



Application for Credit

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Version	E
Date	July 2020

This Application for Credit applies to the trading accounts maintained by or on behalf of the Osmoflo group (Osmoflo Water Management Pty Ltd ACN 608 078 459, Osmoflo Pty Ltd ACN 050 952 175, Osmoflo Water Supply Pty Ltd ACN 083 782 503 and Osmoflo Holdings Pty Ltd ACN 137 804 954) (**Osmoflo**).

CUSTOMER DETAILS			
Trading Name:		ABN:	
Legal Entity:		ACN:	
Registered Address:			Post Code:
Postal Address (if different):			Post Code:
Delivery Address (if different):			Post Code:
Telephone No.:		Facsimile:	
Have you ever traded with Osmoflo before?	Yes <input type="checkbox"/> No <input type="checkbox"/>	If yes, please provide details:	
Accounts Contact:		Email:	
Bank:		Branch:	
BSB:		Account No.:	

Credit Limit Requested:	
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DIRECTORS, PARTNERS AND PROPRIETORS DETAILS (turn overleaf if insufficient space)				
Full Name	Date of Birth	Driver's Licence No.	Residential Address	Telephone No.

TRADE REFERENCES – Please provide at least <u>three</u> references from firms with a monthly spend greater than the Credit Limited requested above			
Contact Name	Business Name	Email	Telephone No.

OTHER REQUIREMENTS	
Please provide the following with your application:	<ul style="list-style-type: none">• your audited financial accounts for the past three financial years;• your most recent management accounts; and• your DUNS number and any recent credit report.

Standard Terms and Conditions of Sale

These are the standard terms and conditions ("**Terms and Conditions**") governing, and incorporated into, any Purchase Order supplied by a Customer to Osmoflo Water Management Pty Ltd (ACN 608 078 459), Osmoflo Pty Ltd (ACN 050 952 175), Osmoflo Water Supply Pty Ltd (ACN 083 782 503) or Osmoflo Holdings Pty Ltd (ACN 137 804 954) (**Osmoflo Group** or **Osmoflo**). These Terms and Conditions will apply to any Purchase Order unless a contractual arrangement already exists between the Customer and Osmoflo. If at any time in relation to the supply of the Goods or Services, the Customer provides, refers to, submits or otherwise uses terms and conditions other than these Standard Terms and Conditions of Sale, such terms and conditions will not form part of, or be incorporated into the Purchaser Order or the Contract.

In these Terms and Conditions:

Additions means any Goods which are installed in or affixed to other goods;

Amount Payable means, at any time, all amounts payable by the Customer to Osmoflo at that time (whether or not those amounts have become due for payment) in connection with the Contract (including, without limitation, any invoiced amount, interest, fees, costs or expenses);

Contract means the contract comprising the Application for Credit (if any), Osmoflo's Sale Proposal, the Purchase Order, these Terms and Conditions of Sale and any other document which is attached to, or incorporated by reference in, the Purchase Order or these Terms and Conditions;

COR means the chain of responsibility provisions as provided for in the Heavy Vehicle National Law;

Customer means the person named as the customer in respect of the Goods and/or Services in the Contract and includes as appropriate the Customer's related bodies corporates, executors, administrators, successors, and permitted assigns;

Defect means any part or aspect of the Goods or Services which is not in compliance with the requirements of the Contract and includes any Defect which is attributable to design, workmanship or operating characteristics;

Goods means each and every article or thing described in the Purchase Order as to be purchased by the Customer, or any part thereof;

GST has the same meaning as it does in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Heavy Vehicle National Law means the road safety regime contained in the *Heavy Vehicle National Law Act 2012* (QLD) and related state and federal legislation including regulations and amendments;

Indemnified Parties means each of the entities comprising the Osmoflo Group and their officers, directors and employees;

Intellectual Property Rights means any and all intellectual and industrial property rights anywhere in the world, including but not limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, throughout the world for the full period of the rights and all renewals and extensions;

Osmoflo's Sales Proposal means the document prepared by Osmoflo defining the Goods and/or Services to be provided by Osmoflo to the Customer including such commercial clarifications as are agreed in writing by the parties prior to the date of the Purchase Order;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Price means the price of Goods or Services as specified in a Purchase Order that is accepted by Osmoflo;

Processed Goods means Goods which after their delivery become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass;

Purchase Order means the document provided by the Customer to Osmoflo describing the Goods and/or Services to be supplied pursuant to the Contract;

Services means the services described in the Purchase Order and includes the performance of all incidental or other services, and the provision of all materials and equipment, necessary to allow or assist the performance of the Services; and

Transport Activities means activities, including business practices and making decisions associated with the use of a heavy vehicle on the road, as defined in the Heavy Vehicle National Law.

