



MATTHEW DAVIS Australia Pty. Ltd.

ACN 142 493 669 ABN 59 142 493 669
P.O. Box 536, Braeside, Victoria, 3195
102-104 Malcolm Road, Braeside, Victoria, 3195
Telephone: (03) 9580 0066 Facsimile: (03) 9587 2829

TO: _____ ATTENTION: _____

DATE: _____ EMAIL / FAX: _____

ACCOUNT APPLICATION

Company Details

Company Name:			
Company Trading Name: (where applicable)			
ABN:		Year of Incorporation:	
Business Address:			Post Code:
PO Box Address:			Post Code:
Phone No:	Fax No	Email:	
Web Site Address:			

Key Staff Details

Purchasing Dep Contact:		Accounts Dep Contact:	
Phone No:		Phone No:	
Mobile No:		Mobile No:	
Email:		Email:	

Company Director Details

Name:		Name:	
Address:		Address:	
Signature		Signature	

Company Bank Details

Bank Name:		Branch:	
Address:		BSB:	
Account Number:		Account Name:	

Credit Limit Required

\$ _____

Trade Reference Details

Company Name:	Address:	Phone / Fax Number	Trade Limit (\$ Value):
1.			
2.			
3.			

Conditions:

1/We acknowledge that the above details are true and correct and agree to comply with the trading terms of Matthew Davis Australia Pty Ltd., which are strictly 30 days end of month. We note that the completion of this form does not necessarily guarantee the establishment of a credit account

Internal Use Only / REP NAME:

PLEASE NOTE THE CHANGE IN OUR ACN, ABN AND PO BOX DETAILS

Leaders in Valves, Valves Automation, Pipe, Hose and Fittings



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AGREEMENT TO GUARANTEE AND INDEMNIFY

To: Matthew Davis Australia Pty Ltd – ABN 59 142 493 669

WE GUARANTEE payment of all monies and performance of all obligations by the Debtor or any of us arising from any dealing with you whatsoever.

WE INDEMNIFY YOU against all losses you sustain whatsoever as a result of any dealing you have with the Debtor or any of us.

WE AGREE:

- a) To pay you any amount certified by you as payable before we become entitled to dispute whether that amount is payable.
- b) That this agreement shall remain effective notwithstanding any conduct or event which, but for this clause may have the effect of releasing the Debtor or any of us.
- c) This agreement is signed by us both in our personal capacity and as Trustee of each and every trust of which we are trustees.

WE CHARGE in your favor all of our estate and interest in any asset or trust asset, and including any land in which we now have any interest (or in which we later acquire any interest) with payment of all monies owed to you by the Debtor or any of us.

CONSIDERATION: You to grant credit from time to time and to withhold from taking legal action for 30 days against the Debtor or any of us.

PROPER LAW: We agree that this agreement to Guarantee and Indemnify and any claim and any dispute between the Creditor, the Debtor or any of us at all shall be governed by Victorian Law and heard in the appropriate Victorian Court at Melbourne.

DEFINITIONS:

- a) "You" and "Your" shall be a reference to each of the Companies listed below as the "Creditor(s) jointly and severally.
- b) "We" and "Us" shall be reference to each of the Guarantors and the Debtor jointly and severally.

THE PARTIES

A. THE CREDITOR: Matthew Davis Australia Pty Ltd – ABN 59 142 493 669

B. THE DEBTOR: _____ ABN _____

C. THE GUARANTORS

1. Name..... Signature.....

Name..... Witness.....

2. Name..... Signature.....

Name..... Witness.....

DATED this.....day of.....20.....

ACCEPTED on behalf of: Matthew Davis Australia Pty Ltd – ABN 59 142 493 669

This.....day of.....20.....

PLEASE NOTE THE CHANGE IN OUR ACN, ABN AND PO BOX DETAILS
Leaders in Valves, Valves Automation, Pipe, Hose and Fittings

Terms and conditions of sale

1. Definitions and Interpretation

1.1 In this Agreement:

- (1) **Agreement** means the terms and conditions contained in this document including the Credit Application, the Business Purpose Declaration, the Director's Guarantee and the Privacy Act acknowledgement and consent;
- (2) **Credit Application** means the application for credit by the Purchaser which accompanies this Agreement including all information supplied by the Purchaser in that application;
- (3) **Goods** means goods and/or services specified in this Agreement or provided by MDA to the Purchaser.
- (4) **Guarantee Clause** means the Director's Guarantee attached to the Credit Application.
- (5) **Guarantor** means, if the Purchaser is a company, the directors of the Purchaser.
- (6) **Purchaser** means the person or company whose name and address is set out in the Credit Application and includes its legal representatives, administrators, successors and permitted assigns.
- (7) **Purchaser Specified Goods** means Goods that are custom made by Regent in accordance with Purchaser specifications or particulars.
- (8) **MDA** means Matthew Davis Australia Pty Ltd ABN 59 142 493 669 of 102 – 104 Malcolm Road, Braeside, Victoria 3195 and any related body corporate of Regent within the meaning of section 50 of the *Corporations Act 2001*.
- (9) **Sales Order** has the meaning given to that term in clause 5.2.

