

SOFTWARE LICENCE AGREEMENT

Between:

PPG Industries Australia Pty Limited
ACN 055 500 939
ABN 82 055 500 939
"PPG"

McNaughton Road
Clayton Vic 3168
Telephone: (61) 3 9263 6000
Facsimile: (61) 3 9263 6999
Contact: D Johnson

And:

User: *(registered business name)*.....

ACN No: **ABN No:**

User's Address:

.....

.....

.....

Telephone: **Facsimile:**

Site Contact Name:

Site:

.....

Contract Details

Commencement Date:

Payment Period: per calendar month **Fee:** \$ (GST inclusive)

Initial Term: 12 months **Software:**

Product	\$ / Month
Paint Manager	
Business Manager	
Business Manager Extras Equoting	
Qsat Mobile Quoting	
PPG Access Parts	
WebTrim	

RECITALS

- A. The User wishes to use a certain computer program.
- B. PPG has offered to grant the User a non-transferrable and non-exclusive Licence to use the computer program subject to the terms and conditions set out below.

1. DEFINITIONS

"System" means the Software together with the Documentation and the Improvements and any other programs, optional modules, other materials or documents which PPG may supply to the User.

"Documentation" means any written or printed matter including operating manuals, users manuals and other documents designed to assist or supplement the understanding or application of the Software.

"Fee" means:

- (a) initially, the amount set out in the "Contract Details" section of this agreement; or
- (b) any amended amount of which PPG notifies the User under clause 3.1.

"Improvements" means all improvements, variation, additions, updates, modifications and enhancements made by PPG to the Software and to the Documentation.

"GST" means any goods and services tax or similar tax imposed by the Commonwealth of Australia, other than any penalty, fine, interest or like payment.

Capitalised terms that appear in this Licence have the meaning given to them on page 1 of this Licence.

2. LICENCE

In consideration of the payment by the User of the Fee (payable in accordance with the Payment Period), PPG hereby grants to the User a non-exclusive, non-transferable Licence to use the System for the Initial Term beginning on the Commencement Date on the terms and conditions set out in this Licence.

3. FEE AND PAYMENTS

PPG may amend the Fee payable for existing installed modules each Payment Period by giving the User a minimum of 60 days written notice of the amended Fee. PPG may immediately charge an additional fee when the user agrees to install and accept charges for additional modules

3.1 **"GST"** and other terms and expressions defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) have the same meaning in this clause.

3.2 In addition to paying any amount payable under this agreement for the supply of goods, services, real property or other things, each party must, subject only to the other party presenting it with a valid tax invoice, pay to the other party, the amount of GST payable in relation to that supply.

- 3.3 Each party must do all things necessary or reasonably desirable to ensure that the other party can claim:
- (a) input tax credits or adjustments in respect of GST paid; and
 - (b) refunds in respect of payments or set offs, pursuant to this contract.
- 3.4 Where any consideration for the supply of goods, services, real property or other things is ascertained by reference to any cost or expense incurred by a party, that cost or expense shall be calculated by deducting from the actual cost or expense the amount of any GST input tax credit that the party can claim in respect of the cost or expense, but nothing in this sub-clause shall limit or affect the operation of sub-clauses 3.3 and 3.4.
- 3.5 Where amounts payable pursuant to this contract are offset against any other amount, each amount offset shall be calculated in accordance with the principles of this clause, as if it were an actual payment made pursuant to this contract.

4. **FURTHER TERMS**

On conclusion of the Initial Term or any subsequent 12 month term, this agreement is automatically renewed for a further 12 month term unless either PPG or the User gives the other party written notice that it does not wish to renew the agreement at least 60 days before expiry of the current term. If notice is given and this agreement is not renewed, the expiry of the current term is taken to be a termination of the agreement for the purposes of clauses 12.4 [12.5] and 12.6.

5. **USE**

- 5.1 The User is licensed to use the System solely for the internal purposes of its own business (but not for the purpose of any business offering the System as part of a bureau, or other similar service, to anyone) on a single or multiple terminal computer system at the Site.
- 5.2 This Licence does not permit the User to sell or otherwise convey derivative products or programs containing portions of the object code to the customers of the User or other third parties.
- 5.3 The User agrees not to export the System.

6. **OWNERSHIP**

- 6.1 The User acknowledges that there is no transfer of title or ownership of the System to the User.

7. **DOCUMENTATION**

- 7.1 The User acknowledges that the Documentation contains sufficient information for the adequate use of the Software, except to the extent PPG has notified the User of any omission or deficiency or of any variation which it considers necessary for the proper use of the Software.

7.2 The User shall not copy or reproduce the Documentation except to the extent otherwise authorised by this Licence.

8. IMPROVEMENTS

In the event that PPG, at its sole option, makes generally available to duly registered users any Improvements, PPG shall make those Improvements available to the User.

9. SECURITY

9.1 The User may not sell, let on hire, distribute, give away or otherwise supply to a third party any of the System or any copy thereof or any derivative thereof save that the User shall be entitled to make not more than two (2) copies of each of the machine readable parts of the Software required solely for the archival purposes of the User, providing security or making authorised modifications in order to use the System. The original and all copies of the System are and shall remain the property of PPG.

