

Heiniger Australia Pty Ltd  
 5A Tayet Link  
 BIBRA LAKE WA 6163  
 Phone (08) 9434 0000 Fax (08) 9434 0011  
 Email: [ar@heiniger.com.au](mailto:ar@heiniger.com.au)



**APPLICATION FOR 30 DAY CREDIT ACCOUNT BY A COMPANY AND / OR PROPRIETORS OF A BUSINESS NAME**

CREDIT APPLICANTS DETAILS			
COMPANY/BUSINESS NAME			
A.B.N. NUMBER			
TRADING AS			
REGISTERED OFFICE			
INVOICE ADDRESS			
POSTAL ADDRESS			
DELIVERY ADDRESS			
EMAIL ADDRESS			
TELEPHONE NUMBER		FAX NUMBER	
OFFICE CONTACT PERSON		SALES TAX NUMBER	
DATE COMMENCED TRADING		YEARS OF OPERATION	
TYPE OF BUSINESS			
PROPRIETORS/DIRECTORS	NAME	ADDRESS	
	1.		
	2.		
	3.		
	4.		
	5.		
CREDIT LIMIT REQUESTED			

**TRADE REFERENCES**

FIRM NAME & CONTACT	ADDRESS	PHONE / EMAIL	HEINIGER USE ONLY	
			Comments	Years Trading
			Comments	Years Trading
			Comments	Years Trading
			Comments	Years Trading

**AUTHORITY TO REQUEST CREDIT**

Where any other person than a proprietor/director of a business signs the application for credit, this box must be signed by the applicant(s) confirming that he/she has the authority to commit the firm in any credit application. Proprietors and Directors shall be deemed to have full authority where the applicant for credit is a proprietary company.

I hereby confirm that I am an authorised Officer / employee of the applicant and have the requisite authority to request that credit facilities be provided to the firm by Heiniger Australia Pty Ltd.

Signature.....Position.....

**CONFIRMATION OF RECEIPT AND ACCEPTANCE OF HEINIGER AUSTRALIA PTY LTD TERMS AND CONDITIONS OF SALE**

I hereby confirm that as part of this application for credit, I have received and read the Heiniger Australia Pty Ltd Terms and Conditions of Sale and agree that any credit facility provided by Heiniger Australia Pty Ltd to my firm shall be on the basis of those Terms and Conditions of Sale only.

Signature.....Position.....

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## GUARANTEE

(TO BE EXECUTED BY EACH DIRECTOR OF AN APPLICANT COMPANY OR EVERY PROPRIETOR OF A BUSINESS NAME)

"We, the understated Guarantors request Heiniger Australia Pty Ltd to grant this application for credit and in consideration of Heiniger Australia Pty Ltd doing so, We jointly and severally guarantee the payment by the Applicants to Heiniger Australia Pty Ltd, of all monies which are now, or may from time to time become owing by the Applicants to Heiniger Australia Pty Ltd together with all costs, charges and expenses (if any) incurred by Heiniger Australia Pty Ltd in collecting such monies AND this guarantee shall be a continuing Guarantee notwithstanding any settlement of account or otherwise AND shall not be prejudiced or affected by Heiniger Australia Pty Ltd granting any time or indulgence or making any compromise with the Applicants in terms of the amount of its liability otherwise or varying the terms of trade between Heiniger Australia Pty Ltd and the Applicants."

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DATED THIS                      DAY OF                      20