1.2 The only terms which are binding upon MDA are:

- (1) those set out in this Agreement or otherwise notified to the Purchaser in writing by Regent in accordance with clause 5.1; and
- (2) those which are imposed by law and which cannot be excluded.

2. Acceptance of Goods

2.1 Goods that are provided by MDA to the Purchaser are subject to this Agreement and acceptance of Goods by the Purchaser constitutes its acceptance of the terms and conditions contained in this Agreement.

3. Price list, quotations etc

- 3.1 Unless otherwise withdrawn, MDA's quotations are valid for the period stated in the quotation, or, if no period is stated, for a period of 30 days from the date of quotation.
- 3.2 Quotations and MDA's price list do not constitute an offer to sell but are an invitation to treat and Regent reserves the right to accept or reject in its absolute discretion any Sales Orders which it may receive.
- 3.3 Where the Purchaser provides specifications, drawings or other particulars to MDA for the purpose of MDA quoting on Purchaser Specified Goods, MDA's quotation is based on its estimates of quantities of materials required. If any adjustment in materials is required above or below the quotation estimate for any reason, any such increase or decrease will be adjusted on a rate per unit basis as set out in the price list current at the date of the adjustment.
- 3.4 The Goods and prices shown in any catalogue or price list are subject to alteration without notice.
- 3.5 MDA reserves the right to abandon, redesign or to incorporate new features into the Goods and to supply Goods under any Sales Order, which represent the current design and standard of the Goods so ordered at the time of delivery.
- 3.6 All drawings and descriptions supplied by MDA remain the property of MDA and may not be copied, reproduced, passed onto or in any other way communicated to a third party without the express written consent of MDA.
- 3.7 Use of the drawings and descriptions necessary for the proper installation, starting, operation and maintenance of the Goods passes to the Purchaser in accordance with this Agreement, but such materials are to be treated as confidential and the Purchaser must comply with the requirements of clause 18 in respect of such materials.

- 3.8 The descriptions, illustrations and particulars of weights and dimensions contained in catalogues, price lists and other advertising materials do not form part of this Agreement.
- 4. Purchaser Specified Goods**
- 4.1 MDA may, but is not obliged to produce, manufacture, and machine or cut Purchaser Specified Goods.
- 4.2 Subject to this Agreement and to requirements at law, Purchaser Specified Goods are not returnable or refundable. This clause overrides the operation of clause 10.
- 5. Supply of Goods**
- 5.1 MDA may vary the terms and conditions of trade contained in this Agreement by giving 7 days notice to the Purchaser in writing, specifying the variation to the terms and conditions of sale.
- 5.2 An order or offer to purchase Goods by the Purchaser which is accepted by Regent and the contract made by that acceptance (**Sales Order**) are subject to the terms and conditions of trade set out in this Agreement.
- 5.3 All Goods to be supplied under this Agreement are described on the Sales Order. In the event of any dispute arising, the description of Goods in the Sales Order will prevail over all other descriptions.
- 6. Demonstration stock and ex-stock**
- 6.1 MDA may, on the Purchaser's written request supply Goods for demonstration purposes and the written request together with MDA's appropriately noted copy of its despatch advice will (in the absence of obvious error) be conclusive proof of supply of Goods as demonstration stock. Where Goods are so supplied, title remains with MDA, but risk passes to the Purchaser on despatch until return freight pre-paid to Regent on or before the date specified on the despatch advice. If not returned by such date, the Purchaser must pay to MDA the cost of the Goods as set out in the then-current price list. If returned in damaged condition, the Purchaser must pay the cost of repair, or if incapable of repair the full cost as set out in the then-current price list.
- 6.2 All Goods quoted ex-stock are subject to availability and prior sale. MDA will notify the Purchaser as soon as practicable if any ex-stock order cannot be supplied, but MDA will not be liable for any loss or damage caused by its failure to supply ex-stock Goods.
- 7. Cancellation of orders**
- 7.1 The Purchaser must not cancel an order that has been accepted by MDA without MDA's prior written consent.
- 8. Packing, delivery and storage**
- 8.1 Unless otherwise specified in writing, delivery is at MDA's premises, and costs of delivery or transportation or unloading of the Goods must be paid by the Purchaser.
- 8.2 All costs associated with any packing requirements (including but not limited to export requirements) which are in addition to MDA's standard packaging must be paid by the Purchaser notwithstanding that such costs may have been omitted from any quotation.
- 8.3 Every effort will be made to deliver the Goods within agreed times but delivery times quoted are an estimate only. MDA will not be liable for any loss or damage howsoever arising as a result or consequence of any delay in delivery or any failure to deliver. The Purchaser will not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.
- 8.4 Delivery will occur when the goods are first left with the Purchaser or at the premises of the Purchaser or at any other place nominated by the Purchaser and agreed by MDA. MDA will not be required to obtain the Purchaser's signature as proof of delivery.
- 8.5 Unless this Agreement otherwise specifies, MDA may, in its sole discretion, deliver the Goods in any number of instalments and this Agreement applies to any Goods partially supplied.
- 9. No Representations**
- 9.1 **No employee, agent or contractor of MDA (except where authorised in writing by the Managing Director of MDA) has any authority to give any warranties or make any representations about the performances, specifications or fitness for purpose of the**

