

**CREDIT ACCOUNT APPLICATION**

01 - BUSINESS AND CREDIT INFORMATION																													
Full Legal Name:																													
Business Name:					Credit Limit Required?																								
Primary Business Address:																													
City:					State:		Post Code:																						
Postal Address:																													
City:					State:		Post Code:																						
ABN:					ACN:																								
Telephone:			Fax:		Email:																								
Bank Name:					BSB:		Account No:																						
Bank Address:							Telephone:																						
City:					State:		Post Code:																						
02- BUSINESS REFERENCES																													
Company Name:																													
Address:					Avg Monthly Spend:																								
City:			State:			Post Code:																							
Phone:			Fax:		Email:																								
Company Name:					Avg Monthly Spend:																								
Address:																													
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Company Name:					Avg Monthly Spend:																								
Address:																													
City:			State:			Post Code:																							
Phone:			Fax:		Email:																								
03 - AGREEMENT																													
<ol style="list-style-type: none"> <li>By submitting this application, you authorise <b>EmRock</b> Building Supplies Pty Ltd to make inquiries into the banking and business/trade references that you have supplied.</li> <li>By submitting this application, you agree to the '<b>EmRock Terms &amp; Conditions</b>' included below as part of this document.</li> </ol>																													
04 - SIGNATURES																													
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DATE:					DATE:																								
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<table border="1"> <tr> <td>Document:</td> <td colspan="7">Emrock-Credit-Account-Application-Form-V2.0</td> <td colspan="2">Page 1 of 4</td> </tr> <tr> <td>Date Revised:</td> <td colspan="4">23-04-2018</td> <td colspan="3">Date for Next Review:</td> <td colspan="2">11-11-2018</td> </tr> </table>										Document:	Emrock-Credit-Account-Application-Form-V2.0							Page 1 of 4		Date Revised:	23-04-2018				Date for Next Review:			11-11-2018	
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## TERMS & CONDITIONS

### 01 - CONTRACT

The specifications, timing, price and other details of the products and, or services to be provided by *EmRock Building Supplies Pty Ltd* - ABN 86 621 727 802 (**EmRock**) will be agreed in writing between you and **EmRock** (the Contract).

These Terms and Conditions are applicable to all your purchases from **EmRock** regardless of how the purchase request is made and by whatever means the order is transmitted (e.g. in person, or via telephone, email, facsimile, Electronic Data Interchange (EDI) or via the web).

By submitting an order to **EmRock** you are deemed to be making an order to purchase goods and or services.

Each Order will constitute an offer by you to acquire Products from **EmRock** upon and subject to these Terms and Conditions to the exclusion of all other Terms and Conditions.

All quoted prices are valid for a 14-day period from the date of that quotation unless withdrawn earlier by **EmRock** or agreed to in writing stating otherwise.

No quotation should be construed as an offer or obligation to supply products and, or services.

If you make a request or order ('the Order') for **EmRock** to supply products and, or services the Order should be construed as an offer and not as an acceptance of an offer previously made by **EmRock**, the Order does not create any obligation on **EmRock** to supply the products and the Contract will not be formed until such time as **EmRock** accepts the Order either verbally or in writing or by delivery of the products and, or provision of the services.

Once formed, the Contract and the **EmRock** Terms and Conditions ('the Terms') constitute the entire agreement between you and **EmRock**. All prior negotiations, agreements, arrangements, representations, understandings and correspondence are superseded by the Contract and these Terms.

The Contract and these Terms will in all circumstances prevail over your terms and conditions (if any), unless **EmRock** agrees in writing to be bound by your terms and conditions.

To the extent that there is any inconsistency between the Contract and these Terms, these Terms prevail unless the inconsistency is agreed in writing.

### 02 - YOU WARRANT THAT:

- you have provided all relevant information to **EmRock** when seeking a Quotation or placing an Order for Goods or Services from **EmRock**;
- all relevant information supplied by you to **EmRock** was accurate and complete;
- in giving any Quotation, accepting any Order or supplying or delivering any Goods or Services, **EmRock** will be entitled for all purposes to rely upon the accuracy and completeness of all Relevant Information provided by you;
- subject to any Law to the contrary, unless **EmRock** makes an express representation to the contrary in writing, you will not allege or in any circumstances maintain:
  - a) that **EmRock** had, or should be taken to have, approved of or represented any specification (whether supplied by you, by **EmRock** or by a third party) as being suitable for any particular purpose; or
  - b) that **EmRock** is liable for any Loss to the extent that the Loss results from or is attributable to any defects in, or unsuitability of, the specification.
- you have formed your own opinion as to the correctness or otherwise of any information or advice provided by or any representation made by **EmRock** (including as to product design and application) in connection with any Goods or Services quoted for, ordered from or supplied or Delivered by **EmRock** and does not rely on **EmRock** in respect of such information, advice or representation or maintain or allege that it has so relied.

