



ABN - 37 646 225 238

Head Office: 95 Redwood Drive
Dingley, Victoria 3172
Phone: (03) 9551 5022
Email: melbourne@holyoake.com

APPLICATION FOR CREDIT, GUARANTEE AND GENERAL CONDITIONS OF SALE

THREE CREDIT REFERENCES: TELEPHONE

TO: PRICE HOLYOAKE (AU) PTY LTD

We ("the Customer"), apply to establish a Customer Account with Price Holyoake (AU) Pty Ltd ("PHA") on the following terms and conditions: We are a Limited Liability Company / Partnership / Trust / Sole Trader (delete as required). Partnership / Trust / Sole Trader – see separate form.

NAME OF ORGANISATION: \_\_\_\_\_

TRADING NAME (if different): \_\_\_\_\_

Physical Address: \_\_\_\_\_

Postal Address: \_\_\_\_\_

TELEPHONE: BUSINESS: \_\_\_\_\_ AFTER HOURS: \_\_\_\_\_

MOBILE: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_

EMAIL: \_\_\_\_\_

COMPANY INCORPORATION NUMBER (if a company): \_\_\_\_\_

ADDRESS OF REGISTERED OFFICE: \_\_\_\_\_

PAID UP CAPITAL: \_\_\_\_\_ \*\*MUST COMPLETE\*\*

PERSON ACTING ON BEHALF OF THE COMPANY: \_\_\_\_\_

Names, addresses and occupations of all Directors/Partners/Proprietors: NAME & ADDRESS OCCUPATION AFTER HRS PHONE

Reason Credit Required: \_\_\_\_\_

Credit Limit Required: \$ \_\_\_\_\_

Estimated Monthly Purchases: \$ \_\_\_\_\_

We have owned the Business since: \_\_\_\_\_

We confirm that none of our Directors, Partners or Managers have been or are now bankrupt or have made any compromise with any of their creditors, nor have they been or are presently associated with any Company in receivership or liquidation. We also confirm that we are not aware of any action that may lead to any of our Directors, Partners or Managers or any Company associated with them going into liquidation, receivership or bankruptcy or making any compromise with any of their creditors.

Our Bankers are: \_\_\_\_\_. The contact person is \_\_\_\_\_. Their phone number is \_\_\_\_\_.

We confirm We have not been refused any credit account / Details of any credit, including bank facilities, refused in the past six months are as follows (delete as appropriate):

PRIVACY ACT AUTHORISATION: The signatory irrevocably authorises any person to supply Price Holyoake (AU) Pty Ltd or its agent with any information they may require in response to any queries they may make concerning any signatory or The Customer at any time.

(Please ensure referees are willing to give a reference (Not Banks, Lawyers, Utilities, accountants))

- We agree as a condition of any credit facility arranged with PHA that:
1. We will notify PHA of any changes immediately and in writing should any of the above information become incorrect. Should PHA in its sole, unrestricted discretion for any reason consider its position jeopardised or the state of the Company's Account unsatisfactory. We agree PHA may at any time without notice cancel our credit facility and require immediate payment of any outstanding amounts, regardless of their due date.
2. For the avoidance of doubt, the Supplier's interest constitutes a "purchase money security interest" pursuant to the Personal Property Securities Act 2009.
3. We agree that all Purchases are subject to the terms and conditions contained in PHA's standard Terms and Conditions of Sale, a copy of which We acknowledge We have received and read. We agree and understand that, notwithstanding any credit facility provided, title in goods purchased shall not pass unless and until payment in full is received by PHA.
4. We will pay interest at 2% per month on any sums not paid to PHA on due date, on request from PHA and that interest shall compound on the 1st day of each month. For completeness, due date is the end of the month after the goods are supplied unless otherwise agreed in writing before the goods are supplied.
5. Where our Customer Account and / or Purchase Contract is not for a single natural person, then the natural person / persons (herein after called the Guarantor) who signs this application for or on our behalf hereby undertakes that We have full power to enter into this and any future arrangements or contracts with PHA and that the Guarantor is fully authorised to so commit us. The Guarantor acknowledges that if We fail to perform or discharge any of our obligations to PHA or for any reason We are not bound hereunder then the Guarantor shall be personally liable as a principal in all respects in such matters and if more than one natural person signs each natural person's liability shall be as a Principal and shall be joint and several. We acknowledge that time is of the essence in performing any obligation contemplated.
6. We and the signatories acknowledge we fully understand the terms and conditions of this agreement and have had the opportunity to obtain independent legal advice before signing below.
7. The terms and conditions of this application constitutes a complete record of the arrangement between PHA and The Customer until amended or superceded in writing.