Goods other than those specified in MDA's authorised written material. All such unauthorised warranties and representations are expressly excluded.

10. Acceptance and returns

- 10.1 The Purchaser must inspect the Goods immediately upon delivery and must within 7 days after the date of inspection give written notice to MDA, with particulars, of any claim that the Goods are not in accordance with the Sales Order. If the Purchaser fails to give notice, then to the extent permitted by statute, the Goods must be treated as having been accepted by the Purchaser and the Purchaser must pay for the Goods in accordance with the provisions of this Agreement and, to the fullest extent permitted by law, MDA will be discharged from any liability in respect of the Goods being wrong or defective or short delivered.
- 10.2 If a Purchaser's claim under clause 10.1 that the Goods are not in accordance with the Sales Order, is found to be valid, MDA may, at its discretion:
- (1) reduce the purchase price by agreement with the Purchaser;
 - (2) accept the return of the Goods or any part of the Goods, subject to the Goods being returned in the same condition as they were in at the time of delivery to the Purchaser and refund the purchase price to the Purchaser less a handling charge equivalent to the greater of \$50 or 15% of the price of the Goods returned, unless the Purchaser is a "consumer" for the purposes of the Trade Practices Act 1974 or Similar State or Territory legislation; or
 - (3) replace the Goods.
- 10.3 The Purchaser must not return any Goods, without MDA's prior written approval (including the terms and conditions of any such return). Approved returns must be freight pre-paid. MDA will only give credit for the Goods if they are in as-new saleable condition. MDA reserves the right to charge a handling charge equivalent to the greater of \$50 or 15% of the price of the Goods returned.
- 10.4 If MDA has given its written approval to the return of Goods under clause 10.1 MDA must repay freight and cartage to the Purchaser if the Purchaser's claim that the Goods are not in accordance with the Sales Order is valid.
- 10.5 Subject to this clause 10, if MDA has given its written approval to the return of Goods under clause 10.1 or 10.2(2), risk in the Goods reverts to MDA upon delivery of the Goods to MDA.

11. Payment

- 11.1 Unless this Agreement otherwise specifies, or credit terms are approved by MDA, payment for Goods sold by MDA to the Purchaser must be made in full immediately against a valid tax invoice presented at or prior to delivery.
- 11.2 MDA may grant credit to approved Purchasers on the basis of the Credit Application. Where so granted payment is due and payable on or before the end of the month after the month in which delivery is made. Such credit facilities may be withdrawn or varied by MDA at any time by notice in writing and, once withdrawn, payment must be made in full immediately against a valid tax invoice presented.
- 11.3 If the Purchaser fails to place an order for a period of 6 months, the credit facility is deemed to have been withdrawn and may only be reinstated on the basis of MDA's approval of a new Credit Application form.
- 11.4 Time is of the essence in respect of the Purchaser's obligation to make payment for Goods sold by MDA to the Purchaser.
- 11.5 No deduction to the invoiced amount is allowed by way of set-off, counterclaim or otherwise without the prior written consent of MDA. Where delivery is by instalment, MDA may withhold indefinitely any further instalment until full payment of prior instalments has been made.
- 11.6 If the Purchaser defaults in making payment in accordance with this Agreement MDA may in its absolute discretion:
- (1) refuse to supply further Goods to the Purchaser;
 - (2) from the date on which the default arose until the date of actual payment, charge the Purchaser interest calculated on the portion of the Purchaser's account overdue at the rate which is 1.5% per month calculated daily; and
 - (3) require the Purchaser to reimburse MDA for all costs associated with the recovering of outstanding amounts, including mercantile agent fees and legal costs incurred by MDA calculated on a solicitor and client basis.