### 03 - PRICING

**EmRock** may increase the price of products and, or services if the price increase results from any introduction of, or change to, any legislation, regulation or government policy.

Each product has minimum order quantities ('**MOQ**'), an additional charge may be applied for product orders below the **MOQ**.

Unless otherwise stated, the price for the products and, or services agreed in the Contract and any other amount payable under the Contract or these Terms shall be exclusive of any tax payable pursuant to A New Tax System (Goods and Services Tax) Act 1999 (Cth) ('GST') or similar legislation, you will be required to pay to **EmRock** an amount equal to the GST in addition to the price or relevant amount.

### 04 - PAYMENT TERMS

Payment terms shall be at **EmRock's** discretion and unless agreed to in writing stating otherwise **EmRock** requires payment strictly 30 days from date of invoice in Australian Dollars (AUD).

**EmRock** reserves the right to request a deposit on projects greater than \$10,000 AUD.

**EmRock** encourage payment through electronic transfer to the following account:  
Account Name: **EmRock** Building Supplies Pty Ltd

- **Bank:** CBA
- **BSB:** 064-000
- **Account No:** 14944291

If payment is not made within the specified time, **EmRock** reserves the right to:

- charge interest at **EmRock's** current overdraft rate + 5% per annum on any amounts overdue and such interest will accrue and be recoverable from day to day; and
- commence legal proceedings to recover the outstanding amount plus any costs incurred in the recovery on an indemnity cost basis, including debt collection, agency fees and legal fees on a client /solicitor basis.

**EmRock** may pass credit information on to our debt collectors when pursuing outstanding debts.

Payment is only considered 'received by **EmRock**' when it receives cash, or when the proceeds of other methods of payment are credited and cleared to **EmRock's** bank account.

You are not entitled to any retention or otherwise retain any amount due to **EmRock**. All payments are to be made without deduction or equitable or other **set-off** whatsoever.

### 05 - PRODUCT SHIPMENT AND FREIGHT COSTS

Standard product pricing does not include any allowance for shipping or freight costs. You will, unless **EmRock** and you agree otherwise, bear the cost of delivery of the products.

**EmRock** will make all reasonable efforts to have the products and, or service results delivered or provided to you by the date agreed, but **EmRock** will not be liable for:

- any failure, or delay in delivery or provision, of the products, services and, or service results for any reason;
- any damage or loss due to unloading or packaging of the products and, or service results;
- any damage to property caused upon entering premises to deliver the products and, or service results; and
- any damage to property caused upon entering premises to supply the products and, or service results.

You will inspect all products, services and, or service results upon delivery or collection.

You will be deemed to have accepted the products and, or service results supplied in the following events:

- failure by you to reject or return the products and, or service results; or

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- installation or use of the products and, or service results in any way by you.

### 06 - WARRANTIES AND LIMITATION OF LIABILITY

**EmRock** warrants that the products and, or services it supplies are free from defects in their design, materials and workmanship. This warranty does not include wear and tear of parts and defects caused by:

- improper handling;
- unskilled operators;
- non-compliance with **EmRock's** operating instructions; or
- if the products and, or service results are modified in any way.

The warranty is valid for all defects that occur within 12 months of delivery to you. You shall notify **EmRock** in writing of the existence and nature of any defect without unreasonable delay after discovery of the defect.

It is your responsibility to remove the faulty product and, or service results and ship them back to **EmRock** who will replace or repair them and pay for freight costs to return them. This however is only the case if the products are covered by the warranty as outlined above.

All repairs made to products after the aforementioned warranty period shall be charged to you accordingly.

All terms and warranties, which would otherwise be implied by law or otherwise, are excluded except as stated in these Terms.

If under the Australian Consumer Law or any other law any terms which apply to the sale of the products under the Contract cannot be legally excluded, restricted or modified then those terms apply only to the extent required by law.

