

## TRADE TERMS AND CONDITIONS: PIL- Prestige International Ltd (19/07/2018)

### 1. Definitions

In these terms and conditions "PIL" means Prestige international Limited (including its lawful assignees and successors) and also includes any company associated with PIL. **The Customer** In these terms and conditions "the customer" shall mean the customer, any person acting on behalf and with the authority of the customer or any purchaser purchasing goods or services from PIL. **Goods** In these terms and conditions "goods" shall mean all goods and chattels supplied by PIL to the customer and shall include any fee or charge associated with the supply of goods by PIL to the customer and shall include the proceeds of any goods (as defined in the PPSA). **Services and Policies** [Our Goods and Services Terms & Conditions are available on request] In these terms and conditions it shall mean all "services" provided to the customer and shall include but not be limited to the provision of all sales and mechanical services, supplies and charges for labour and work, hirages or any fee or charge associated with the supply of services by PIL to the customer. Our "policies" can be workshop vehicle maintenance supply policies with lubricants, parts and outdoor and parts return policies in place at any time, but not limited to such policies. Account trading with PIL constitutes acceptance of all PIL policies. **PPSA** In these terms and conditions "PPSA" means the Personal Property Securities Act 1999.

### Price

In these terms and conditions the word "price" shall mean the cost of goods and services as agreed between PIL and the customer subject to Clause 3 of this agreement.

### 2. Acceptance

- Receipt of any order for the supply of goods and/or services will be deemed to be accepted by the customer if these terms and condition, despite anything stated to the contrary on the customer's order, terms and conditions of purchase or similar document. Orders may not be cancelled.
- Invoice queries must be made within 14 days, after this time our goods and services are regarded and deemed as accepted by the customer. Goods for credit (at the sole discretion of PIL) shall be returned within 7 days.
- Customer Order Numbers shall be immediately furnished to PIL. Customer order numbers not issued will not hold up invoicing (Refer to PIL's Goods and Services policies).

### 3. Price

At PIL's sole discretion:

- The price shall be as indicated in invoices provided by PIL to the customer in respect of the goods and services supplied; or
- The price shall be at the price of PIL's current price at the date of any delivery of the goods and services; or
- The price of the goods and services shall be at PIL's quoted price excluding GST, which must be in writing and which shall be binding upon PIL provided that the buyer shall accept PIL's quote in writing within the time-frame stated on the quote.

### 4. Payment

Any credit granted shall be on the basis that the price shall be paid in full with agreed payment terms without deductions or if no term agreed by not later than the 20th of the month following the date of the invoice or upon receipt of the delivery of the goods or the provision of the services, whichever is the earlier. The customer grants Authority to accept Direct Debits if agreed.

### 5. Limitations of Credit Facility

Notwithstanding PIL having processed or approved this application or having approved the grant of credit and without prejudice to any other of its rights, PIL shall be entitled to withhold delivery of any goods until payment has been made or if it considers the customer's creditworthiness to be unsatisfactory. Credit shall be revocable by PIL at any time.

### 6. Interest on Overdue Monies.

Interest may be charged on any amount owing after the due date at the rate of 1.9% per month or part thereof. Interest shall compound monthly on the 20th day of each month.

### 7. Default

The whole of the amount of credit outstanding shall become immediately due and payable to PIL;

- If the customer fails to make payment of any monies on the due date for payment or is otherwise in breach of these terms and conditions; or
- On the appointment of a liquidator or receiver of the customer; or
- Upon the termination of the contract pursuant to Clause 19.
- If PIL deems the customer uncreditworthy.

### 8. Credit Information

- The customer authorises any person, company or organisation to provide PIL with such information as PIL may require in response to PIL's credit enquiries. Any information obtained by PIL under this clause will be confined to that reasonably required by PIL.
- The customer authorises PIL to furnish to any third party, details of this application and by subsequent dealings that PIL may have had with a customer. Any disclosure made by PIL under this clause will be confined to that reasonably required by the third party.
- Under the Privacy Act 1993 the Customer and the Guarantor have the right of access to and correction of their personal information held by PIL.

