

# APPLICATION FOR CREDIT ACCOUNT

**REGISTERED NAME "the Distributor":** Sabakem Trading Pty Ltd trading as Sabakem

**ACN** 151 698 476      **ABN** 48 151 698 476

**ADDRESS** Suite 809, 2 Queen Street, Melbourne, VIC 3000, Australia

**TELEPHONE** 03 9629 3979

**EMAIL ADDRESS** orders@sabakem.com

**REGISTERED NAME "the Customer"**

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**TRADING NAME (if different from above)**

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**ACN** (If Applicable): \_\_\_\_\_ **ABN:** \_\_\_\_\_

**COMPANY**     **PARTNERSHIP**     **SOLE TRADER**     **INDIVIDUAL**

**IF INDIVIDUAL OR COMPANY IS A TRUSTEE OF A TRUST, FULL NAME OF TRUST(S)**

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**NAME OF ASSOCIATED PARENT COMPANY (If applicable)**

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**YEAR COMMENCED** \_\_\_\_\_

**PHYSICAL ADDRESS** \_\_\_\_\_

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**POSTAL ADDRESS** \_\_\_\_\_

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**DELIVERY ADDRESS** \_\_\_\_\_

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**TELEPHONE** \_\_\_\_\_ **FAX** \_\_\_\_\_

**ACCOUNTS EMAIL** \_\_\_\_\_



AMOUNT OF MONTHLY CREDIT REQUIRED (Approx) \_\_\_\_\_

NORMAL CREDIT TERMS REQUESTED (tick appropriate boxes)

CASH  30 DAYS

FROM INVOICE  FROM STATEMENT

**Note:** *this is a request and will be confirmed once account approved.*

PERSON TO CONTACT REGARDING ACCOUNT

\_\_\_\_\_

**PERSONAL DETAILS OF DIRECTOR(S) / PARTNER(S) OR INDIVIDUAL**

NAME DATE OF BIRTH DRIVERS LICENCE NO.

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

***Please supply copies of all directors(s)/partners(s) drivers licences as proof of identification***

ADDRESS PHONE NO. (pref mobile)

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

**TRADE REFERENCES AVAILABLE FROM**

1. \_\_\_\_\_

TELEPHONE \_\_\_\_\_ FAX \_\_\_\_\_

EMAIL \_\_\_\_\_

2. \_\_\_\_\_

TELEPHONE \_\_\_\_\_ FAX \_\_\_\_\_

EMAIL \_\_\_\_\_

3. \_\_\_\_\_

TELEPHONE \_\_\_\_\_ FAX \_\_\_\_\_

EMAIL \_\_\_\_\_

I/We have read, accepted and acknowledged the Terms and Conditions of Sale of Goods and the Conditions for Application of Credit. I/We hereby give you authority to investigate my/our credit references and authorise any person or company to disclose information in relation to any asset, liability or income relating to me/us.

**NB: PLEASE ENSURE THAT ALL INFORMATION IS COMPLETE SO THAT CREDIT CAN BE AUTHORISED PROMPTLY.**

**SIGNED BY THE CUSTOMER**

NAME	SIGNATURE	DATE	POSITION
1. _____	_____	_____	<input type="checkbox"/> Director <input type="checkbox"/> Partner <input type="checkbox"/> Owner
2. _____	_____	_____	<input type="checkbox"/> Director <input type="checkbox"/> Partner <input type="checkbox"/> Owner
3. _____	_____	_____	<input type="checkbox"/> Director <input type="checkbox"/> Partner <input type="checkbox"/> Owner
4. _____	_____	_____	<input type="checkbox"/> Director <input type="checkbox"/> Partner <input type="checkbox"/> Owner

**SIGNED BY THE GUARANTOR**

We, the guarantors whose signatures appear below have read the attached Application for Credit and in particular clause 11 which provides that we guarantee the obligations of the Customer. If our signatures appear below this guarantee takes effect as a deed.