AND IN CONSIDERATION of PHA providing any credit facility or supplying any goods or services at the request of the Guarantor (which is hereby acknowledged) the Guarantor does hereby guarantee the due and punctual performance of all the terms covenants and conditions and payments relating to any contract We have with PHA and shall in all respects be regarded as having entered into a separate Agreement with PHA on the same basis. The Guarantor also indemnifies PHA against any costs PHA may incur enforcing any of the terms, conditions or Guarantees herein, including legal costs on a solicitor/client basis. No indulgence, waiver, delay, variation, giving of time to The Customer, whereby the Guarantor would have been released had the Guarantor been merely a surety, shall release the Guarantor from liability hereunder. In addition the Guarantor hereby indemnifies PHA against any loss PHA might suffer should this or any contract by disclaimed by any Liquidator or Receiver or otherwise on our behalf.

As between the Guarantor and PHA the Guarantor may for all purposes be treated as the Customer and PHA shall be under no obligation to take proceedings against The Customer before taking proceedings against the Guarantor.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 201

SIGNED for and on behalf of The Customer AND as Guarantors personally liable:

(Proprietor/Director – circle which) SIGN, AND PRINT NAME

## GENERAL CONDITIONS OF SALE

All orders for the supply and manufacture of Goods by Price Holyoake (AU) Pty Ltd and its related entities ("Seller") are subject to the Seller's general conditions of sale as printed below and as varied from time to time by the Seller in its sole discretion ("Conditions of Sale"). The latest version of these Conditions of Sale can be found at [www.holyoake.com].

### 1. DEFINITIONS

In these Conditions of Sale:

"Application" means an application for commercial credit with the Seller and incorporating these Conditions of Sale.

"Buyer" means the person who requests to buy Goods from the Seller or who is named in an Order or an Application, and where the Buyer comprises two or more persons, means those persons jointly and severally.

"Goods" means all goods supplied by the Seller to the Buyer.

"Order" means a request from the Buyer for the Seller to supply Goods to the Buyer.

"Order Acknowledgement" means the Seller's written acceptance of an Order or Quotation.

"Quotation" means the Seller's quotation specifying Goods requested by the Buyer from the Seller.

### 2. ACCEPTANCE AND AGREEMENT

(a) By making an Order or other offer to purchase Goods from the Supplier, the Buyer acknowledges that it is aware of the contents of, and agrees to be bound by, these Conditions of Sale. The Buyer shall be bound by these Conditions (as varied from time to time) in respect of the supply of any particular Goods by the Seller to the Buyer.

(b) Any Quotation given by the Seller is indicative only and acceptance of a Quotation by the Buyer does not form a binding agreement until such acceptance is confirmed in writing by the Seller. On acceptance in writing by the Seller of a Buyer's Order, acceptance of Quotation or other offer to purchase Goods, a contract is formed between the Seller and the Buyer in respect of those Goods on and subject to these Conditions of Sale.

(c) Unless expressly accepted in writing by the Seller, any qualification of these Conditions of Sale in a Buyer's Order or anything contrary to or inconsistent with any of these Conditions of Sale proposed by the Buyer must be deemed to be and will be treated as inapplicable and will be of no effect. All Orders and any variation of, addition to or cancellation of an Order must be accepted in writing by the Seller to be binding on the Seller.

### 3. TERMS OF PAYMENT

(a) All prices are subject to alteration without notice, and orders are accepted only on the condition that all deliveries will be invoiced at the prices on the terms ruling at the date of the despatch of the goods.

(b) Payment is to be on the Next Monthly Account unless otherwise stated on the Order Acknowledgement and is to be effected by the 30th day of the month following date of invoice, in Australian currency.

(c) The Seller reserves the right at any time to demand full or partial payment before proceeding with an Order or proceeding further with an Order.

(d) All prices are exclusive of GST. If GST is payable on a supply made under or in connection with these Conditions of Sale, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable on that supply. Subject to the prior receipt of a tax invoice from the supplier, the amount of GST is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive. Terms used in this clause that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meanings given in that Act.

### 4. DELIVERY

(a) Unless otherwise stated in writing by the Seller all prices quoted are ex-factory from the location stated in the Quotation or Order Acknowledgement.

