the parties as to the subject matter of this Credit Application.

- 11.7 No oral explanation or information provided by a party to another affects the meaning or interpretation of this Credit Application or constitutes any collateral agreement, warranty or understanding.
- 11.8 No waiver or amendment of a provision of this Credit Application is binding unless made in writing and signed by both parties.
- 11.9 The parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under this Credit Application.
- 11.10 If a provision of this Credit Application is void or unenforceable it must be severed from this Credit Application and the provisions that are not void or unenforceable are unaffected by the severance.
- 11.11 The rights and remedies of a party to this Credit Application are in addition to the rights or remedies conferred on the party at law or in equity.
- 11.12 This Credit Application may be executed in any number of counterparts and when executed communication of the fact of execution to the other parties may be made by sending evidence of execution by electronic communications including email.
- 11.13 Where this Credit Application is executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.
- 11.14 The contra proferentem rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 11.15 Time is in all cases and in every respect of the essence of this Credit Application.

## **12. GUARANTEE AND INDEMNITY**

- 12.1 In consideration of Floveyor, at the request of the Guarantor, entering into this Credit Application with the Client the Guarantor covenants and agrees with Floveyor that:
  - (a) Notwithstanding that as between the Guarantor and the Client the Guarantor may be a surety only, as between the Guarantor and Floveyor the Guarantor is a principal debtor.
  - (b) The Guarantor will be liable jointly and severally with the Client (and with each other Guarantor if there is more than one Guarantor) for the due and punctual payment of all moneys to be paid by the Client under this Credit Application and the Agreement and for the due performance and observance by the Client of the Credit Terms and the Agreement and such liability will not be reduced or affected by the death insolvency liquidation or dissolution of the Client or the Guarantor or any of them.
  - (c) The Guarantor indemnifies Floveyor from and against all Loss, damage costs (including all costs payable by Floveyor to a solicitor on a solicitor and own client basis) and expenses which Floveyor may suffer or incur in consequence of any breach or non-observance of the Credit Terms or the Agreement by the Client and the Guarantor agrees that the Guarantor will remain liable to Floveyor under this indemnity notwithstanding as a consequence of any breach or non-observance Floveyor has exercised any of its rights under this Credit Application or the Agreement.
  - (d) On any default or failure by the Client to observe and perform any of the Credit Terms or the terms of the Agreement the Guarantor will immediately (without the need for any demand to be made) pay all moneys and make good to Floveyor all damages costs (including all costs payable by Floveyor to a solicitor on a solicitor and own client basis) and expenses sustained or incurred by Floveyor by reason of or in consequence of any breach or non-observance by the Client and the Guarantor will also pay to Floveyor interest

at the rate of 15% per annum accrued daily from the due date for payment until the date of payment.

- (e) The liability of the Guarantor under this guarantee and indemnity will not be affected by the granting of time or any other indulgence to the Client or by any compromise abandonment waiver variation or by any other thing which under the law relating to sureties would or might but for this provision release the Guarantor in whole or in part from its obligations under this guarantee and indemnity.
- (f) To the fullest extent permitted by law the Guarantor hereby waives such of its rights as surety or indemnifier (legal equitable statutory or otherwise) as may at any time be inconsistent with any of the provisions of this guarantee and indemnity.
- (g) The Guarantor hereby:
  - i) charges all of its legal and beneficial interest in all of its property, including but not limited to its real property and personal property (as that term is defined in the PPSA), including property acquired after the date of this Agreement, in favour of Floveyor, whether or not demand has been made on the Client by Floveyor;
  - ii) agrees to execute all documents and do all things necessary, upon request by Floveyor, to register Floveyor's interest in the Guarantor's property as granted by this clause 12, whether by a mortgage over the Guarantor's real property or by registration of a security interest on the PPS Register or otherwise;
  - iii) irrevocably appoints Floveyor and/or its officers and/or its nominees severally to be the true and lawful attorneys of the Guarantor on behalf of and in the name of the Guarantor to do all things necessary to register Floveyor's security over the Guarantor's property granted by this clause 12.
- (h) If the charges created by sub-clause 12.1(g)i) are or become void or unenforceable, sub-clause 12.1(g)i) may be severed from this Agreement and the Agreement shall continue in full force and effect and the severance shall not effect on its validity and the Guarantor will not be released from its obligations in whole or in part and Floveyor's rights and remedies against the Guarantor shall not be effected by such severance.
- (i) The parties agree that clauses 9.1(m), 9.1(n) and 9.2 apply to the security granted by the Guarantor to Floveyor under this clause 12 however any reference to the Client is deemed to be a reference to the Guarantor and the Client's Property is deemed to be a reference to the Guarantor's property secured under this clause 12.
- (j) The enforceability of this guarantee and indemnity against the Guarantor is not conditional, contingent or dependent in any way upon the validity or enforceability of this guarantee and indemnity against any other person or execution of this contract or this guarantee and indemnity by any other person.
- (k) The Guarantor does not execute this guarantee and indemnity as a result of or by reason of any promise representation statement information or inducement of any nature or kind given or offered to the Guarantor by Floveyor or on Floveyor's behalf whether in answer to any enquiry by or on behalf of the Guarantor or not and Floveyor was not prior to the execution of this guarantee and indemnity by the Guarantor, and is not subsequently, under any duty to disclose to the Guarantor or to do or execute any act matter or thing relating to the affairs of the Client or its transactions with Floveyor.



- (l) In the event of the invalidity of any part or provision of this guarantee and indemnity that invalidity will not affect the validity or the enforceability of any other part or provision of this guarantee and indemnity. If a provision of this guarantee and indemnity is void or unenforceable it must be severed from the guarantee and indemnity and the provisions that are not void or unenforceable are unaffected by the severance.
- (m) All notices or demands to be given to, made or served upon the Guarantor will be deemed to be duly given to, made or served on the Guarantor if:
  - i) it is signed by any officer, authorised employee, agent or solicitor of Floveyor; and
  - ii) it is delivered:
    - A. to any Guarantor personally; or
    - B. left at the last known place of business or abode of any Guarantor; or
    - C. if an address is noted in the Schedule, left at or sent to the Guarantor through the post in an ordinary prepaid envelope addressed to that Guarantor at the address. A notice or demand which is posted will be deemed to have been served on the Guarantor on the second business day following the date of posting.
- (n) If there is more than one Guarantor, any notice or demand given to, made or served upon a Guarantor is deemed to be served on each of them.
- (o) The Guarantor agrees that its liability to Floveyor is unlimited notwithstanding that Floveyor supplies the Client with credit in excess of the Credit Limit.
- (p) The Guarantor acknowledges and agrees that the Guarantor may receive Personal Information of another person in the course of business with Floveyor and agrees that any such Personal Information must only be used, disclosed or otherwise dealt with in accordance with the Australian Privacy Principles.