9.2 The User agrees to observe complete confidentiality with regard to the System and agrees:

- (a) not to disclose or otherwise permit any other person or entity access in any manner to the System provided that such disclosure or access shall be permitted to an employee of the User requiring access to the System in the course of his or her employment;
- (b) to ensure that the permitted employees referred to in sub-clause (a) observe complete confidentiality with regard to the System and to ensure that such employees do not disclose or copy any of the System except for the purposes of their employment; and
- (c) not to alter, remove, conceal or deface any copyright or proprietary rights, notice or identification which indicates the ownership of the System or any of the interest therein.

9.3 The User must not alter or modify the System or merge all or any part of the System with any other software without PPG's written permission.

9.4 This Licence is to apply to the System as modified or altered.

10. SUPPORT SERVICES

10.1 Subject to Clause 9.2, PPG will make available to the User and the User's employees:

- (a) telephone support services in relation to the technical operation of the System; and
- (b) only if PPG determines necessary, PPG's service representatives, who will provide assistance to the User at the Site in relation to the System,

collectively called "Support Services".

10.2 The Support Services will be made available to the User only between the hours of 9.00 am and 5.00 pm on Mondays through to Fridays (or as agreed between the parties), but not including on public holidays.

- 10.3 The User agrees to accept information/updates/support via e mail, fax, internet connection, or any other electronic medium as deemed appropriate by PPG. The user expressly consents on behalf of itself and its organisation to the sending of “commercial electronic messages” (as defined in the Spam Act 2003) by PPG in connection with the System and this Agreement. PPG and the User acknowledge that the user may choose to “unsubscribe” at any time.

11. **WARRANTY**

Subject only to any non-excludable provisions of the Trade Practices Act 1974 or any similar State or Territory legislation which may apply in relation to this Licence, PPG, its dealers and distributors shall have no liability on any basis for any loss or damage suffered by the User arising in relation to its use of the System or in relation to the provision by PPG to the User of the System or any services in relation to the System or the unavailability, defect or failure of the System or any services in relation to the System, whether such loss or damage arises directly, indirectly or consequentially and whether or not PPG was advised that such loss or damage would or might result. If the Trade Practices Act 1974 or any similar State or Territory legislation implies conditions or warranties in relation to this Licence which cannot be excluded, then PPG hereby limits its liability to, at the option of PPG, any one or more of the following:

- (a) If the breach relates to goods:
- (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired.
- (b) If the breach relates to services:
- (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

Except as expressly set out above, PPG excludes all other warranties expressed, implied or statutory.

12. **TERMINATION**

- 12.1 If the User is in default or in breach of any provision of this Licence or if PPG reasonably considers that the User has not carried out its obligation under this Licence. PPG may give the User thirty days' written notice of its intention to terminate this Licence. If the User has not, within the time specified in that notice, remedied the default or breach or failure then this Licence shall immediately terminate.
- 12.2 If the User defaults in paying in full any sum due to PPG hereunder, PPG may forthwith terminate this Licence by notice in writing to the User.
- 12.3 If PPG gives notice under clause 3.1 increasing the Fee, the User may terminate this Licence giving a minimum of 30 days' notice in writing to PPG.

- 12.4 On termination of the Licence the User shall cease to use the System and shall return all material and documents furnished by PPG and relating to the System and warrant in writing that all copies thereof have been delivered to PPG or destroyed and that the System has been permanently eliminated from the computer system(s) on which it had been installed.
- 12.5 The User recognises that PPG has gone to considerable time and expense to develop PPG's products and that PPG would suffer great and irreparable harm and damage by unauthorised copying or reproduction or distribution of PPG's products or disclosure of PPG's trade secrets. The User further acknowledges that such actions may cause significant commercial damages.
- 12.6 Clause 9.2 and shall survive the termination of the Licence.

13. **GENERAL**

- 13.1 No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 13.2 PPG shall not be liable for any delay in performance, or failure to perform its obligations hereunder due directly or indirectly to causes beyond its control, including, but not limited to, act of God, strikes or inability to obtain labour or materials on time.
- 13.3 The risk in the materials to be supplied hereunder shall pass to the User on delivery.
- 13.4 The Licence is personal to the User who shall not be entitled to assign, transfer, or sub-licence any of the rights granted hereunder without the prior written consent of PPG.
- 13.5 This Licence constitutes the entire Licence between PPG and the User with respect to the licensing of the System and no variation of the terms and conditions of this Licence shall be binding on PPG or its dealers or distributors unless agreed to in writing in advance by PPG.
- 13.6 PPG's dealers and distributors are not representatives or agents of PPG, except for the purpose of the sale of PPG Software Licences, and no representations by dealers or distributors shall be binding upon PPG unless agreed to in writing in advance by PPG.
- 13.7 Any notice, demand, consent or other communication given or made under this Licence must:
- (a) refer to this Licence and state the clause under which notice is given; and
 - (b) be in writing and signed by a person duly authorised by the sender.
- 13.8 This Licence is governed by the laws of the State of Victoria and each party submits to the jurisdiction of the Courts of that State or any other Court competent to exercise that jurisdiction.
- 13.9 In addition to all other legal and equitable remedies available to PPG under the laws of Victoria and the 1971 Paris revision of the Universal Copyright Convention the Law of Trade Secrets and unfair Competition PPG shall be entitled to all damages, Solicitor's fees, collection costs and Court costs incurred by PPG in enforcing this Licence.

SIGNED for and on behalf of)
PPG INDUSTRIES AUSTRALIA)
PTY LIMITED)
in the presence of:)

Signature

Witness - Signature

Title

Name

Name

SIGNED for and on behalf of)
THE USER)
in the presence of:)

Signature

Witness - Signature

Title

Name

Name