NAME	SIGNATURE	DATE	POSITION
1. _____	_____	_____	<input type="checkbox"/> Director <input type="checkbox"/> Partner <input type="checkbox"/> Owner

2. \_\_\_\_\_  Director  
 Partner  
 Owner
- 
3. \_\_\_\_\_  Director  
 Partner  
 Owner

## CONDITIONS FOR APPLICATION OF CREDIT

**1.** The Customer is not entitled to any credit facilities until the Customer receives notice in writing from the Distributor stating that credit facilities have been granted.

Until confirmed any goods supplied by the Distributor to the Customer shall be on "cash on delivery" basis.

**2.** This Agreement binds the Customer both personally and as trustee of any trusts of which the Customer is trustee.

Where the Customer is a trustee

- (a) the Customer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Distributor; and
- (b) the Customer warrants that it has full power and authority for the benefit purposes and objects of the trust to make this application on behalf of the trust and that the Customer shall be bound by the terms of this Application and be liable for payment of all monies owing to the Distributor both personally and as trustee.

**3.** The Customer declares that the above information is true and correct in every particular and is aware that the Distributor will rely upon the correctness of the representations and information contained herein in granting credit facilities and any transactions associated therewith or entered into pursuant thereto.

**4.** The Customer (if a corporation) is solvent and able to pay its debts as they fall due and is not in liquidation or being wound up and no meeting is being called or resolution is being passed or order made for such purposes and no Receiver and Manager has been appointed in respect of the Customer and the Customer has not made any compromise or arrangement with its creditors or any class of them and no Application has been proposed or made to any Court for any order summoning a meeting of its creditors or any class of them.

**5.** The Customer hereby authorises and permits the Distributor to make independent enquires of third parties concerning the Customer's financial standing and for the purpose of this clause authorises and permits such third parties to supply such information notwithstanding any confidentiality or privilege which applies to the information sought.

**6.** The Distributor may exercise any power under the Privacy Act 1988 (Cth) relevant to assessing this credit application or collecting overdue payments from the Customer.

**7.** If the Distributor considers it relevant to assessing the application for commercial credit or for collecting overdue payments, the

Customer agrees to the Distributor obtaining a credit report containing personal credit information about the Customer in relation to commercial credit provided by the Distributor and in relation to collecting overdue payments.

**8.** The Customer agrees that the Distributor may give to and seek from any credit providers names in this credit application and any credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands the information may be used to:

- (a) assess an application by the Customer for credit;
- (b) notify other credit providers of a default by the Customer; (c) exchange information with other credit providers as to the status of this credit account where the Customer is in default with other credit providers;
- (c) assess the Customer's credit worthiness.
- (d) assist in recovering overdue accounts if payments are overdue, or the Distributor is of the opinion that you do not intend to meet your credit obligations.

**9.** The Customer has read and understood the Terms and Conditions of Sale of Goods ("see Terms and Conditions") attached to this Credit Application and in consideration of the Distributor supplying the goods the Customer shall comply with, observe and perform the Terms and Conditions in respect of the purchase of the goods from the Distributor.

**10.** The Customer agrees to indemnify the Distributor and keep the Distributor indemnified from and against and in respect of any claim, action, loss, cost, expense or liabilities suffered or incurred by the Distributor arising from or in any way related to the breach of any of the Terms and Conditions.

**11.** In consideration of the Distributor agreeing from time to time to supply goods on credit to the Customer the Guarantors do hereby jointly and severally guarantee the due and punctual payment of all moneys falling due and payable to the Distributor by the Customer or as a result of the liquidation thereof, such guarantee to be a continuing guarantee and not to be prejudiced or affected by any extensions of time or other indulgence which may be granted by the Distributor or any security which may be received by the Distributor and the Guarantors hereby agree to waive all rights to notice whether suitable or otherwise and to be bound by the provisions hereof in all

respects as if the Guarantors were primarily liable as the principal debtors not as guarantors.

