APPLICATION TO OPEN A CUSTOMER ACCOUNT

Company Name:

ABN No: **ACN No:**

Postal Address:

Delivery Address:
(If different from above)

Telephone: ( ) **Facsimile: ( )**

Accounts Payable Contact: **Telephone: ( )**

Email Address:

If not a Registered Company – Owner's Name and Address:

Type of Business:

Purchasing Requirements: ☐ Perlite ☐ Filter Aid ☐ Vermiculite ☐ Pumice

Purchasing Contact: **Telephone: ( )**

Estimated monthly spend:

Trade References (Three required):

Phone: ( )
Email:

Phone: ( )
Email:

Phone: ( )
Email:

1. I/We apply to open a credit account and authorise any person or company to provide you with such information as you may require in response to your credit enquiry. I/We further authorise you to furnish to any third party details of the application and any subsequent dealings that I/we may have with you as a result of this application being achieved.

2. I/We acknowledge that we have read and agree to the terms of trade attached.

Authorised Signatory: **Title:** **Date:**

Approved: **Date:**

Date Account Setup in MYOB:

Customer and Sales Team advised of Account Setup: ☐ **Y** ☐ **N**

AUSPERL PTY LIMITED

Tel: +61 2 8318 7824 • Fax: +61 2 9791 1350 • Email: info@ausperl.com
PO BOX 381 Padstow, NSW 2211 • 64 Gow Street, Padstow, NSW 2211
ACN: 605 415 816 • ABN: 39 605 415 816 • **www.ausperl.com**

PERSONAL GUARANTEE
(for a Limited Liability Company only)

In consideration of Ausperl Pty Limited (APL) agreeing to supply the Company with goods on credit. I hereby agree as follows:

1. I shall guarantee to APL the due payment by the Company for all such invoices, collection costs or other monies owing by the Company to APL from time to time.

2. This guarantee shall be a continuing guarantee to APL for all monies due by the Company to APL, and this guarantee shall not be discharged in whole or in part by the fact that the Company's account with APL may be in credit at any time.

3. APL is at liberty, without notice to me, and without in any way discharging me from any liability, to grant time or other indulgence to the Company, to accept payment from the Company in cash or by means of negotiable instruments, and to treat me in all respects as though I were jointly and severally liable with the Company instead of merely being surety for the Company.

Date:

Signature of Guarantor:

Name of Guarantor:

Signature of Witness:

Name of Witness:

Occupation of Witness:

Address of Witness:

CLEAR PRINT

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TERMS OF TRADE
Effective 1 September 2021

1. DEFINITIONS
In these terms and conditions:
"**Goods**" means all products and services agreed to be supplied by Ausperl to the Buyer under any contract, arrangement or understanding between Ausperl and the Buyer;
"**Ausperl**" means Ausperl Pty Ltd and its agents, servants and employees and any related bodies corporate as defined in the Corporations Law (if such related body corporate is named as the party making or accepting the Buyer's order of Goods); and
"**Quoted Date**" means the date of delivery as agreed between the Buyer and Ausperl. "**Terms**" means these terms of trade as updated from time to time.

2. STATUTORY PROVISIONS
These terms and conditions:
(a) shall be subject to the provisions of the Competition and Consumer Act 2010, and statutory amendment or re-enactment thereof for the time being in force and any other relevant and applicable state and/or commonwealth legislation ("the Statutory Provisions);
(b) unless Ausperl otherwise agrees in writing, these are the only terms and conditions of sale to which Ausperl will be bound and the Buyer agrees that these terms and conditions will in all circumstances prevail over the Buyer's terms and conditions of purchase (if any); and
(c) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that out to be expected from using the Goods.