(b) The method of transport if not requested by the Buyer shall be as chosen by the Seller. The entire cost of such transport shall be paid by the Buyer.

(c) The Goods shall be deemed to have been delivered to the Buyer and all risks in respect of the Goods shall pass to the Buyer upon the Goods having left the factory.

(d) Despatch date as forecast is quoted in good faith by the Seller but is given and is intended only as an estimate and the Seller shall not be liable to make good any damage or loss whether arising directly or indirectly out of any delay or default in delivery. The Seller reserves the right to despatch orders in whole or by instalments and to despatch prior to the advised delivery date.

(e) Where the Order Acknowledgement provides for delivery by instalments each instalment delivered shall be deemed to be sold under a separate contract. Any failure by the Seller to deliver an instalment within the time stated or at all shall not entitle the Buyer to repudiate the contract with regard to any instalments remaining to be delivered.

### 5. FORCE MAJEURE

The Seller reserves the right to cancel, suspend, or delay despatch in the event of any acts of God, wars, strikes, labour disputes, civil commotion, epidemics, pandemics, floods, fire, shortages of fuel, raw materials, transportation or labour, the imposition of government controls or requirements, quarantine, accidents to or breakdown in or to the Seller's works, plant or machinery, or any other circumstances of any kind whatsoever beyond the Seller's control affecting or interfering with production or delivery of the Goods and the Seller shall not be liable to make good any damage or loss whether arising directly or indirectly out of any such delay suspension or cancellation. In the event of suspension or of delay in despatch as aforesaid the forecast despatch date shall be extended by a period equal to the period of suspension or delay and every date of despatch shall stand postponed accordingly.

### 6. ALTERATIONS AND ADDITIONS TO ORDERS

Alterations and additions to existing Orders will only be accepted in writing at the sole discretion of the Seller and then only subject to the following conditions.

(a) ALTERATIONS - An existing Order may not be amended if the Goods are already in production.

(b) ADDITIONS - Any additions to an existing Order will only be accepted by the Seller if the Seller considers that despatch can be effected within the original acknowledged despatched date.

(c) PRICE - Where the quantity of an item is increased it will be priced at a rate applicable to the original Order at the discretion of the Seller. Any reduction in the original Order will result in the balance of the original Order being re-priced in accordance with the scale applicable to the revised quantity.

### 7. RETURNING GOODS

Where the Goods comply with clause 8(a) and claims under clause 11(a) are not valid any request for the return of Goods to the Seller will only be accepted at the sole discretion of the Seller on the following conditions, subject at all times to the Buyer's rights under the Australian Consumer Law.

(a) Goods returned shall not be specially manufactured or ordered to meet the Buyer's specific requirements. The goods must be supplied from the range of stock goods the Seller has in store.

(b) Goods returned shall be preserved intact as delivered.

(c) The Seller shall not be liable for any loss, damages or expenses incurred by the Buyer whether directly or indirectly regarding the Goods.

(d) On acceptance of returned Goods, a re-stocking fee of 25% of the invoiced value will be deducted from the Credit amount.

(e) Return of Goods for any cause whatsoever cannot be accepted after three months from delivery.

### 8. WARRANTY

(a) The Seller warrants that the Goods delivered shall, subject to the other terms of these Conditions of Sale, conform to the description shown on the Order Acknowledgement and in the Seller's Price List in effect at the date of the Order Acknowledgement and that the Goods shall be free from defects in material and workmanship except for such defects as are normally regarded as being commercially acceptable.

(b) Nothing in these Conditions of Sale excludes, restricts or modifies any consumer guarantee, right or remedy conferred on a party by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified by agreement. To the fullest extent permitted by law, the Seller's liability under these Conditions of Sale, including for a breach of a non-excludable guarantee under the Australian Consumer Law shall be strictly limited, at the Seller's option to, in the case of services, the supplying of the services again; or the payment of the cost of having the services supplied again, and in the case of goods, any one or more of the following: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the costs of repairing or replacing the goods or of acquiring equivalent goods; or (at the option of the Seller) allowing a full credit of the Goods returned to the Seller within three months of the date of despatch which are found by the Seller to be defective, and the Seller shall not be liable, whether in contract or tort, for any claim in respect of work done on the Goods, transport costs, loss of profit on or any claim suffered through re-sale or any other claim loss, damage, or expense incurred or suffered by the Buyer relating whether directly or indirectly to any such defects or for any other direct or consequential loss, damage or injury whatsoever arising out of the manufacturing, sale, existence or use of the Goods.