The Distributor may, at any time or times at their absolute discretion and without giving any notice whatsoever to the Guarantors, refuse further credit or supplies of goods or services to the abovementioned Customer and granted to it or to any drawers, acceptors or endorsers of Bills of Exchange, Promissory Notes or other securities received by the Distributor from it or on which it may be liable to the Distributor any time or other indulgency or compound with it or them respectively without discharging or impairing the Guarantors liability under this guarantee. This guarantee shall be enforceable against the Guarantors jointly and each of us severally notwithstanding that any negotiable or other securities referred to herein shall at the time of proceedings being taken against the Guarantors or any Guarantor on this guarantee be outstanding or in circulation.

The Guarantors agree to be bound by the conditions contained in this Application and the Terms and Conditions and that the Customer may at all times act as if the Guarantors were the principal debtors and we also jointly and severally indemnify the Distributor and agree to keep the Distributor indemnified from and against all loss damage and expenses suffered or incurred by the Distributor due to any breach non-performance or non-observance by the Customer. In the event of all directors of the Customer not signing this form, we the signatories of this form will accept full liability under this guarantee and indemnity and agree if requested to execute the Distributor's standard form of guarantee and indemnity.

This is a continuing guarantee and indemnity for all amounts owing by the Customer pursuant to this credit facility despite any settlement of account or intervening payment or by the Distributor granting to the Customer time or any other concession or making any composition or compromise with the Customer.

The guarantors may determine their liability only as to further credit extended to the debtor by giving prior written notice one month before the date of such determination given to the Distributor or the Distributor's duly authorised agent or in the case of the Guarantor's death by the Guarantor's personal representatives.

This guarantee shall not be affected by the death, lunacy, mental capacity, bankruptcy or liquidation of any of the Guarantors.

Any notice given by the Distributor under this guarantee may be given by the Distributor or on their behalf by their solicitors or agents, manager, secretary or director and shall be deemed to have been served if sent by pre-paid post to the Guarantors address(es) appearing hereon or such other address(es) as may subsequently be notified to the Distributor in writing by the Guarantors.

- 12.** The Customer hereby charges all of the Customer's estate, right, title and interest in any land in favour of the Distributor to secure the payment of any monies owing to the Distributor under the Terms and Conditions attached to this Credit Application. The Customer irrevocably authorises and consents to the Distributor lodging an absolute caveat over any such land to protect the Distributor's interest herein.
- 13.** The Customer has had full and ample opportunity prior to the execution of this Credit Application to obtain independent legal advice as to the extent and implications of this Credit Application and executes this Credit Application accordingly.

# SABAKEM TRADING TERMS & CONDITIONS OF SALE OF GOODS

**1. Orders.** The supply by the Distributor of goods to the Customer, or the placement of an order for goods by the Customer, will be on these Terms.

Acceptance of the goods or placement of an order by the Customer will be deemed to be acceptance of these Terms.

1.1 Any terms or conditions set out on any order or document submitted by the Customer are expressly excluded.

1.2 The Distributor may reject any order at its discretion. If any order requires goods to be delivered in multiple instalments, each instalment will be considered a separate order.

**2. Delivery of Orders.** The Distributor shall deliver each order to the place of delivery specified in the order by such mode as the Customer shall determine, unless sold ex warehouse.

2 In the event of loss or damage to the goods in transit the Customer shall notify the Distributor in writing immediately when loss or damage is discovered and shall render the Distributor such assistance as may be necessary to successfully claim for recovery of the loss. Failure to do so will result in the Customer being liable for payment of the goods.

2 The Distributor shall make all reasonable efforts to effect delivery of ordered goods within any quoted period.

2 The Distributor shall not be liable for any failure or delay in delivery for any cause beyond the control of the Distributor.

2 Delivery for the purpose of invoicing is deemed to take place on despatch by the Distributor.

2 Property in the goods subject to a delivery docket, invoice or consignment note does not pass until the goods have been paid for in full.

2 Acceptance of delivery of the goods, subject to a delivery docket, invoice or consignment note, and whether or not a Proof of Delivery is signed, creates a secured agreement for the purposes of the Personal Properties Securities Act 2009 (Cth) ("the PPSA").