3. WARRANTIES
Subject to the Statutory Provisions:
(a) Ausperl warrants that the Goods supplied are of merchantable quality;
(b) Ausperl's liability for breach of sub-clause 3(a) or a condition or warranty implied into this Contract by law is limited to any one of the following as determined by Ausperl:
(i) the replacement of the Goods or the supply of equivalent Goods;
(ii) the repair of the Goods or payment of the cost of having the Goods repaired; or
(iii) the refund of the price paid by the Buyer for the Goods.
The Buyer will examine the Goods for defects and shall notify Ausperl of any defects in writing within 14 days of delivery. If the Buyer does not notify Ausperl within 14 days of delivery the Buyer shall be deemed to have accepted the Goods.

To the extent the law permits and notwithstanding any other clause of these terms and conditions, Ausperl excludes all liability whatsoever to the Buyer arising out of or in any way connected with a contract for any consequential or indirect losses of any kind howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort. Consequential or indirect losses will be taken to include but not limited to:
(a) any loss of income, profit or business;
(b) any loss in the nature of overhead costs; and
(c) any loss of goodwill or reputation.

4. ADVICES
The Buyer hereby acknowledges that it has not relied on any service involving skill or judgement, or on any advice, recommendation, information or assistance provided by Ausperl in relation to the Goods or their use or application.

5. DELIVERY
Ausperl will make all reasonable efforts to have the Goods delivered to the Buyer on the date agreed between the parties as the quoted date, but Ausperl shall not be liable for any failure to deliver or delay in delivery for any reason.
The place of delivery will be at the address specified in the customer order, or if not specified, at the address to which previous orders were delivered. Where trucks are held on site for additional time awaiting delivery, all costs incurred as a result of delays on site or extra labour costs to unload will be charged to the customer.

6. RISK
(a) Unless otherwise agreed in writing, all risk in and to the Goods purchased shall pass to the Buyer upon delivery to the Buyer or his agent or to a carrier commissioned by the Buyer.
(b) Without in anyway limiting the operation of the foregoing, upon delivery of the Goods to the buyer or his agent or to a carrier commissioned by the Buyer, the buyer covenants and warrants to Ausperl that, in the storage and handling of the Goods, the buyer and his agents and carriers shall comply with all relevant environmental laws and regulations, and do comply with all necessary and/or relevant permits or licences pertaining to the storing and handling of the Goods, and the Buyer shall ensure that the Buyer and his agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods.
(c) If Ausperl does not receive forwarding instructions sufficient to enable it to dispatch the Goods within 14 days of notification to the Buyer that they are ready, the Buyer shall be deemed to have taken delivery of the Goods from such date. The Buyer shall be liable for storage charges payable monthly on demand.

7. TITLE
a) Title in and to the Goods shall not pass to the Buyer until payment in full for all Goods is made.
b) The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause, the Buyer holds the Goods as bailee of Ausperl and that a fiduciary relationship exists between the Buyer and Ausperl.
c) Until title in and to the Goods passes to the Buyer in accordance with this clause the buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of Ausperl. Ausperl shall be entitled at anytime until title in and to the Goods passes to the Buyer, to demand the return of the Goods, and shall be entitled without notice to the Buyer, and without liability to the Buyer, to enter any premises occupied by the Buyer in order to search for and remove the Goods.
d) The Buyer acknowledges that if it sells the Goods before title in and to the Goods has passed to the Buyer in accordance with this clause, it sells the Goods as a fiduciary agent of Ausperl provided that such sales shall not give rise to any obligations on the part Ausperl. The Buyer shall hold the proceeds of sale on trust for Ausperl in a separate account.
e) If title in and to the Goods has not passed to the Buyer in accordance with this clause, the Buyer's implied right to sell the Goods shall immediately terminate upon the happening of any of the events stipulated in paragraph 10(b)(i)-(v) of the terms.

8. PRICE
Unless otherwise agreed in writing, the price charged for the Goods shall be the price as determined by Ausperl at the date of delivery. Any price lists are subject to change.

9. FORCE MAJEURE
Deliveries may be totally or partially suspended by Ausperl during any period in which Ausperl may be prevented or hindered from manufacture, delivery or supply through any circumstances outside Ausperl's reasonable control, including but not limited to strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network, pandemics and events directly related to pandemics such as lockdowns. Ausperl shall not incur any liability to the buyer in respect of such suspension.