## TERMS & CONDITIONS OF SALE

- 1) **DEFINITIONS:** In these Terms and Conditions of Sale:
  - “Heiniger” means Heiniger Australia Pty Ltd ACN 009 342 278 and any of its related bodies corporate as that term is defined in the *Corporation Act 2001*;
  - “Application” means the Heiniger application for credit form submitted by the Customer to Heiniger and accepted by Heiniger;
  - “Contract” has the meaning provided in clause 3 of these Terms and Conditions
  - “Customer” means any legal entities, including; public companies, private companies, partnerships, trusts individual sole traders and government bodies, who accept goods from Heiniger;
  - “Goods” means any goods and services supplied by Heiniger to the Customer;
  - “Order” has the meaning provided in clause 6 of these Terms and Conditions;
  - “Payment Date” has the meaning provided in clause 15 of these Terms and Conditions;
  - “PPSA” means the *Personal Property Securities Act* (2009) (Cth) and any associated regulations or subsidiary legislation;
  - “PPSR” means the Personal Property Securities Register established in accordance with s147 of the PPSA; and
  - “Terms and Conditions” means these terms and conditions of sale as may be amended from time to time in accordance with clause 33.
- 2) **INTERPRETATION:** These Terms and Conditions:
  - (a) Replace all prior Terms and Conditions issued by Heiniger to the Customer in respect of goods provided to the Customer from the date the Customer is given notice of these Terms and Conditions in accordance with clause 33 or accepts them in accordance with clause 4. The Customer prior to the commencement of the Terms and Conditions shall remain subject to the Terms and Conditions current at the time the goods were provided;
  - (b) Unless otherwise provided on these Terms and Conditions, take precedence over any terms sets out in the Customer’s purchase order, regardless of whether Heiniger has accepted the purchase order, to the extent of any inconsistency;
  - (c) The expression “Person” includes an individual, a body politic, a corporation, an association (incorporated or unincorporated), a statutory authority or persons identified as Heiniger;
  - (d) References to legislation or legislative provisions will include any legislative or other modification or amendment thereto or consideration or replacement thereof.
  - (e) The terms “writing” and “written notice” include email.
- 3) **THE CONTRACT:** These Terms and Conditions together with:
  - (a) Any completed Application;
  - (b) Any Guarantee provided in favour of Heiniger for the provision of goods;
  - (c) Any Order issued by the Customer and accepted by Heiniger; and
  - (d) Any invoice issued by Heiniger to the Customer for the provision of goods
 together make up the contract between Heiniger and the Customer for the supply of goods by Heiniger to the Customer (“Contract”).
- 4) **BINDING TERMS AND CONDITIONS:** The only contractual terms which are binding upon Heiniger are those set forth herein or otherwise agreed to in writing by Heiniger and those, if any, which are imposed by law and which cannot be excluded. Where a term is imposed by law, the operation of such terms will be restricted and modified in operation to the maximum extent possible so as to comply with these Terms and Conditions. These Terms and Conditions and any agreement including them will be governed by the law of Western Australia and Heiniger and the Customer submits to the jurisdiction of the Courts of Western Australia. Any terms or conditions put forward by a Customer (whether contained in an Order or otherwise) will not be binding on Heiniger so far as they purport to amend, annul or vary any of these Terms and Conditions, unless specifically agreed by Heiniger in writing. All conversations, representations and statements not embodied in these Terms and Conditions or agreed in writing by Heiniger shall not be binding or form part of any Contract between the Customer and Heiniger. By accepting goods from Heiniger the Customer agrees to be bound by these Terms and Conditions.
- 5) **PRIVACY AUTHORITY:** Where goods are supplied to the Customer on credit the Customer irrevocably authorises Heiniger, its employees and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Customer from time to time including (but without limiting the generality of the forgoing) the making of enquiries of persons, company or credit reporting agencies (**Information Sources**) and the Customer hereby authorises the Information Sources to disclose to Heiniger such information concerning the Customer which is within their possession and which is requested by Heiniger.
- 6) **ORDERS:** The Customer may seek to order goods from Heiniger from time to time by providing a purchase order to Heiniger in a form and containing such information as Heiniger may require (**Order**). Heiniger reserves the right to accept or reject any Order submitted by the Customer at its absolute discretion. No binding contract between the Customer and Heiniger will come into existence until Heiniger accepts the Order. A minimum handling fee will apply to orders below our minimum limit as detailed on the price list. Any amounts within this clause may change from time to time and the latest price list is deemed to show the correct amounts.
- 7) **STATUS OF PRICE LIST:** Any price list and/or quote given or made by or on behalf of Heiniger will not be construed or operate as an offer or obligation to sell but will be an invitation to treat only. The prices shown in the price list and/or quote are subject to alteration by Heiniger from time to time at its absolute discretion and notice of 30 days will be provided of such events.
- 8) **DISCOUNTS:** In circumstances where discounts are offered by Heiniger to the Customer, discounts shall only be valid if the discounted invoice is paid in full by the Payment Date. This may only be varied by written amendment, signed by an authorised Heiniger representative.
- 9) **PARTIAL SUPPLY:** If Heiniger is unable to supply the Customer’s total Order, however is able to deliver part of the Order, these Terms and Conditions will apply to all goods supplied.
- 10) **BACK ORDERS:** Heiniger will advise the Customer if an Order for goods is accepted by Heiniger but cannot be supplied at that time. Back Orders of goods will be supplied to the Customer at the price and on the Terms and Conditions applying at the time the original Order is accepted by Heiniger. Back Orders will be delivered freight free with the exception of agency ranges.