2 The Customer shall be liable to indemnify the Distributor against any costs damages and expenses resulting from the cancellation of any order after acceptance by the Distributor (whether or not notified to the Customer).

**3. Pallets.** Any pallets used for the delivery or storage of the goods will remain the property of the Distributor or its lessor. The Customer must promptly return or exchange the pallets in its custody or reimburse the Distributor the cost of replacement or repair of lost or damaged pallets.

## **4. Prices.**

4.1 Prices quoted are those ruling at the date of issue of quotation as determined by the Distributor. By default prices are quoted ex-warehouse.

4.2 Should pricing be quoted freight inclusive, prices are based upon all charges affecting the cost of transport and delivery of the goods ruling on the date the quotation is made and any alterations thereto either before acceptance of the order or during the currency of the order shall be to the Customer's account.

4.3 All prices, delivery costs and amounts payable by the Customer are, unless otherwise specified, exclusive of taxes. The Customer must pay or reimburse the Distributor all taxes, levies and the fees imposed by any statutory or industry body and any amount required by the Distributor by way of deposit on any returnable pallet. The Distributor will provide the Customer with a tax invoice.

4.4 The inclusion of any goods in a price list does not imply that it is registered and available for sale in any particular state. Intending Customers should check the status, of any goods, prior to purchase.

## **5. Claim and Returns.**

5 The Customer must notify the Distributor as soon as practically possible to investigate any claimed defect in the goods. The Customer will co-operate fully in gathering information to assess and resolve the claim.

5 The Distributor will not accept the return of any goods unless agreed in writing prior to return. Any goods returned must be in the same order and condition as when delivered to the Customer and returned to the nearest Distributor depot. The Distributor may charge the Customer the then current restocking charges, payable immediately. Any other costs relating to return of the goods (such as freight and delivery charges) are at the Customer's expense.

5 All items will be subject to inspection before a credit can be considered and accordingly acceptance of the goods by the Distributor or its agent shall not constitute acceptance for the purpose of applying a credit.

5 To the fullest extent allowable by law, the Distributor makes no warranty or representation regarding the quality nature or fitness for purpose of any goods and if the Customer relies on goods corresponding with any sample, the Distributor shall not be liable for deficiency or discrepancy.

5 The limit of any claim against the Distributor shall be the price for the products the subject of such claim and in particular no claim for consequential loss will be recoverable against the Distributor.

## **6. Payment of the invoice.**

6.1 Unless otherwise agreed in writing between both parties all accounts are to be settled in full within 30 days of the date of the Distributor's Statement.

6.2 Should the Customer default in the payment of any monies due under these Terms and Conditions, then all monies due to the Distributor shall immediately become due and payable and shall be paid by the Customer within seven (7) days of the date of demand and the Distributor shall be entitled to charge interest at the rate of up to 10% above the Reserve Bank cash rate on all overdue accounts from the date of due payment until the date of actual payment.

6.3 Any expenses, costs or disbursements incurred by the Distributor in recovering any outstanding monies, including debt collection, agency fees, and solicitor's costs, shall be paid by the Customer.

6.4 The Distributor shall be entitled at any stage during the continuance of these Terms and Conditions to request such security or additional security as the Distributor shall in its discretion think fit and shall be entitled to withhold supply of any goods or credit arrangements until such security or additional security shall be obtained.

**7. Passing of Risk and Retention of Title.** Risk in the goods will remain with the Distributor until delivery of the goods to the Customer and thereafter risk or loss, damage or deterioration of the goods will pass to the Customer.

7.1 Legal and beneficial title in the goods will remain with the Distributor until:

- (a) the goods are paid for in full by the Customer; and
- (b) the Customer has paid all other amounts owing to the Distributor.