PART A – GOODS

1. Supply

Osmoflo will supply the Goods to the Customer in accordance with the Contract.

2. Delivery

2.1 Good will be: (a) properly and safely packed and marked so as to comply with any applicable laws; (b) clearly and accurately labelled; (c) compliant with the specifications set out in the Purchaser Order; and (d) new and of good quality and workmanship.

2.2 Delivery times of Goods are estimates only and are subject to change due to factors outside of Osmoflo's control.

2.3 Osmoflo is committed to ensuring that so far as is reasonably practicable, all Transport Activities performed as part of the supply of the Goods or Services, are performed safely and in accordance with the Heavy Vehicle National Law and its COR requirements. Osmoflo shall not direct or instruct the Services be carried out in a way which may have the effect of contributing to a breach of the Heavy Vehicle National Law, or otherwise prevents either party from complying with their duties of care under the Heavy Vehicle National Law. Accordingly, in supplying the Goods or Services, Osmoflo shall comply with its obligations under the Heavy Vehicle National Law and any COR requirements.

2.4 If Osmoflo has not received a claim by the Customer within 10 business days of delivery of Goods, the Customer will be taken to have accepted the relevant Goods without Defect.

2.5 Any installation of the Goods by Osmoflo will be subject to Part B (Services) of these Terms and Conditions.

3. Title & Related Matters

The legal and equitable title to the Goods will only be transferred from Osmoflo to the Customer when the Amount Payable for those Goods has been reduced to zero.

PART B – SERVICES

4. Performance of Services

4.1 Osmoflo shall perform the Services, and the Customer shall pay Osmoflo for the Services performed, in accordance with the Contract.

4.2 Osmoflo is responsible for the provision and maintenance of all materials and resources and the supply of all tools and equipment necessary to perform the Services. Osmoflo will ensure that all of Osmoflo's equipment is in good working order and suitable for use in connection with the Services.

4.3 Osmoflo will perform the Services: (a) with due care and skill; and (b) in accordance with good safety practices and any applicable Legal Requirements and, if applicable, good industry practices.

PART C – General

5. Prices

5.1 Quotations provided by Osmoflo are estimates only and may be withdrawn, corrected or altered by Osmoflo at any time before acceptance of a Purchaser Order.

5.2 Prices provided in quotations are exclusive of: (a) transport and delivery costs, which may be charged by Osmoflo in its sole discretion; and (b) GST, which will be charged in addition to the Price.

5.3 Osmoflo may elect not to commence the work contemplated under a Purchase Order until it has received the deposit specified in Osmoflo's Sale Proposal.

5.4 Any amount paid as a deposit by the Customer is forfeited on the termination of a Contract, or part thereof.

6. Credit

6.1 Any agreement by Osmoflo to grant the Customer credit has been, or will be, made on the basis of the information provided by the Customer to Osmoflo in the Application for Credit and such other documents and information as may be required by Osmoflo.

6.2 The granting of credit does not oblige Osmoflo to extend any particular amount of credit to the Customer and Osmoflo may withdraw, refuse, suspend or limit credit to the Customer at any time, in its absolute discretion, without notice or providing any reason.

6.3 The Customer must notify Osmoflo within 5 business days if there is any change in the shareholding or ownership of the Customer or any material change in the Customer's financial position.

6.4 Credit is provided by the Osmoflo Group on behalf of all of them together, and termination of a credit account by one entity will terminate the Customer's credit arrangements with the whole Osmoflo Group.

7. Payment

7.1 Unless otherwise specified in Osmoflo's Sales Proposal, for so long as Osmoflo has agreed to provide credit to the Customer (if applicable), payment for Goods or Services must be made in full (without any set-off) and received by Osmoflo within 30 days from the date of invoice.

7.2 If Osmoflo has not granted credit to the Customer, the Customer must pay the Price for Goods prior to dispatch and for Services within 7 days from date of invoice following supply.

7.3 Unless otherwise stated in Osmoflo's Sales Proposal, Osmoflo shall be entitled to immediately render an invoice upon completion of the supply of the Goods and/or Services or, where performance of the Contract may exceed 30 days in duration, at the end of each calendar month in which the Contract is performed.

7.4 A tax invoice is correctly rendered if it complies with the provisions of Subdivision 29C of *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended and all associated rulings by the Australian Tax Office.

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

7.6 Any amount due and payable by Osmoflo to the Customer may be set-off against any amount due and payable by the Customer to Osmoflo.