### 9. Risk

If PIL retains property in the goods nonetheless all risk for the goods passes to the customer upon delivery or collection by the customer. If any of the goods are damaged or destroyed prior to property in the passing to the customer, PIL is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the price for the goods and services), to receive all insurance proceeds payable in respect of the goods. This applies whether or not the price has become payable under these terms and conditions. The production of these terms and conditions by PIL is sufficient evidence of PIL's right to receive the insurance proceeds without the need for any person dealing with PIL to make further inquiries. PIL will apply the insurance proceeds as follows:

- First: In payment of the price of the goods that are damaged or destroyed, if unpaid;
- Second: In payment of the outstanding price of any other goods or services supplied to the customer by PIL whether under the terms and conditions or otherwise;
- Third: In payment of any sums payable to PIL by the customer on any account;
- Fourth: Any balance to be paid to the customer.

### 10. Delivery

If there is delivery of the goods to the customer's address and property, then this is at the customer's expense. The costs of any carriage and any insurance for that carriage, which the customer reasonably directs PIL to incur, shall be reimbursed by the customer (without any set-off or other withholding whatsoever) and shall be due on the date for payment of the price. The carrier shall be deemed to be the customer's agent.

### 11. Delay

- If any time for delivery is specified at the time of order, such time shall be approximate only and shall not be deemed to be the essence of the contract.
- Dates given for completion of work and delivery of goods for which work has been performed are stated in good faith but to be treated as a condition of the sale. If completion and delivery is delayed for any reason at all, PIL will not be responsible or liable in any way to the customer or any other party for loss suffered due to the delay.

### 12. Unauthorized Use of Account

The customer shall be liable for any debts arising from unauthorized use of the account provided that the authorization came from a servant or agent of the customer.

### 13. Reservation of Title

- It is the intention of PIL and agreed by the customer that property in the goods shall not pass until:
  - The customer has paid all amounts owing for the particular Goods, and;
  - The customer has met all other obligations due by the customer to PIL in respect of all contracts between PIL and the customer, and that the goods, or proceeds of the sale of the goods, shall be kept separate until PIL shall have received payment and all other obligations of the customer are met.

2. It is further agreed that:

- Until such time as ownership of the goods shall pass from PIL to the customer, PIL may give notice in writing to the customer to return the goods or any of them to PIL. Upon such notice the rights of the customer to obtain ownership or any other interest in the goods shall cease.
- If the customer fails to return the goods to PIL then PIL or PIL's agent may enter upon and into land and premises owned, occupied or used by the customer, or any premises as the invitee of the customer, where goods are situated and take possession of the goods, without being responsible for any damage thereby caused.
- Receipt by PIL of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then PIL's ownership of rights in respect of the goods shall continue.
- The customer shall not charge the goods in any way nor grant nor otherwise give any interest in the goods while they remain the property of PIL.
- PIL may require payment of the price or balance of the price due together with any other amounts due from PIL to the customer arising out of these terms & conditions, and PIL may take any lawful steps to require payment of the amounts due to the price.
- PIL can issue proceedings to recover the price of the goods sold notwithstanding that ownership of the goods may not have passed to the customer.

### 14. Personal Property Securities Act

- The customer acknowledges that this agreement constitutes a Security Agreement for the purposes of the PPSA.
- The customer will not allow a Security Interest to be created or registered over the goods in priority to the Security Interest held by PIL.
- The customer grants PIL a security interest in all present and after acquired goods as security for the payment and performance of all of the customer's indebtedness and obligations.
- The customer grants a security interest to PIL over all the customer's present and after acquired property.
- The customer will, when requested by PIL, promptly execute any documents and do anything else required by PIL to ensure that the Security Interest created under this agreement constitutes a first ranking perfected Security Interest over the goods and their proceeds, including any information PIL reasonably requires to complete a Financing Statement or a Financing Change Statement. The customer grants a security interest to PIL over all the customer's present and after acquired property.
- The customer waives any right to receive a copy of a Verification Statement under the PPSA.
- The customer will pay to PIL all costs, expenses and other charges incurred, expended or
- payable by PIL in relation to the filing of a Financing Statement or a Financing Change Statement in connection with this agreement.
- The provisions of this clause survive any termination of this agreement. PIL may, in its sole and absolute discretion, allocate and, notwithstanding any initial allocation, re-allocate any amounts received in relation to the customer's indebtedness and obligations in any manner it determines, including any manner required to preserve any purchase money security interest it has in any goods.
- The customer agrees that nothing in sections 114(1) (a), 117(1) (c), 133 and 134 of the PPSA shall apply to this agreement.
- The customer agrees that the rights of the Customer as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to this agreement.
- The customer will on demand, pay all costs and expenses of, or incurred by, PIL as a result of enforcing any of its rights under this agreement.