- 11) **DELIVERY AND DELIVERY CHARGES:** Any time or date named and accepted by Heiniger for delivery, dispatch, shipment or arrival of the goods is an estimate only and does not constitute a condition of the Contract. All delivery charges, including but not limited to overnight transport, air freight or other special delivery including ancillary charges or fees attached to priority delivery services will be for the account of the Customer, with the exception of back orders, and payable on the Payment Date or as otherwise notified by Heiniger to the Customer in writing.
- 12) **ACCEPTANCE:** The Customer must inspect the goods immediately upon delivery and must, within 7 days from the date of despatch of the goods to the Customer or its agent, give written notice to Heiniger of any matter or thing by reason of which the Customer alleges that the goods are not in accordance with the Contract. If the Customer fails to give such notice then the goods will be deemed to have been accepted by the Customer and the Customer must pay for the goods in accordance with the provisions hereof.
- 13) **RETURNS:** Returns may only be made if approved by Heiniger in writing prior to return. Authorised returns must be freight prepaid by the Customer. Heiniger will credit returned goods only if they are, in Heiniger's opinion acting reasonably, in a saleable condition upon return. Heiniger reserves the right to charge a handling charge equivalent to 10% of the price of goods returned payable on the Payment Date or as otherwise notified by Heiniger to the Customer in writing. Acceptance of the returned goods by Heiniger shall not constitute any acceptance of any claim.
- 14) **RISK AND INSURANCE:** Goods supplied by Heiniger to the Customer will be at the Customer's risk immediately on receipt by the Customer or its agent (whichever is the sooner) unless otherwise agreed in writing by an authorised representative of Heiniger (**Possession Date**). The Customer indemnifies Heiniger for any refusal of delivery or for any damage incurred to the goods during the course of delivery or collection. The Customer should insure the goods for their full insurable value from the Possession Date at their own cost against such risks as are appropriate or reimburse Heiniger for such costs incurred on their behalf.
- 15) **PAYMENT TERMS:** All invoices must be paid by the 25<sup>th</sup> of the month following purchase or other date as agreed in writing by an authorised officer of Heiniger (**Payment Date**). Payment for the goods sold by Heiniger to the Customer must be tendered in the manner set out in the invoice on or before the Payment Date, or on or before such other date as agreed in writing (including email) between Heiniger and the Customer. The Customer must ensure that all invoices are paid to Heiniger in full without demand, deduction, abatement, counter-claim or set-off. Where a Customer makes a payment from a source outside Australia, the Customer is responsible for (without limitation) all bank and government charges, taxes, fees, withholdings and currency exchange transaction and other costs and must ensure that the full amount of the invoice is received by Heiniger. Where the payment is received by Heiniger by electronic transfer or cheque, the entry in Heiniger's bank statement will be prima facie evidence of the amount having been received.
- 16) **TIMING OF PAYMENT:** Payment will be deemed to have been made:-  
(a) if cash is tendered, on the date it is tendered; and  
(b) if the payment is by way of cheque or electronic funds transfer on the date on which Heiniger receives cleared funds.
- 17) **SANCTIONS FOR LATE PAYMENT:**  
(a) If the Customer defaults in making payment to Heiniger in accordance with these Terms and Conditions Heiniger may at its absolute discretion:-  
i) suspend or cancel any credit account or facility held by the Customer and require that all goods supplied, including any Orders accepted by Heiniger prior to the default, must be paid for on delivery;  
ii) charge the Customer interest on the amount due from time to time at the rate of 2% per month calculated monthly from the date on which such default arose until such date all amounts and interest are paid in full;  
iii) require the Customer to reimburse Heiniger for all costs, including legal costs, incurred by Heiniger as a consequence of Heiniger instructing its solicitor or other agent to provide advice to it in connection with each default and/or to institute such recovery or enforcement processes as will be, at the absolute discretion of the Heiniger, appropriate in the circumstances.  
(b) Where any invoice has not been paid within the time specified and has fallen into arrears then the totality of all invoices outstanding and any credit account or facility whether or not in arrears shall become immediately due and payable.
- 18) **APPLICATION OF PAYMENTS:**  
(a) Heiniger may apply or re-apply at any time any payments tendered by the Customer to Heiniger in connection with the Contract to satisfy obligations of the Customer contemplated or secured by the Contract in any way Heiniger determines in Heiniger's absolute discretion even if Heiniger has applied payment towards an invoice and sent a statement of account to the Customer evidencing this.  
(b) if no determination is made by Heiniger in accordance with sub-clause (a) by Heiniger then payments will be applied as follows:-  
i) firstly to reimburse any collection costs incurred by Heiniger in accordance with clause 17);  
ii) secondly in payment of any interest charged to the Customer in accordance with clause 17); and  
iii) thirdly in satisfaction or part satisfaction of the oldest portion of any outstanding invoice(s).  
(c) Any payment made to Heiniger and later awarded by any statutory provision or discounted, refunded or reduced by any subsequent legal proceedings shall not be deemed to discharge any liability to pay such amount.
- 19) **USE OF THE GOODS:**  
The Customer must not use the goods other than for their intended use and in accordance with the manufacturer's instructions and without limiting any other provision of the Contract, Heiniger shall not be liable for any damage, loss or claim suffered by the Customer as a result of the Customer failing to comply with this clause.
- 20) **RETENTION OF TITLE:**  
(a) All the goods sold by Heiniger pursuant to these Terms and Conditions remain the property of Heiniger until all debts owing by the Customer to Heiniger have been paid in full, notwithstanding that payments may be made for the purpose of the settlement of specifically designated claims.  
(b) If payment in full is not made on the Payment Date, Heiniger shall have the right, with or without prior notice, to re-take and resume possession of any goods which remain Heiniger's property and by its servants and agents, enter upon the Customer's premises, or any other place where the goods may be, for that purpose if:-  
(i) there is any breach of any Contract, any term of these Terms and Conditions or any other agreement between Heiniger and the Customer; or