8. Default Interest

8.1 Osmoflo may charge interest on any overdue amount at a rate equivalent to 4% per annum above the business overdraft interest rate of Commonwealth Bank of Australia Ltd, as determined and calculated by Osmoflo. Such interest will be payable on demand by Osmoflo and for so long as it remains unpaid will compound on a monthly basis.

9. Security Interest & Charge

9.1 The Customer grants to Osmoflo a security interest in the Goods to secure payment of the Amount Payable. The security interest: (a) extends to and continues in all proceeds, Additions and Processed Goods; and (b) is a purchase money security interest to the extent to which it secures payment of that part of the Amount Payable which comprises the aggregate unpaid Price of Goods.

9.2 The Customer must not do or permit anything to be done that may result in the purchase money security interest granted to Osmoflo ranking in priority behind any other security interest.

10. Access

10.1 The Customer grants Osmoflo access to the Customer's premises for the purposes of: (a) performing its obligations under the Contract; and (b) at any time when Osmoflo may reasonably claim the return of Goods under clause 11.2, entering and removing the Goods from the Customer's premises.

11. Termination & Default

11.1 If either party breaches any of its obligations under the Contract, the non-defaulting party may, by notice in writing, require the defaulting party to remedy the breach within fifteen (15) business days.

11.2 In the case of a breach by the Customer which remains unrectified following the notice period in clause 11.1, Osmoflo may do all or any of the following:

- (a) suspend the Contract, including the supply of Goods and or Services, or any part thereof until the breach is rectified;
- (b) terminate the Contract and claim the return of Goods in the Customer's possession where title has not passed to the Customer; or
- (c) exercise any other right or remedy available to it under the Contract, the PPSA or any other applicable law, including to enforce the security interests created by the Contract.

11.3 In the case of a breach by Osmoflo which remains unrectified following the notice period in clause 11.1, the Customer may terminate the Contract and exercise any remedy available to it under the Contract or any applicable law.

11.4 Notwithstanding anything else contained in the Contract, Osmoflo will not be liable for any delay in or failure to comply with the Contract if such delay or failure is caused by circumstances beyond Osmoflo's control, failure of Osmoflo's machinery, or failure of a supplier to Osmoflo, provided that Osmoflo uses reasonable efforts (which, for the avoidance of doubt, does not require Osmoflo to incur material expenses) to remedy the cause of delay or failure.

12. Warranties

12.1 The parties acknowledge and agree that: (a) State and Commonwealth legislation implies certain non-excludable guarantees, warranties and conditions into particular agreements for the supply of goods and services, which cannot be excluded, restricted or modified ('Non-Excludable Guarantees'); (b) Osmoflo does not exclude, restrict or modify the Non-Excludable Guarantees, nothing in this document is intended or is to be construed as doing so; and (c) nothing in this document affects any remedies available to the Customer at law and which cannot be lawfully excluded by the Company, including in respect of any of the Non-Excludable Guarantees which may be applicable.

12.2 Subject to clauses 12.1 and 12.3, to the maximum extent permitted by law, Osmoflo excludes all warranties, terms, conditions and guarantees regarding the Goods and Services supplied or provided under a Contract which are implied by law.

12.3 Osmoflo warrants that Goods provided under a Contract (except any Goods not manufactured by Osmoflo) will be free from faulty workmanship. This warranty applies only where Goods are used in strict accordance with operational guidelines. Osmoflo's obligation under this warranty is limited to the replacement of parts which are Defective and have not been misused, carelessly handled, defaced, or damaged during or as a result of incorrect installation or maintenance (as determined by Osmoflo). This warranty is VOID where the Goods have been tampered with, or if repairs have been made or attempted by anyone except Osmoflo. It does not cover normal wear and tear, or consumable items such as chemicals, filter elements UV lamps/tubes, pump seals and bearings. In any event Osmoflo has no other obligation or liability beyond replacement or repair of this product. Goods repaired under warranty, where appropriate, must be returned to Osmoflo at the Customer's cost and risk.

12.4 The Customer acknowledges and understands that apart from any Non-Excludable Guarantees which may be applicable and the warranty provided under clause 12.3, Osmoflo does not make or provide any further warranties or guarantees regarding the Goods or Services.

13. Limitation of Liability

13.1 Osmoflo's liability to the Customer for any claim for loss or damages made in connection with the Contract (including the supply of Goods or Services) whether in contract, tort (including negligence), under statute, in equity or otherwise, is limited and excluded as follows (to the extent that the law does not prohibit such limitations and exclusions):

- (a) for any liability arising from Goods not meeting their specifications or which are said to be otherwise Defective or deficient, Osmoflo's liability is limited to the cost of replacement of those Goods as soon as reasonably practicable, or the repair of those Goods or the repayment (or allowance) of the Price of those Goods (at the option of Osmoflo);
- (b) for any liability arising from the Services not meeting the scope or which are said to be otherwise Defective or deficient, Osmoflo's liability is limited to the provision of the Services again or payment of the cost of having the relevant Services provided (at the option of Osmoflo); and
- (c) for any liability that does not fall within the scope of clauses 13.1(a) or 13.1(b), Osmoflo's liability for any loss or damage arising from or caused in any way by Osmoflo or the Goods or Services it supplies under the Contract is excluded.