(c) Except for the warranties expressly set out in these Conditions of Sale, and to the maximum extent permitted by law, the Seller disclaims and excludes all other conditions or warranties, whether expressed or implied or statutory, that the Goods are suitable for use under any specific conditions or for any specific purpose although such conditions or purpose may be known to the Seller, regarding the quality, condition, reliability or availability of the Goods or as to the life or wear of any Goods, subject at all times to the Buyer's rights under the Australian Consumer Law.

(d) No statement or recommendation made or advice or assistance given by the Seller or its servants, agents or representatives in connection with the Goods shall constitute a warranty by the Seller or a term or condition of sale or a waiver of any of the provisions hereof and the Seller accepts no responsibility thereof and shall not be liable for any loss which may be suffered by a Buyer who relies on the accuracy of such statements, recommendations, advice or assistance.

### 9. SIZES, QUANTITIES, CLASSIFICATIONS AND TOLERANCES

(a) The Seller's invoice shall be conclusive evidence of the sizes, quantities and classifications of the goods shipped or transported.

(i) All Goods are sold subject to the Seller's normal variations in measurements, standard sizes, mechanical properties, surface conditions and quality and the Seller's current packaging practice.

### 10. BREACH

3457-0955-1123, v. 1

(a) No Order may be cancelled without the consent in writing of the Seller. If the Seller in its discretion accepts cancellation of an Order, it will be on the following terms:

(i) Where the Goods are finished or in the course of manufacture the Buyer shall pay such amount up to the full sale value of the Goods set out in the Order Acknowledgement, less the scrap value of the metal, as the Seller shall stipulate.

(ii) Where the Goods are not yet in the course of manufacture the Buyer shall pay such amount up to 5% of the sale value of the Goods set out in the Order Acknowledgement.

(b) If the Buyer shall default in or commit any breach of any of its obligations to the Seller or if any distress or execution shall be levied on any of the Buyer's property or if the Buyer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or become bankrupt or (if the Buyer is a limited company) if any resolution or partition to wind-up its business is presented or passed or a receiver is appointed of such company's undertaking, property or assets or any part thereof then the Seller shall be entitled to suspend execution of any Order received from the Buyer (whether or not the defaults are in respect of such Order) until the default or defaults are made good and shall be entitled (notwithstanding that the right to suspend execution may have been exercised) forthwith to terminate any Order received from the Buyer and then subsisting and on written notice of such termination being posted by the Seller to the Buyer's last known address any and every subsisting Order shall be deemed to have been terminated. The rights of the Seller under this paragraph shall be exercisable without prejudice to all other rights and remedies of the Seller in consequence of the default or defaults.

(c) The Seller shall be entitled, without prejudice to its other rights and remedies in respect of any other default to charge an accounting fee on any overdue payment at the rate of up to Ten (10) per cent per annum calculated from the due date until the date payment is received in full is actually received and all costs and expenses incurred by the Seller at any time in seeking recovery of any overdue payment shall be paid by the Buyer on demand.

### 11. CLAIMS

(a) No claim for shortage of or damage to Goods will be entertained by the Seller unless written notice thereof is received within fourteen days after delivery. The Goods in respect of which any such claim is made shall be preserved intact as delivered for a period of fourteen days after such notice is given within which time the Seller shall have the right to attend and inspect the Goods and where applicable, check the complete delivery.

### 12. ERRORS AND OMISSIONS

(a) Acceptance by the Seller of any notice or claim under clauses 8 or 11 hereof after expiry of the time limits set out therein shall be without prejudice to its right to reject the claim on the grounds of non-compliance with such time limits.

(b) Failure by the Seller to enforce any of these Conditions of Sale or to take action in respect of any breach thereof shall not be a waiver of any of these Conditions of Sale notwithstanding that such breach is continuing and habitual or repeated from time to time and no estoppel may be pleaded against the Seller either at law or in equity in any circumstances whatsoever.

### 13. LICENCES

If by law any licence shall be required to enable the Buyer to acquire, or the Seller to sell to the Buyer the Goods, such licence shall be obtained by the Buyer. In the event of the Seller receiving directions from a Government Department as to the disposal of the Seller's output of goods of the type, kind or category of goods included in the Order and if in the Seller's opinion such directions shall prevent or hinder the fulfillment by the Seller of the Order the Seller may by notice to the Buyer cancel the Order in whole or in part.