- (ii) an application is commenced to wind up the Customer or the Customer is placed under official management or a receiver, or a receiver and manager, or an administrator is appointed in respect of the Customer, its undertaking or property or any part thereof, or an encumbrancer, by itself or by an agent, has taken possession of the Customer's undertaking or property or any part thereof.
- (c) Without limiting any other provision of these Terms and Conditions the Customer shall indemnify and keep indemnified Heiniger in respect of any claims, actions or costs that may arise against Heiniger in relation to the removal, repossession and sale of the collateral including any claims bought by third parties.
- (d) The Customer may sell the goods in the ordinary course of business notwithstanding they have not paid Heiniger the full amount of the invoice relating to the goods (**Unpaid Goods**). The Customer must keep separate records in relation to the proceeds of sale of any Unpaid Goods, bank the proceeds of any such sale into a separate account and immediately remit such funds to the credit of Heiniger.
- (e) The Customer may mix, combine, attach, affix or secure the goods to another item such as a vehicle on the following conditions:
  - (i) if it mixes or comingles the goods with other items so that the goods are no longer separately identifiable, or there has been an accession of the goods within the meaning of the PPSA, Heiniger have rights in and to the other item.
  - (ii) The Customer must record the value of goods combined including sufficient identification details of the item to which the goods are combined including serial numbers for serial numbered goods within the meaning of the PPSA or affixed so as to allow registration of Heiniger's interest in the goods on the PPSR pursuant to clause 23)
  - (iii) and upon sale of any relevant goods immediately remit that amount from the proceeds of sale to Heiniger.