10. PAYMENT AND DEFAULT
a) Subject to sub-clause 10(c) and unless otherwise agreed in writing all accounts shall be payable within 14 days of delivery, or as otherwise identified on any statement of account issues by Ausperl.
b) If any of the events set out in (i) to (v) below occur, Ausperl may at its option withhold further deliveries or cancel the contract without notice to the Buyer and without prejudice to any other action or remedy which Ausperl has or might otherwise have had and all monies owing and outstanding to Ausperl on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable:
(i) the Buyer makes defaults in any payments or is unable or states that it is unable to pay its debts as and when they fall due;
(ii) the Buyer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Buyer's estate or any part of the Buyer's property or assets;
(iii) the Buyer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
(iv) a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Buyer;
(v) the Buyer experiences any analogous event having substantially similar effect to any of the events specified above.
c) Notwithstanding sub-clause 10(a) hereof Ausperl may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore review, alter or terminate the Buyer's credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of Ausperl shall be final and Ausperl accepts no liability or responsibility for any loss, howsoever arising, incurred by the Buyer due to the operation of this condition.
d) Where the Buyer fails to pay Ausperl any amounts due, any costs incurred by Ausperl in collecting outstanding payments owing by the Buyer, including bank fees, credit agency or debt collection fees, and legal and court costs, are payable by the Buyer, and Ausperl may list the debt with a credit reporter.

11. CONTAINERS
a) Containers in which Goods are delivered and for which a deposit charge is made remain the property of Ausperl and must not be used for any other commodity than that contained therein at the time of delivery. On their return in good order and condition by the buyer and at the Buyer's expense, to the factory or store of Ausperl from which the Goods were delivered, the full amount of any deposit will be repaid to the Buyer. Containers will be deemed to be still in the Buyer's hands until received at such factory or store. In the case of containers which are received at a factory or store of Ausperl otherwise than in good order and condition, only such part of the deposit as in the opinion of Ausperl is reasonable, having regard to their actual condition, will be allowed to the Buyer.
b) Containers in which Goods are delivered and for which a separate charge other than a deposit charge is shown in the face of the invoice are, unless otherwise specified therein, sold with the Goods and their price as shown on the invoice must be paid with the price of the Goods.

12. PORTABLE MAGAZINES AND PALLETS
Unless otherwise agreed to in writing all portable magazines and pallets on which Goods are delivered remain the property of Ausperl and must be returned at the buyer's expense in good order and condition to the factory or the store of Ausperl from which they were delivered. Portable magazines and pallets will be deemed to be still in the buyer's hands until received at such factory or store. To the extent the law permits, all risks whatsoever associated with the portable magazines and pallets rest with the Buyer absolutely and the Buyer agrees to indemnify Ausperl in respect of any portable magazine or pallet that is not returned in good order and condition to Ausperl within one month of delivery of the Goods.

13. GENERAL LIEN
In addition to any right of lien to which Ausperl may be entitled under the common law, Ausperl shall be entitled to exercise a general lien over all items in its possession belonging to the Buyer until the Buyer has paid in full for all Goods supplied by Ausperl to the Buyer. Ausperl may in its sole discretion sell any item that is subject to the said lien, provided that Ausperl shall pay to the buyer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to Ausperl in respect of Goods that have been delivered by it to the buyer and all reasonable costs of sale incurred by Ausperl.

14. SEVERANCE
If any provision of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of its hall be deemed to be void and severable and the remaining provisions of these terms and conditions shall not in any way be affected or impaired.

15. GOVERNING LAW
The supply of Goods under these terms and conditions is governed by the law at the State of New South Wales and Ausperl and the Buyer submit to the non-exclusive jurisdiction of the courts of the State of New South Wales.

16. TRANSACTION TAX
Where a transaction tax, including a Goods and Services tax ("GST") and any transaction taxes that come into existence after the date of these terms and conditions, applies to any supply made under these terms and conditions, Ausperl may recover from the Buyer an additional amount on account of that transaction tax.

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