12. Goods and services tax

- 12.1 In this clause, **GST** means GST as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended (**GST Act**) or any replacement or other relevant legislation and regulations.
- 12.2 Capitalised expressions set out in this clause bear the same meaning as those expressions in the GST Act.
- 12.3 Except where express provision is made to the contrary, and subject to this clause, any amount that may be payable under this Agreement is exclusive of any GST. If a party makes a Taxable Supply in connection with this Agreement for a Consideration which represents its Value, then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply. A party's right to payment under this clause is subject to a valid Tax Invoice being delivered to the Recipient of the Taxable Supply.
- 12.4 To the extent that one party is required to reimburse another party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an Input Tax Credit.

13. Risk and insurance

- 13.1 Goods supplied to the Purchaser are at the Purchaser's risk immediately on delivery to the Purchaser or into the Purchaser's custody (whichever is the sooner). The Purchaser must insure the Goods at its cost from delivery of the Goods until they are paid for in full against such risks as it thinks appropriate and must note the interest MDA on the policy and produce a certificate to this effect to MDA on request.
- 13.2 Any property belonging to the Purchaser that is under MDA's custody or control is held at the Purchaser's risk and MDA will not be liable for any loss or damage caused to or by such property.

14. Retention of title

- 14.1 Property in the Goods does not pass to the Purchaser until the money owing for those Goods, and any other money owing by the Purchaser to MDA, has been paid. The Purchaser in the meantime takes custody of the Goods and retains them as the fiduciary agent and bailer of MDA.
- 14.2 Until the Goods have been paid for in full, the Purchaser:
- (1) must properly store, protect and insure the Goods, including storing them in a manner that shows clearly that they are the property of MDA; and
 - (2) may, with written authority of MDA, sell the Goods, in the ordinary course of business, but only as fiduciary agent of MDA. The Purchaser has no authority to bind MDA to any liability by contract or otherwise and must not purport to do so. The Purchaser receives all proceeds, whether tangible or intangible, direct or indirect, of any dealing with the Goods (including any proceeds from insurance claims) in trust for MDA and must keep the proceeds in a separate bank account until the liability to MDA is discharged.
- 14.3 If the Purchaser uses any of the Goods in a manufacturing or construction process of its own or a third party and sells the product of the manufacturing or construction process (**Manufactured Product**), then the Purchaser holds such part of the proceeds of the sale of any Manufactured Product as relates to any Goods sold by MDA in trust for MDA.
- 14.4 MDA is entitled to reclaim possession of the Goods without prejudice to any other rights of MDA, even if they have been paid for in full, in satisfaction of all debts owing to MDA, if any of the following events occurs (**Insolvency Event**):
- (1) the Purchaser commits an act of bankruptcy, goes into liquidation, administration, or some other form of insolvency or a receiver is appointed to the Purchaser; or
 - (2) the Purchaser ceases to carry on business.
- 14.5 The Purchaser irrevocably authorises MDA at any time to enter any premises where the Goods are stored or records pertaining to the Goods are held to enable MDA:
- (1) to inspect the Goods and/or the records and copy the records; and
 - (2) if the Purchaser has breached this Agreement, or has committed an Insolvency Event, to reclaim possession of the Goods.

15. Exclusions and limitations

- 15.1 The only conditions and warranties, whether express or implied by law or otherwise, which are binding on MDA in respect of:
- (1) the state, quality or condition of the Goods supplied by it to the Purchaser; or
 - (2) advice, recommendations, information or services supplied by it, its employees, servants or agents to the Purchaser regarding the Goods, their use and application,
- are those imposed and required to be binding by statute (including the Trade Practices Act 1974) and which cannot be lawfully excluded.
- 15.2 Except as provided in this clause 15 all conditions and warranties implied by law in respect of the state, quality or condition of the Goods which may, apart from this clause be binding on MDA, are excluded.
- 15.3 Products or parts not manufactured by MDA, or which have been repaired or altered by persons other than MDA or its authorised (in writing) representatives are subject only to that manufacturer's warranty (if any).
- 15.4 To the extent permitted by statute, the liability, if any, of MDA arising from the breach of any actual or implied condition or warranty that cannot be lawfully excluded will be limited to and completely discharged, at the election of MDA, by:
- (1) the repair or making good of any defects in the Goods; or
 - (2) replacement of the Goods or the supply of equivalent Goods; or
 - (3) the payment of the cost of replacing the Goods or of purchasing or acquiring equivalent Goods.
- 15.5 The Purchaser acknowledges that:
- (1) the Purchaser does not rely and it would be unreasonable for the Purchaser to rely on the skill or judgment of MDA as to whether the Goods supplied are reasonably fit for any purpose for which they are being acquired, and that the sale is not a sale of goods by description or sample; and
 - (2) any description of the Goods contained in the Sales Order or invoice is given by way of identification only and the used of such description will not constitute a contract of sale by description.
- 15.6 Except to the extent provided in this clause 15 MDA has no liability (including liability in contract, negligence or under statute) to any person for:
- (1) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the Goods, Manufactured Products or advice, recommendations, information or services;
 - (2) without limiting clause 15.6(1), any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the Goods, Manufactured Products or advice, recommendations, information or services in relation to the Goods or Manufactured Products.