7 Until such time as legal and beneficial title in the goods passes to the Customer, the Customer will:

- (a) store the goods in a manner, which; makes them readily identifiable as the property of the Distributor;
- (b) hold the goods as bailee of the Distributor, in respect of which each party acknowledges a fiduciary relationship exists;
- (c) keep, and provide upon request, proper stock records and records of account with respect to the receipt, identification, storage, location, sale and movement of the goods;
- (d) keep the goods insured against theft, damage and destruction (failing which the Distributor may do so and invoice the Customer for the cost); and
- (e) generally maintain goods in a saleable condition.

7 If the Customer sells or otherwise disposes of the goods;

- (a) the Customer must account to the Distributor for that part of the proceeds of the sale as is equal to the price and other charges payable by the Customer to the Distributor in respect of those goods; and
- (b) until the Customer pays the Distributor the price payable for the goods, the proceeds of resale must be held in a separate account in trust for the Distributor.

7 The Distributor shall have the right at any time to enter the Customer's premises and retrieve the goods.

7 The Customer agrees to indemnify and keep saved harmless the Distributor from and against all proceedings, including all claims, suits or litigations whatsoever brought by any person and arising from or being incidental to or by virtue of the entry onto the Customer's premises and removal of the goods by the Distributor pursuant to its right to do so under sub clause 7.4.

#### 8. Security Interest

- 8 This Agreement constitutes a security agreement, and the Customer grants a security interest in all Products supplied to the Customer under this Agreement.
- 8 Without limiting sub-clause 1. above and the operation of this Agreement generally, the retention of title arrangement described in the "Passing of Risk and Retention of Title" clause above constitutes the grant of a purchase money security interest by the Customer in favour of The Distributor in respect of all present and future acquired Products.
- 8 You hereby consent to the registration of the secured agreement and undertake to provide any and all further information, which may reasonably be required to register the Distributor's secured interest on the Personal Property Securities Register established under the PPSA.
- 8 The Customer must immediately upon request by The Distributor, sign any documents, provide all necessary information and do all things required by The Distributor to ensure that The Distributor's purchase money security interest is a perfected security interest.
- 8 The Customer must not enter into any security agreement that allows any other person to have or to register a security interest in relation to the Products or any proceeds of sale of the Customer of the Products until The Distributor has a perfected security interest and if applicable, a perfected purchase money security interest.
- 8 In accordance with section 115 of the PPSA, for any Products supplied that are not products that are used predominantly for personal, domestic or household purposes:

- (a) The Customer and The Distributor hereby agree to contract out of sections 95, 118, 121(4), 130, 132(4), 135, 142 and 143 of the PPSA; and

- (b) The Customer waives any rights the Customer may have to:
  - (i) receive any notices the Customer may be entitled to receive under sections 95, 118, 121, 130, 132 or 135;
  - (ii) receive a copy of any financing statement or any financing change statement registered by The Distributor, or any verification statement confirming such registration, in respect of any security interest The Distributor may have in the Products;
  - (iii) apply to a court for an order concerning the removal of an accession under section 97; and
  - (iv) object to a proposal of The Distributor to dispose or retain any collateral under sections 130 and 135.

8.7 For the purposes of this clause: "PPSA" means the Personal Property Securities Act 2009, and the expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest", "purchase money security interest" and "verification statement" have the meanings given to them by the PPSA, and references to sections are sections of the PPSA.

**9. Warranties and acknowledgments.** The Customer warrants that it understands the nature and characteristics of the goods, including their particular attributes and intended functions as well as any hazards associated with the goods and is familiar with all information made available to it.

9.1 The Distributor's goods are manufactured to the Distributor's high quality standards and comply with the specifications for those goods at the time of testing. To the extent permitted by law, all other implied terms and warranties are excluded. The Customer must not make any claims or representations about the goods or its suitability for any purpose, beyond the claims, if any, made on the label or in the information material supplied by the Distributor. The Customer must not represent that it is the agent of the Distributor.