### 15. Security And Charge

Notwithstanding anything to the contrary contained herein or any other rights which PIL may have howsoever

- Where the customer and/or the guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the customer and/or the guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to PIL or the PIL's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The customer and/or the guarantor acknowledge and agree that PIL (or PIL's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- Where PIL, as sub-contractor, provides any goods and/or services to the customer as head contractor, the customer hereby acknowledges that PIL shall be entitled to a charge on any monies payable to the customer by whom the customer is contracted or employed. The customer shall provide all reasonable details and particulars of his/her/its/their employment or superior contract in writing and upon reasonable request of PIL. The customer acknowledges and agrees that PIL shall be entitled to demand payment directly from whoever has contracted or employed the customer and the production of these terms and conditions of trade by PIL shall be sufficient evidence of PIL's right to receive such monies without the need for the payee, employer, head contractor any other person dealing with the customer and/or PIL to make further enquiries; and/or
- Should PIL elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the customer and/or guarantor shall indemnify PIL from and against all PIL's costs and disbursements including legal costs on a solicitor and own client basis.
- To give effect to the provisions of clause (14, 15 a) to b)) inclusive hereof the customer and/or the guarantor (if any) do hereby irrevocably nominate constitute and appoint PIL or PIL's nominee as the customer's and/or guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as PIL shall think fit in its absolute discretion against the joint and/or several interest of the customer and/or the guarantor in any land, realty or asset in favour of PIL, and in the customer's and/or guarantor's name as may be necessary to secure the said customer's and/or guarantor's obligations and indebtedness to PIL and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in PIL's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

### 16. Right to Dispose of Goods

The customer agrees that PIL may exercise general lien against any goods or any property belonging to the customer that is in the possession of PIL for all sums outstanding under this agreement and any other agreement to which the customer and PIL are parties.

- Therefore if:
- PIL retains possession or control of the goods; and
  - payment of the price is due to PIL and
  - PIL has made demand in writing of the customer for the payment of the price in terms of this agreement and
  - PIL has not received the price of the goods, then whether the property in the goods has passed to the customer or has remained with PIL may dispose of the goods and may claim from the customer the loss to PIL on such disposal. This may include but not be limited to all costs of storage, advertising, and legal costs. PIL may sell the goods in accordance with the Wages Protection Act 1983 and Contractors Liens Act Repeat Act 1987.

### 17. Cost of Collection

The customer shall be immediately liable for all costs of collection and legal fees (on a Solicitor/Client basis) incurred by PIL in the recovery or attempted recovery of any overdue amounts.

### 18. Variation of Terms, Conditions and Policies

PIL reserves the right to amend or add to these terms, conditions and policies at any time and from time to time by giving to the customer notice in writing and use thereafter by the customer of this account shall constitute acceptance of any such amendments. Such notice in writing shall include any variation to these trade terms and conditions on the website of PIL.

### 19. General

- If any of these terms and conditions are held by a Court to be ineffective because of non-registration, illegally or any other reason, then the term or condition or part of it will be severed from all other terms and conditions without affecting the validity or enforceability of all other terms and conditions or part of them.
- No waiver by PIL or any term or condition will constitute a waiver of any other of these terms or conditions.

### 20. Termination

In addition to any other PIL rights of termination provided herein or at law, both PIL and the customer shall have the right to terminate this credit facility on giving not less than one working days notice in writing but no such termination shall release the customer from any monies owing or from liability for any previous breach of these terms and conditions.

### 21. Consumer Guarantees Act

The parties acknowledge that where the goods supplied under this Agreement are being purchased for business purposes the provisions of the Consumer Guarantees Act 1993 do not apply.