## 21) INTELLECTUAL PROPERTY:

"**Intellectual Property**" means the specification and design of goods developed by Heiniger or any original or copy designs, data sheets, manuals or specifications supplied by Heiniger including but not limited to, copyright, design right, trademarks or other intellectual property, patents, database rights, rights in trademarks, designs, circuit layout, know how, trade secrets, formulae and confidential information (whether registered or unregistered), applications for registration and rights to apply for registration, of any of the foregoing rights and all other intellectual property rights or equivalent or similar forms of protection existing anywhere in the world including but not limited to those defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

- (a) All Intellectual Property attaching to, relating to the goods and associated items of any goods purchased or received by the Customer from Heiniger or arising from the provision of the goods by Heiniger pursuant to these Terms and Condition is the property of Heiniger which is held by the Customer on behalf of Heiniger only in accordance with these Terms and Conditions and the Customer agrees to do anything reasonably required by Heiniger to insure that this Intellectual Property vests in Heiniger.
- (b) In dealing with Heiniger's Intellectual Property the Customer must not:-
  - (i) disclose or furnish the Intellectual Property to any other person, firm or government and all reasonable precautions must be taken to protect such confidentiality; or
  - (ii) copy, distribute, transmit, display, perform, reproduce, publish, license, modify, rewrite, allow or permit derivative works be created from, transfer or sell the Intellectual Property;
  - (iii) allow copies of the Intellectual Property to be printed, published, made, reproduced or otherwise communicated without acknowledging Heiniger's Intellectual Property; or
  - (iv) directly or indirectly do anything that would or might invalidate or put in dispute Heiniger's title to the Intellectual Property.
- (c) If any person makes a claim alleging that the goods infringe any intellectual property rights of any person, the Customer must:
  - (i) promptly notify Heiniger;
  - (ii) not make any admission or take any action in relation to a claim without Heiniger's written consent;
  - (iii) permit Heiniger control over any and all investigations, negotiations, settlements and dispute resolution proceedings relating to the claim; and
  - (iv) co-operate assist and act at all times in accordance with the directions of Heiniger in relation to the claim.
- (d) The Customer must ensure that Heiniger's Intellectual Property is not subjected to any treatment which is prejudicial to the reputation and does not infringe the moral rights of the author.
- (e) Heiniger's Intellectual Property rights and the obligations of the Customer set out above shall survive the termination or completion of any Contract.

## 22) CONFIDENTIALITY:

- (a) The Customer acknowledges that all pricing information and any other commercially sensitive or confidential information relating to the Intellectual Property, the goods, the business of Heiniger and the Contract is strictly confidential (**Confidential Information**).
- (b) Except as stated in the Contract the Customer, pursuant to these Terms and Conditions, is under an obligation to not and must not permit any of their officers, employees, agents, contractors or related bodies corporate to disclose any Confidential Information to any person, without the prior written consent of Heiniger other than to their professional advisers or as required by law.
- (c) The Customer acknowledges and agrees, for the purpose of section 275(6)(a) of the PPSA, that neither party may disclose any information or documents supplied by another party, including information of the kind referred to in section 275(1) of the PPSA, except in the circumstances in which disclosure is permitted pursuant to clause 22).
- (d) This clause shall continue despite the termination or completion of any Contract or these Terms and Conditions.

## 23) SECURITY

- (a) Terms used in this clause 23 have the same meaning as defined in the PPSA unless otherwise defined.
- (b) The Customer acknowledges that the Contract and these Terms and Conditions constitute a security agreement for the purposes of section 20 of the PPSA and that the goods are collateral being described in any Order or other part of the Contract.
- (c) The Customer acknowledges and agrees that Heiniger's interests in the goods are interests held as security for the payment of a monetary obligation or the performance of any other obligation for the purposes of the PPSA (**Security Interest**) and that Heiniger is the holder of a Purchase Money Security Interest (**PMSI**) by virtue of these Terms and Conditions and/or the PPSA.