9.2 The Distributor does not accept responsibility for any claim in respect of any goods unless the claim is made in writing to the Distributor within 30 days of the delivery of the goods to the Customer and is accompanied by a sample of sufficient quantity to enable the Distributor to properly test the goods to determine if it has been manufactured in accordance with the specifications for the goods.

9.3 The Distributor does not accept any responsibility for the handling, storage or use of the goods after it leaves the premises of the Distributor. Suitability of the goods for any purpose is limited to claims made, if any on the label on the container of the goods. Each user must determine the suitability of the goods for any particular purpose and take all proper precautions in the handling, storage and use of the goods.

9.4 In the event of a claim against the Distributor, the Customer will cooperate with the Distributor in the investigation of the claim and will provide to the Distributor all information in the possession of the Customer relating to the handling, storage and use of the goods.

**10. Limitation.** Except as expressly set out in these Terms, the Distributor:

- (a) excludes all conditions and warranties in relation to the goods, whether imposed or implied by statute or otherwise; and
- (b) will not be liable for any loss, damage or injury including consequential loss (such as loss of profits and loss of opportunity),

arising from the condition, supply or use of the goods or otherwise whether or not caused by the Distributor's negligence.

1 These Terms include terms implied by statute, which cannot be lawfully excluded. However, in relation to the supply of goods, which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Distributor's liability for breach of those implied terms (other than section 69 of the Trade Practices Act) will be limited, at its option, to any one or more of:

- (a) in the case of goods, the replacement, repair or payment of the cost of replacement or repair of the goods; and
- (b) in the case of services, supplying the services again or payment of the cost of having the service supplied again.

**11. Indemnity.** The Customer hereby indemnifies the Distributor from any liability, loss or damage (including but not limited to any liability or obligation to pay legal costs on a full indemnity basis) accruing to the Distributor from any claim or legal action in respect of:

- (a) any breach of any term, condition, or warranty (whether express or implied) of these Terms and Conditions; or
- (b) any negligent, reckless, or wilful act or omission performed or made by the Distributor, its servants, contractors, agents, or associated entities.

**12. Force majeure.** Where a party is unable, wholly or in part by reason of an act of God, strike lockout or other interference with work, war declared, or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, failure of crop grown by the Customer or by any agent of the Customer, Governmental or quasi-Governmental restraint, expropriation prohibition intervention direct or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining government or quasi-Governmental approvals consents permits licences authorities or allocations and any other cause whether of a kind specifically enumerated above or otherwise which is not reasonably within the control of the party affected ("force majeure") to carry out any obligation under these terms and conditions and that party:

- (a) gives the other party prompt notice of that force majeure with reasonably full particulars thereof and in so far as known the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- (b) uses all possible diligence to remove that force majeure as quickly as possible, that obligation is suspended so far as it is affected by force majeure during the continuance thereof:

12.1 An obligation to pay money is never excused by force majeure.

12.2 The requirement that any force majeure shall be removed with all possible diligence shall not require the settlement of strikes, lockouts, or other labour disputes or claims or demands by any Government on terms contrary to the wishes of the party affected.

**13. Default.** The Distributor may withdraw credit facilities to the Customer, with immediate effect by notice in writing to the Customer upon the occurrence of any one of the following events:

- (a) if the Customer has failed to pay the purchase price of the goods within the period specified from time to time by the Distributor;
- (b) if the Customer has entered into any composition or arrangement with its creditors, has appointed a controlling trustee pursuant Part X of the Bankruptcy Act 1966, has resolved to appoint an administrator or is obliged to execute a deed of company arrangement pursuant to Part 5.3A of the Corporations Act 2001, or has a receiver appointed over any of its assets, has filed for its own bankruptcy, or is the subject of any resolution or petition for winding up or orders for the

sequestration of its estate in bankruptcy, or judicial management (other than for the purposes of amalgamation or reconstruction); (c) if the Customer has committed a breach of any term of these terms and conditions and fails to rectify such breach (if capable of rectification) within seven days of service of a notice in writing calling upon it to rectify such breach; and

- (d) if the Customer assigns the benefit of these terms and conditions or credit facilities without prior consent in writing of the other party. Any termination of these terms and conditions shall be without prejudice to any rights, which either party may have against the other arising out of or in connection with these terms and conditions.