13.2 To the maximum extent permitted at law, neither party shall be liable to the other for any consequential loss or damage of any nature whatsoever resulting from or caused

in any way by the Contract. For the purposes of this clause 13.2, consequential loss includes without limitation any loss of income or profits, loss of opportunity, loss of goodwill or reputation, loss of value of intellectual property, loss of business expenses, loss of interest and loss or damage resulting from the loss or damage to other goods.

13.3 To the maximum extent permitted at law, Osmoflo is not liable for: (a) the cost of the removal of Goods not meeting the specifications or which are said to be otherwise defective or deficient; (b) the cost of installation of replacements for Goods not meeting the specifications or which are said to be otherwise defective or deficient; or (c) defects or deficiencies in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.

14. Indemnity

The Customer agrees to defend, hold harmless and keep indemnified the Indemnified Parties against all and any: (a) loss, damage, liabilities, penalties, costs and expenses relating to damage to, or loss of equipment, plant and property, personal injury or death; (b) financial loss; (c) claims, demands, actions, proceedings or liabilities and related costs and expenses made by third parties against, or incurred by, the Indemnified Parties in relation to damage to, or loss of property, personal injury or death or the infringement of a third party's Intellectual Property Rights; and (d) any other loss or liability of any nature whatsoever caused by or arising out of or in any way connected with the supply of the Goods and/or Services, to the extent caused or contributed to by the acts or omissions of the Customer or the Customer's personnel or agents.

15. Assignment & Novation

15.1 The Customer must not subcontract, novate or assign its rights or obligations under the Contract without the prior written consent of Osmoflo. Osmoflo may assign the Contract or any part of it and must, within a reasonable time thereafter, give notice of such assignment to the Customer.

15.2 The Customer must not unreasonably withhold its consent to Osmoflo novating the Contract and must, on Osmoflo's request, do all things necessary and desirable to effect a novation.

16. Risk & Insurance

16.1 Risk of loss or damage to the Goods passes to the Customer upon the earlier of: (a) delivery (including all risks associated with unloading); or (b) title to the Goods passing to the Customer in accordance with clause 3.

16.2 The Customer is solely responsible for arranging, and for the payment of, all freight, insurance, delivery costs and other charges levied or payable in respect of the Goods, unless otherwise agreed by the parties in writing.

17. Intellectual Property

17.1 The Customer warrants to Osmoflo that all documents provided by the Customer are accurate and that Osmoflo is entitled to use all such documents for the purposes of a Contract and that such use does not infringe any third party's Intellectual Property Rights.

17.2 The Customer indemnifies Osmoflo against all claims, losses and damages incurred by Osmoflo as a result of documents provided by the Customer to Osmoflo in connection with the Goods breaching a third party's Intellectual Property Rights.

17.3 Osmoflo acknowledges and agrees that nothing in this document gives Osmoflo any right or entitlement to any of the Intellectual Property Rights of the Customer or its related entities, and that except to the extent strictly necessary for it to perform its obligations under this Contract, it must not access or use any of the Intellectual Property Rights of the Customer or any of its related entities. Osmoflo will not have any legal or equitable claim or right to any part of the Intellectual Property Rights of the Customer or its related entities, except as provided for in this document.

18. Contracting out of the PPSA

18.1 The Customer: (a) waives the right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement relating to a security interest created under the Contract; and (b) contracts out of its rights to receive any other notice or statement under any other provision of the PPSA.

18.2 To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143, which will not apply to this Contract.

19. Miscellaneous

19.1 The Customer must not disclose to any third party information supplied to it by Osmoflo in connection with any Contract without Osmoflo's prior written consent (including without limitation the existence, or terms, of the Contract).

19.2 The Customer and Osmoflo must each appoint a representative for the purpose of liaising with the other party and will notify the other party of its appointed representative.

19.3 The Contract constitutes the entire agreement between the parties as to its subject matter and supersedes all previous negotiations and communications.

19.4 The laws in South Australia govern these Standard Terms and Conditions. The parties submit to the non exclusive jurisdiction of the Courts of South Australia and the Federal Court of Australia (Adelaide Registry), and the Courts of Appeal there from.