### 22. Parts Credit Policy

Goods returned for credit must be in clean resalable condition and received within 10 days of invoice otherwise may be subject to a charge or declined. Airfreighted and procured items are non-returnable

Please sign here: \_\_\_\_\_

**APPLICATION FOR CREDIT**

Entity Type:  Limited Company  Partnership  Sole Trader  Other

Registered Name of Entity: \_\_\_\_\_

Incorporation/Commencement Date: \_\_\_\_\_

Trading As (if applicable): \_\_\_\_\_

Full Business Address: \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_

Postal Address (if differs from above): \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_

Business/Home Phone: \_\_\_\_\_ / \_\_\_\_\_ Cell: \_\_\_\_\_

Email: \_\_\_\_\_

Name of Principals (eg: Directors): \_\_\_\_\_

Contact Details of Principal(s): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Birth Date(s) of Principal(s): \_\_\_\_\_ / \_\_\_\_\_

Driver Licence Number(s): \_\_\_\_\_ / \_\_\_\_\_

Primary Person of Contact \_\_\_\_\_

Contact Details (if differs from above): \_\_\_\_\_

**CREDIT REFERENCES:**

**Referee One**

**Referee Two**

Name of Referee: 1: \_\_\_\_\_ 2: \_\_\_\_\_

Company/Trading Name: 1: \_\_\_\_\_ 2: \_\_\_\_\_

Contact Land Line: 1: \_\_\_\_\_ 2: \_\_\_\_\_

Contact Mobile: 1: \_\_\_\_\_ 2: \_\_\_\_\_

Signature of Applicant: \*\* \_\_\_\_\_ \*\*

**PERSONAL GUARANTEE OF ACCOUNT** (normally only where the customer is a registered company)

In consideration of Prestige International Limited (“PIL”) having agreed to extend credit to the abovenamed applicant (“the customer”) at the request of me/us and I/we do hereby admit and declare:

I/We DO HEREBY JOINTLY AND SEVERALLY AGREE AS FOLLOWS:

I/We hereby personally guarantee the due payment of all money now or hereafter owing to PIL by the customer  
I/We hereby personally guarantee the due performance by the customer of all credit terms and conditions of sale of PIL

This agreement shall be a continuing personal guarantee to PIL for the whole debt including interest and charges now or hereafter owing by the customer to PIL.

I/We hereby indemnify PIL against any loss PIL might suffer as a result of default(s) on the part of the customer or the customer going into administration, receivership or liquidation.

I/We hereby grant a security interest to PIL over all my/our present and after acquired property in support of this personal guarantee.

I/We hereby acknowledge that I/we have either had independent legal advice prior to executing this guarantee or, if that has not occurred, that is solely my/our own choice freely made and I/we irrevocably waive any rights which the lack of that independent advice might otherwise have given me/us.

All payments received by PIL and all credits or set offs granted by PIL in respect of the moneys owing by the customer shall be applied by PIL in reduction of the gross amount owing by the customer and my/our right to be subrogated to PIL in respect of payments made by me/us shall not arise until PIL shall have received payment in full for all moneys including interest and charges owing by the customer and claims against the customer for losses incurred by PIL and this guarantee shall be security to PIL for the payment of any final balance that may remain due and payable by the customer.

As between me/us and PIL I/we may for all purposes be treated as the principal debtor and not merely as a surety and PIL shall be under no obligation to take proceedings against the customer before taking proceedings against me/us.

Name of Customer: \_\_\_\_\_

Name(s) of Guarantor(s): \_\_\_\_\_ / \_\_\_\_\_

Addresses: \_\_\_\_\_ / \_\_\_\_\_

\_\_\_\_\_ / \_\_\_\_\_

\_\_\_\_\_ / \_\_\_\_\_

\_\_\_\_\_ / \_\_\_\_\_

Phone: \_\_\_\_\_ / \_\_\_\_\_

Email: \_\_\_\_\_ / \_\_\_\_\_

Birth Date(s) of Guarantor(s): \_\_\_\_\_ / \_\_\_\_\_

Driver Licence Number(s): \_\_\_\_\_ / \_\_\_\_\_