**14. Notice.** Notice, approval consent or other communication given, sent or made to a party under these terms and conditions must be in writing and left for 5pm on a business day or sent by certified prepaid post, facsimile to the Facsimile Number or e-mail address of the party as entered on the face of these terms and conditions or to such other address, Facsimile Number and e-mail as the party from time to time may notify to the other party for the purpose of this clause.

Proof of dispatch is proof of receipt.

- (a) in the case of a letter, on the third business day after posting
- (b) in the case of a facsimile transmission, of a production of a transmission report by the machine from which the facsimile was sent, which indicates that the facsimile was sent in its entirety to the facsimile Number of the recipient, notified for the purposes of this clause.
- (c) in the case of e-mail transmission at the time that a delivery receipt is received.

**15. Place of Agreement.** The contract for the sale of the goods arising from these terms and conditions is made in the State or Country where the Distributor issuing the invoice for the goods is registered and the parties agree to submit all disputes arising between them to the Courts of such State or Country and any Court competent to hear an appeal therefrom.

**16. Whole Agreement.** These terms and conditions and any documents referred to herein contain the whole of the agreement between the parties and no understanding arrangement or provision not expressly set forth herein shall be binding upon the parties.

**17. Amendment.** This Agreement sets out the full understanding between the parties and any representations warranties or other agreements made by the parties or any modification or variation of this agreement shall only bind the Distributor if made in writing and signed by the parties.

**18. Enforcement.** The failure of either party at any time to enforce any of the provisions of these terms and conditions or to exercise any right shall not constitute a waiver of the same or effect the party's right thereafter to enforce the same.

There shall be no waiver of this agreement unless made in writing and signed by the parties and failure by any of the parties to require performance or resort to legal remedy shall in no way affect the right of the parties to later require strict performance or seek legal remedy.

**19. Severance.** If any provision of these terms and conditions is deemed to be unlawful or unenforceable. Such provisions shall be severed from these terms and conditions and all other provisions hereof shall remain in force.

**20. No partnership.** Nothing contained in these terms and conditions shall create a partnership between the Distributor and the Customer.

**21. Definitions and Interpretation.** In these terms and conditions unless the context otherwise requires the following expressions shall have the following

meanings:

- (a) "the Distributor" means Sabakem Trading Pty Ltd ACN 151 698 476 ABN 48 151 698 476 and any related entity or related body corporate (as those terms are used in the Corporations Act 2001) from whom the Customer may order goods or services.
- (b) "the Customer" means the purchaser ordering and taking delivery of the goods and includes all or any one or more of them jointly and severally and each of their personal representatives successors in title transferees and permitted assigns.
- (c) "the goods" means the chemical goods, or any other item sold by the Distributor to the Customer as specified on official invoices and statements.
- (d) "associated persons" means, in relation to a corporation, any related corporation director or substantial shareholder pursuant to the corporations Law and in relation to a natural person, any spouse or blood or adopted relative of that person or that person's spouse.
- (e) "Trade Practices Act" means the Trade Practices Act 1974 as amended.
- (f) Words importing the singular number or plural number shall include the plural number and singular number respectively.
- (g) Words importing any gender shall include any other gender or genders.
- (h) Words importing persons shall include corporations.
- (i) References to statutes include all amendments thereto and statutes passed in substitution therefore or re-enactments thereof respectively.
- (j) The headings used herein are for ease of reference only and shall not affect the construction or interpretation of these Terms and Conditions.
- (k) Any covenant or agreement on the part of or in favour of any two or more persons shall bind them or be in favour of them both jointly and severally.
- (l) GST means any tax imposed upon a taxable supply under the A New Tax System (goods and Services Tax) Act 1999 and any related tax imposition legislation.
- (m) Taxes means GST and all other taxes, charges, duties or similar relating to the supply or use of the goods.