16. Indemnity

- 16.1 To the fullest extent permitted by law, the Purchaser indemnifies, and agrees to keep indemnified, MDA, regardless of any negligence on the part of MDA, against:
- (1) all losses incurred by MDA;
 - (2) all liabilities incurred by MDA; and
 - (3) all costs actually payable by MDA to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by MDA in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal),
- arising directly or indirectly as a result of or in connection with the supply of Goods by MDA to the Purchaser:
- (4) except to the extent that such losses, liabilities and/or costs are incurred by MDA as a result of MDA breaching a condition or warranty which cannot be lawfully excluded under clause 15.1; or
 - (5) unless such losses, liabilities and/or costs are incurred by MDA due to wilful misconduct on the part of MDA or any of its employees or agents acting within the scope of their employment.

- 16.2 The Purchaser must pay to MDA all liabilities, costs and other expenses referred to in clause 16.1, whether or not MDA has paid or satisfied them.
- 17. Testing**
- 17.1 All Goods are manufactured from high-grade materials and to rigid specifications, but since MDA has no control over the conditions under which Goods are applied, used, stored, transported or handled the Purchaser is advised to test the Goods thoroughly before adapting them to its own use.
- 18. Confidentiality**
- 18.1 Both parties acknowledge that information disclosed to it by the other party under this Agreement may be proprietary, confidential or a trade secret of the other.
- 18.2 Except as stated in this Agreement, a party must not and must not permit any of their respective officers, employees, agents, contractors or related companies to use or to disclose to any person any information disclosed to it by the other party without the prior written consent of that party.
- 19. Vienna Sales Convention**
- 19.1 The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.
- 20. Force majeure**
- 20.1 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.
- 21. Miscellaneous**
- 21.1 The Purchaser must not assign or otherwise deal with this Agreement or a Sales Order without the written consent of MDA. MDA may assign or otherwise deal with this Agreement or a Sales Order without the consent of the Purchaser.
- 21.2 In the event that the Purchaser represents more than one person, the Purchaser's responsibilities under this Agreement will be joint and severable.
- 21.3 If the Purchaser is acting as the trustee of any trust (whether disclosed or not), then the Purchaser declares that it is entering into this Agreement and both in its own capacity and as trustee of the trust with the ability to bind, and the intention of binding, both.
- 21.4 A notice or other communication connected with this Agreement has no legal effect unless it is in writing and sent to the address of the addressee set out in this Agreement or subsequently notified from time to time.
- 21.5 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement or the Sales Order remains in force.
- 21.6 The law of Victoria governs this Agreement and the parties submit to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.
- 21.7 All of the rights and obligations of each party to this Agreement which are expressed as surviving termination and/or expiry of this Agreement, or which by their nature or context must survive termination and/or expiry of this Agreement, will survive the termination and/or expiry of this Agreement.



MATTHEW DAVIS Australia Pty. Ltd.

ACN 142 493 669 ABN 59 142 493 669
P.O. Box 536, Braeside, Victoria, 3195
102-104 Malcolm Road, Braeside, Victoria, 3195
Telephone: (03) 9580 0066 Facsimile: (03) 9587 2829

Attn: Accounts Payable

Re: Payments owing to Matthew Davis Australia Pty Ltd

Please ensure you have updated our correct ABN, banking and PO Box details prior to making payments.

ACC NAME: Matthew Davis Australia Pty Ltd

BANK: N.A.B – Braeside

BSB: 083 337

ACC NO: 17 202 9547

P.O BOX 536, Braeside, Vic 3195

Please send Remittance's to (03) 9587 2829 or email to jbattin@matthewdavis.com.au

Kind Regards

Jess Battin @ Matthew Davis Australia Pty Ltd