To the extent permitted by law, **EmRock's** liability for any breach of the terms of the Contract, and any condition or warranty implied by the provisions of the Australian Consumer Law, is limited to and will be completely discharged by any one of the following as determined by **EmRock** in its absolute discretion:

- the replacement of the products and, or service results or the supply of equivalent products and, or service results;
- the repair of the products and, or service results;
- the payment of the cost of replacing the products and, or service results or of acquiring equivalent products;
- the payment of the cost of having the products and, or service results repaired;
- the re-supply of the products and, or services; or
- the payment of the cost of having the products and, or services re-supplied.

Except as expressly provided in these Terms and to the extent permitted by law, **EmRock** is not liable to you (and any party claiming through you) for:

- any claim made under, or in connection with, the Contract, in tort, under statute, in equity or otherwise in respect of defects whatsoever in the products for the loss or damage to person or property arising from or caused from such defects;
- any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the products performed where such loss or damage includes:
  - a) any loss of income, profit or business; or
  - b) any loss of goodwill or reputation.

### 07 - INDEMNITY

You will indemnify and keep indemnified and hold **EmRock** harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by **EmRock**, and from and against all actions, proceedings, claims or demands made against **EmRock**, arising from one or more of the following:

- your failure to comply with any laws, rules, standards, regulations or instructions applicable in relation to the products, services and, or

service results, or the use of the products, services and, or service results; and

- any negligence or breach of duty by you and your employees, agents or contractors in relation to products, or the use of the products.

### 08 - INTELLECTUAL PROPERTY

You acknowledge that:

- **EmRock** have the licence to use all intellectual property rights in the products and, or services; and
- the provision of the products and, or services to you does not transfer any of the intellectual property rights.

You warrant to **EmRock** that **EmRock** is entitled to use any drawings, specifications and documents provided to **EmRock** for the purposes of, or in the course of, the supply of products and, or services and that such use does not infringe any third party's intellectual property rights.

You indemnify **EmRock** against all claims, losses and damages incurred by **EmRock** as a result of drawings, specifications and, or documents provided by you to **EmRock** for the purposes of, or in the course of, the supply of the products and, or services breaching a third party's intellectual property rights.

### 09 - TITLE AND RISK

The legal and equitable title to the products and, or service results will only be transferred from **EmRock** to you when you have met and paid all that is owed **EmRock** on any account whatsoever.

You acknowledge that until you have met and paid all that is owed to **EmRock** on any account whatsoever, you hold the products and, or service results as bailee for **EmRock** and that a fiduciary relationship exists between you and **EmRock**.

You will store the products and, or service results safely and in such manner to ensure that they are capable of being clearly identified as the property of **EmRock**.

If required, you shall deliver the products and, or service results which are subject to this clause to **EmRock** at your cost.

If you default as contemplated by **clause 11**, **EmRock** may, without notice, take possession of the products and, or service results and you agree that representatives of **EmRock** may enter your premises for that purpose.

Despite the above, you may sell as a fiduciary agent for **EmRock** the products to a third party or use the products in some manufacturing or construction process of its own or some third party, provided that where the products you use are paid by that third party to you, you hold the proceeds separate from other monies, to the extent of the amount owing by you to **EmRock**.

Notwithstanding this clause, you are still required to pay **EmRock** for products and, or service results already delivered and products and, or service results manufactured or ordered to specification and not yet delivered.

The risk in the products passes to you upon delivery or handover (including all risks associated with unloading) or upon title in the products and, or service results passing to you, whichever is earlier.

You acknowledge that insurance of the products and, or service results is your responsibility.

### 10 - PERSONAL PROPERTY SECURITIES ACT 2009 (Cth) ('PPSA')

You acknowledge and agree that for the purposes of the PPSA or substitute legislation:

- the Contract and the Terms constitute a 'security agreement';
- **EmRock** holds a 'security interest' in respect of all the products and, or service results supplied and in any proceeds of the sale of the products; and
- any supply of the products to which **clause 9** applies will constitute a 'purchase money security interest'.

You will execute all documents, provide all such information and do such further acts as **EmRock** may reasonably require to enable the registration a 'security interest' or a 'purchase money security interest' under the PPSA.

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To the extent permitted by law and the PPSA, you agree to waive all of your right to receive any notice, statement or information under sections 95, 123, 130, 132(3)(d) and 135 of the PPSA, and all of its rights under sections 142 and 143 of the PPSA.

You will pay the costs, charges and expenses of and incidental to the registration of a 'security interest' or a 'purchase money security interest' in favour of **EmRock** under the PPSA, you will also pay all reasonable legal costs arising from any disputes or negotiations with third parties claiming an interest in any products and service results supplied.