### 14. INTELLECTUAL PROPERTY RIGHTS

(a) The Buyer acknowledges that all intellectual property rights in the Goods are and shall remain the property of the Seller, and warrants that any designs or drawings it provides to the Seller do not infringe any intellectual property rights of any other person and that it has all necessary rights to provide such designs or drawings to the Seller.

(b) The Buyer shall indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable through any work done by the Seller in accordance with the Buyer's specifications involving the infringement of a third party's intellectual property rights, including any patent or registered design.

### 15. IN PLANT INSPECTION

Testing and inspection, other than that normally undertaken by the Seller, when specified by the Buyer or its agents shall take place at the Seller's works and be final there. The Buyer shall pay a standard charge therefore.

### 16. DISPUTES

Any dispute under any Order accepted by the Seller shall be referred to arbitration in accordance with, and subject to, the Resolution Institute Arbitration Rules. Unless the parties agree upon an arbitrator, either party may request a nomination of an arbitrator or arbitrators to be appointed by the Chair of the Resolution Institute for the time being.

### 17. JURISDICTION

Every Order to which these Conditions of Sale apply shall be governed by and must be construed in accordance with the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria.

### 18. OWNERSHIP

(a) Property in the Goods supplied by the Seller shall remain with the Seller until the Seller receives payment in full of all amounts owing to the Seller by the Buyer.

(b) The Buyer has authority to dispose of the Goods or to affix or annex the Goods to any other property until:

(i) The Buyer becomes insolvent, bankrupt, has a receiver of its assets appointed or enters into any assignment or arrangement with creditors, or

(ii) The Seller does not receive payment in full for the Goods within 5 working days of the due date thereof.

(c) Immediately upon the occurrence of an event 18(b), and without the necessity for any notice, the Buyer's authority to dispose of the Goods or to affix or annex the Goods to any other property shall immediately terminate and the Goods must be returned in their original condition to the Seller. The Buyer hereby irrevocably authorises the Seller to enter onto any premises where the Goods (whether separate or affixed or annexed to any other property) may be and to remove the same and the Buyer hereby indemnifies and agrees to hold harmless the Seller against any damage howsoever caused in relation to such entry and removal including consequential loss or damage to any third party or to the Buyer.

(d) Until title and property in the Goods passes to the Buyer, the Buyer shall hold the proceeds of any disposition of the Goods or of any property to which the Goods have been annexed or affixed, in a separate account on behalf of and in trust for the Seller.

(e) The Buyer agrees to inform any third party to whom the Goods are in any way disposed of (including through affixture or annexation) of the terms of this clause 18, unless the Seller has already received payment in full of amount due to the Seller hereunder.

### 19. PERSONAL PROPERTY SECURITIES ACT 2009

(a) In these Conditions of Sale, "PPSA" means the *Personal Property Securities Act 2009* (Cth) and "PPSR" means the register of personal property security interests established under the PPSA. Notwithstanding anything to the contrary contained in these Conditions of Sale, the PPSA applies to these Conditions of Sale.

(b) For the purpose of the PPSA:

(i) terms used in this clause 19 that are defined in the PPSA have the same meaning as in the PPSA;

(ii) these Conditions of Sale are a security agreement and the Seller has a Purchase Money Security Interest in all present and future goods supplied by the Seller to the Buyer and the proceeds of the goods;

(iii) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Buyer at any particular time; and

(iv) 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 the Seller on the PPSR.

(c) The security interest arising under this clause 19 attaches to the goods when the goods are collected or dispatched from the Seller's premises and not at any later time.

(d) Where permitted by the PPSA, the Buyer waives any rights to receive the notifications, verifications, disclosure or any other documentation specified under section 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

(e) The Seller 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 of Sale.

(f) To the extent permitted by the PPSA, the Buyer agrees that:

(i) the provisions of Chapter 4 of the PPSA which are for the benefit of the Buyer or which places obligations on the Seller will apply only to the extent that they are mandatory or the Seller agrees to their application in writing; and

(ii) where the Seller has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

(g) The Buyer must immediately upon the Seller's request:

(i) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and

(ii) procure from any person considered by the Seller to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Seller may at any time require.

(h) The Seller may allocate amounts received from the Buyer in any manner the Seller determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Seller.

### 20. ASSIGNMENT

The Seller may at any time assign, transfer or sub-contract any of its rights and obligations under these Conditions (including the right to receive payment) to any other person.