- (d) The Customer consents to Heiniger effecting a registration on the PPSR (in any manner the Heiniger considers appropriate) in relation to any interest arising under or in connection with these Terms and Conditions, any Contract or otherwise arising under the PPSA and the Customer agrees to provide all assistance reasonably required by Heiniger to facilitate such registrations.
- (e) The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any registration on the PPSR.
- (f) To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by Heiniger of any interest provided for by these Terms and Condition or any Contract, the parties agree that the following provisions of the PPSA do not apply:-
  - (i) to the extent that section 115(1) of the PPSA allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142, and 143; and
  - (ii) in addition, to the extent that section 115(7) of the PPSA allows them to be excluded: sections 127, 129(2) and (3), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.
- (g) If section 115(1) of the PPSA does not allow section 125 of the PPSA to be excluded, the Customer agrees that at any time after any interest provided for by these Terms and Condition or any Contract has become enforceable, Heiniger may delay disposing of, or taking action to retain, the whole or part of the collateral to the extent permitted by law.
- (h) Where Heiniger has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
- (i) The Customer hereby consents to and appoints Heiniger to be an interested person and the Customer's authorised representative for the purposes of section 275(9) PPSA.
- (j) Subject to this clause 23 but regardless of any other terms in these Terms and Condition or any Contract, notices or documents required or permitted to be given to either party for the purposes of the PPSA must be given in accordance with the PPSA.
- (k) The Customer agrees to notify Heiniger in writing of any change to the Customer's details as provided in the Application, within 5 days from the date of such change.
- (l) The Customer agrees not to register or permit to be registered, a financing statement or a financing change statement in relation to the goods in favour of a third party without the prior consent of Heiniger.

**24) TECHNICAL INVESTIGATIONS:**

- (a) It is acknowledged and agreed by the Customer that, should a problem arise during or after application or installation of goods which requires technical investigation by Heiniger, the Customer must provide to Heiniger the invoice number and/or the Customer's purchase order number relating to supply of the goods together with a description of the goods prior to any investigation being instigated.
- (b) It is also acknowledged and agreed by the Customer that the onus is on the Customer to ensure that all goods are correctly applied, installed and maintained and that such applications are to be in accordance with Heiniger's technical data sheets, manuals and recommendations.

**25) INDEMNITY**

The Customer hereby indemnifies Heiniger against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fee, costs and disbursements on a full indemnity basis) incurred by Heiniger as a result of a breach by the Customer of a term of the Contract or if Heiniger is unable to repossess the goods or to trace the proceeds from any dealings with the goods permitted by the Contract, for any reason.

**26) EXCLUSION OF IMPLIED CONDITIONS AND WARRANTIES:**

- (a) Save as detailed below and in any warranty which may be specifically provided by Heiniger to the Customer in writing, the only conditions and warranties which are binding on Heiniger in respect of the state, quality or condition of the goods supplied by it to the Customer and/or in respect of advice, recommendation(s), information or services supplied by the employees, servants or agents to the Customer regarding the goods, their use and application are those imposed and required to be binding by statute and, to the extent permitted by law, all other conditions and warranties whether express or implied by law in respect of the state, quality or condition of the goods sold which may apart from this clause be binding on Heiniger are hereby expressly excluded and negated.
- (b) Heiniger's liability arising from the breach of any conditions or warranties (if any) will, at Heiniger's option, be limited to and completely discharged in the case of the goods by either the supply by Heiniger of equivalent goods or the replacement or repair by Heiniger of the goods supplied to the Customer and in the case of advice, recommendation(s), information or services by the supplying of advice, recommendation(s), information or services again.
- (c) Except to the extent provided in this clause (21) and subject to any applicable law, Heiniger will have no liability to any person for any loss or damage consequential or otherwise howsoever suffered or incurred by any such person in relation to the goods and/or advice, recommendation(s), information or services and without limiting the generality thereof in particular any loss or damage consequential or otherwise howsoever suffered or incurred by any such person caused by or resulting directly or indirectly from any failure, defect or deficiency of whatsoever nature or kind of or in the goods and/or advice, recommendation(s), information or services.

**27) TERMINATION:**

- (a) Without limiting any other provision of these Terms and Conditions Heiniger reserves the right to immediately terminate the Contract or suspend any supply of goods without incurring any liability to the Customer in any of the following circumstances:
  - (i) The Customer is overdue with any payment or otherwise in breach of these Terms and Conditions;
  - (ii) The Customer enters into bankruptcy, liquidation or a composition with its creditors, has a Receiver Manager or Administrator appoint over all or any part of its assets or becomes insolvent; or
  - (iii) Contractual performance is delayed or prevented due to any cause or circumstances.
- (b) Cancellation by Heiniger under this clause shall be without prejudice to Heiniger's right to recover payment from the Customer for goods previously supplied.