### 11 - DEFAULT

You will be in default if:

- you breach any of the Terms or the Contract; or
- you being an individual commits an act of bankruptcy or you being a body corporate becomes insolvent within the meaning of section 95A of the Corporations Act 2001 (Cth).

If you default, **EmRock** may without notice to you:

- treat the whole of the Contract as repudiated and sue for breach of contract;
- refuse to supply or continue to supply any products and, or services to you;
- claim the return of any products and, or service results in your possession where title has not passed to you;
- withdraw or vary any credit **EmRock** has provided to you; and, or
- make all monies owing by you to **EmRock** on any account immediately due and payable.

Notwithstanding any provision in this clause, **EmRock** reserves all of its rights to claim any remedy available to it as a result of your default.

### 12 - FORCE MAJEURE

If **EmRock's** ability to perform its obligations under the Contract is adversely affected by war, strike, trade dispute, damage to plant or machinery, shortage of any material or labour or any cause beyond **EmRock's** control, **EmRock** may, if it chooses, end the Contract or suspend it for a period determined by **EmRock** by giving you written notice. **EmRock** will not be liable for any loss, damage or liability, which you incur.

You must accept delivery of the products and, or service results notwithstanding any delay in delivery caused by any of the events specified in this clause.

### 13 - GENERAL

You cannot assign, charge or otherwise deal with your rights and obligations under the Contract and these Terms without the prior written consent of **EmRock**

You acknowledge that you have been given reasonable opportunity to obtain independent legal advice before entering into the Contract.

The rights and obligations of the parties will not merge on completion of any transaction under the Contract and these Terms or upon the execution of any other document in connection with the subject matter of the Contract and the Terms.

All rights under the Contract and these Terms are in addition to and do not abrogate, limit or reduce any other rights that **EmRock** may have.

Any provision of the Contract and these Terms that is invalid, unenforceable or illegal must be read down to the extent necessary to avoid that effect. If that is not possible, that provision must be excluded from the Contract and these Terms but only to the extent necessary to avoid that effect.

Unless otherwise specified, time is of the essence in the Contract.

**EmRock may vary these Terms from time to time and without notice. Current Terms are available on our website. You must review the Terms on our website as part your due diligence prior to placing an order with EmRock.**

A right or obligation under the Contract and these Terms cannot be waived except by a document executed by the party waiving that right or obligation and specifying the waiver.

You must pay all stamp duty, registration fees and any other fees charged by any government authority or body in respect of the Contract and these Terms and any document required by the Contract and these Terms.

In these Terms, mentioning anything after include, includes or including does not limit what else might be included and a reference to a party that comprises two or more persons or corporations means those persons or corporations jointly and severally.

### 14 - DISPUTES

If a dispute arises in relation to goods supplied by the **EmRock** to you, **EmRock** may by notice to you at any time prior to determination by a court require that such dispute or part thereof be determined by arbitration according to law. The arbitration is to be conducted in accordance with the Commercial Arbitration Act of Queensland.

There is to be a single arbitrator appointed by agreement, or failing agreement by the president of the law society of Queensland. The arbitrator's decision is final and binding subject to any right of appeal under the QLD Commercial Arbitration Act.

The reference of a dispute to arbitration does not affect your obligation to pay the price of goods when due which must be paid without deduction or equitable or other **set-off** pending the resolution of any dispute whether referred to arbitration or otherwise

### 15 - DISCLAIMER

The **EmRock** website may contain links to other websites and materials obtained through third parties. You should make your own enquiries before relying on the content of any third party website. **EmRock** is not liable for any content appearing on websites operated by third parties.

Furthermore, the **EmRock** website may contain product information provided by or obtained directly or indirectly through third parties (such as suppliers) and while it is provided in good faith, we cannot always verify its accuracy. To the extent permissible at law, such material is provided on an "as is" and without warranty basis, and you acknowledge it may contain inaccuracies or errors or be incomplete or out of date.

You should make your own enquiries before relying on such content, including by referring to the relevant third party's websites and other materials for information regarding their relevant products and services.

To the extent permitted at law, your access to and use of **EmRock** website is subject to these terms and all applicable laws, and is at your own risk.

**EmRock** disclaims all liability for loss or damage (whether direct or indirect) arising out of your use of the **EmRock** website or reliance on its contents.

### 16 - GOVERNING LAW

These terms will be governed by and construed in accordance with the laws of Queensland.

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