**28) FORCE MAJEURE:**

- (a) If for any reason beyond the control of Heiniger including without limitation as a result of any strike, trade dispute, fire, tempest, theft or breakdown, orders cannot be filled at the time stipulated by the Customer, Heiniger shall (at its sole discretion and without prejudice to the rights of Heiniger to recover any sums owing to it in respect of goods supplied prior to the date of such determination) be entitled to, at its discretion:-

- (i) cancel any Order for goods placed by the Customer with Heiniger;
  - (ii) determine any Contract or any other agreement between Heiniger and the Customer that may have arisen by reason of the operation of these Terms and Conditions;
  - (iii) determine any credit account or facility provided by Heiniger to the Customer.
- (b) The Customer shall have no claim for damages arising out of any such cancellation and/or determination whether or not the Customer receives notice of any such cancellation and/or determination.
- 29) **TIME OF THE ESSENCE:** In respect of the Customer's obligations to make payment for goods supplied by Heiniger to the Customer, time shall be of the essence.
- 30) **TAXES:** All charges, fees, taxes, withholdings and other payments arising as a result of the sale of goods by Heiniger to the Customer are payable by the Customer either directly or upon demand by Heiniger.
- 31) **GST:** "GST" means GST within the meaning of the GST Act. "**GST Act**" means *A New Tax System (Goods & Services Tax) Act 1999*. Expressions used in this clause that are defined in the GST Act have the same meaning as given to them in the GST Act. Where required under the GST Act, GST is payable on the goods provided by Heiniger to the Customer. If GST is payable on any goods or supply made to or to be made under the arrangements between Heiniger and the Customer then the price payable for any such goods or supply will be increased by an amount equal to the amount of GST payable. The amount of GST will be separately identified on the Invoice.
- 32) **VIENNA SALES CONVENTION:** The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to any Contract nor do any terms or conditions express or implied by the Vienna Sales Convention form part of any Contract.
- 33) **VARIATION OF TERMS:** Heiniger reserves the right to vary all or any of these terms upon 30 days' written notice to the Customer. Notice is deemed given three business days from when Heiniger sends notice of the amended Terms and Conditions to the address supplied by the Customer in the Application or otherwise advised in writing whether or not the Customer has received the notice. The acceptance of goods and/or services by the Customer after notice has been given is deemed to be an acceptance by the Customer of the amended Terms and Conditions. Clerical errors are subject to correction without notification.
- 34) **SEVERANCE:** If any provision of these Terms and Conditions or any Contract is or at any time becomes void or unenforceable the remaining provisions will continue in full force and effect. Any void or unenforceable provision will be replaced forthwith by a lawful and enforceable provision which so far as possible achieves the same economic benefit or burden for Heiniger and the Customer as the unlawful or unenforceable provision was intended to achieve. All obligations of the Customer under these Terms and Conditions will survive the expiration or termination of these Terms and Conditions to the extent required for their full observance and performance.
- 35) **FURTHER ASSURANCE:** The Customer must at its expense do any further act, provide further information and execute any further documents which Heiniger may reasonably request in order to protect Heiniger's title to any goods and rights, powers and remedies under these Terms and Conditions or any Contract including as may be required in order to perfect any security interest.
- 36) **ASSIGNMENT:** The Customer may not assign or transfer any of its rights or obligations as outlined in these Terms and Conditions or under any Contract. Heiniger may assign its rights and obligations without the consent of the Customer.
- 37) **CONSENT:** Where the consent of Heiniger is required in accordance with these Terms and Conditions or a Contract then Heiniger may refuse its consent at its discretion and is not required to provide a reason for doing so.
- 38) **NO WAIVER:** No delay or omission by Heiniger to exercise any right, power or remedy available to that party in respect of a Contract will impair any such right, power or remedy nor will it be construed to be a waiver of Heiniger's rights to take action or make a claim.
- 39) **NOTICES:** All notices required to be given under this Contract must be in writing and sent to the address of the recipient nominated in the Contract or such other address nominated in writing.
- 40) **PRIORITY:** In the event of an inconsistency between these Terms and Conditions and the other documents forming part of the Contract the Terms and Conditions shall apply to the extent of the inconsistency unless otherwise agreed in writing.
- 41) **RELATIONSHIP:** Nothing in these Terms and Conditions creates any relationship of employment, agency or partnership between Heiniger and the Customer.

**TERMS AND CONDITIONS ACCEPTED ON BEHALF OF**

**BY**

**POSITION**