

TERMS AND CONDITIONS

1. Applicability and Acceptance of Terms

- (a) You are taken to have exclusively accepted and be immediately bound, jointly and severally, by this Agreement on the earlier of the date on which, having received a copy of these Terms:
- (i) you execute these Terms and provide us with a signed copy; or
 - (ii) you notify us in writing that you accept the Terms; or
 - (iii) you apply for a Credit Account with us; or
 - (iv) you enter into any Sales Contract with us; or
 - (v) you instruct us to provide any Goods or continue to accept any Goods from us, and you agree that this Agreement will then apply to the provision of all Goods until the date calculated under clause 1(b).
- (b) Once accepted, this Agreement will continue until the later of:
- (i) the date 12 months from the date on which all Sales Contracts have either expired, been completed, or otherwise been validly terminated; or
 - (ii) the date on which these Terms (and all Sales Contracts to which they apply) are terminated in accordance with the provisions herein.
- (c) We may amend these Terms at any time by 30 days' Written Notice to you. Changes made under this clause will apply to any order for Goods received by us on or after the notices' effective date. Changes will not apply retroactively to the supply of any Goods where the relevant order was received by us prior to the notice's effective date unless you agree in writing. If you do not agree with any proposed amendments, you may terminate these Terms under clause 11 without penalty.

2. Wholesale Supply Only

You acknowledge and agree that you are purchasing the Goods on a wholesale basis to on-sell or re-supply to your customers and that as such, the Australian Consumer Law does not apply to the supply under this Agreement.

3. Interaction of Documents

- (a) Possession of our price list does not constitute acceptance of an offer by us to sell any goods to you.
- (b) You may submit to us from time to time purchase orders setting out the quantity of Goods you require. We are not obligated to accept any purchase order submitted by you and we reserve the right to supply a counter offer setting out alternative details on quantity, price, and any other terms.
- (c) Any quotation, proposal document, advertisement, or counter offer for Goods provided to you (**Quotation**) constitutes an offer from us to provide the Goods for the applicable Price and is valid for:
- (i) the Validity Period set out in the Quotation;
 - (ii) where the Quotation is an advertisement, the duration of the advertisement (which may be limited by time or quantity available. We do not accept rain checks on advertised Goods); or
 - (iii) otherwise for 30 days from the date of the Quotation.

- (d) If the Quotation is not accepted within the Validity Period, or if you request changes to the Quotation, we reserve the right to modify the terms of the Quotation, including the applicable Price.
- (e) When:
- (i) you accept a Quotation within the Validity Period; or
 - (ii) we accept a purchase order from you, the accepted Quotation or purchase order (including any written variations to the Quotation or purchase order agreed between the parties) becomes a Sales Contract.
- (f) The parties may agree to a Sales Contract from time to time, setting out the relevant Goods and any special conditions. Each Sales Contract is a separate agreement subject to these Terms and applies for the duration of these Terms. The expiry or termination of any Sales Contract does not automatically affect the validity of these Terms or any other Sales Contract then on foot.
- (g) To the extent that any conflict exists, the various documents comprising the Agreement will take precedence in the following order (from highest to lowest priority):
- (i) any variation to the Terms or any Sales Contract agreed in writing between the parties; then
 - (ii) in order of date from the most recent, any Sales Contract; then
 - (iii) these Terms; then
 - (iv) in order of date from the most recent, any Quotation or purchase order and any agreed variations to a Quotation or purchase order; then
 - (v) any policy or procedure of ours disclosed to you (not forming part of a Sales Contract).

4. Your Obligations and Warranties

- (a) You must give us not less than 28 days' prior Written Notice of any proposed change of ownership and/or any other change in your details which may affect our supply of the Goods. You are liable for any loss or damage incurred by us as a result of your failure to comply with this clause.
- (b) You warrant you have the power and authority to enter into these Terms, you are not insolvent, and these Terms create binding and valid legal obligations on you.
- (c) You warrant that providing the Goods in accordance with your directions will not cause us to contravene applicable laws.
- (d) You warrant that all materials or instructions given to us will not cause us to infringe any third party rights in the execution of your order.

5. Goods

5.1 Supply and Sales Contracts

- (a) We will provide the Goods specified in the relevant Sales Contract and in accordance with these Terms. The supply of Goods is contingent on you complying with this Agreement and is subject to availability.
- (b) Unless otherwise specified in a Sales Contract, we will provide our services during Business Hours.

- (c) You (or your agent) may request changes to the Sales Contract and we will:
- (i) make reasonable efforts to accommodate your request, but are not obliged to accept any changes; and
 - (ii) advise you of any applicable additional costs and delivery schedule changes.
- (d) If you accept the additional costs and delivery schedule changes for implementing the requested changes, we will invoice you for the additional costs.
- (e) If the Sales Contract needs to be amended, or if we incur any cost, because of anything within your control, we reserve our rights to amend the Price and any delivery schedules to cater for any changes required or any costs incurred. Amendments to the Price will be shown as variations on the relevant invoice.
- (f) We reserve our right to charge a surcharge for any Sales Contract which you request to be performed urgently or outside Business Hours.
- (g) We may license or subcontract all or any part of our rights and obligations without your consent.

5.2 Goods

- (a) Any quantities, weights, dimensions, colours, or descriptions included in any Quotation, catalogue, advertisement, website, price list, or similar are approximate or recommended only and will not be binding unless specified in a Sales Contract and to that extent only.
- (b) Other than as specified in the relevant Sales Contract, we do not offer any warranties in respect of the Goods (although relevant manufacturers' warranties may apply).
- (c) If any Goods are not available at the time of ordering, and are not expected to be available at a future date, we may substitute equivalent goods for those originally ordered unless you have expressly stated that we must not do so.
- (d) If any Goods are not available at the time of ordering but are expected to be available at a future date we may put the Goods on back order. If the Goods do not become available within a reasonable time, you have the right to cancel those Goods under clause 11.2 without penalty.
- (e) We may revise the Price related to substituted or back ordered Goods under clauses 5.2(c) and 5.2(d) by reasonable notice to you as necessary to cater for price increases imposed by upstream suppliers, price differences for substituted Goods, or exchange rate fluctuations where Goods are sourced from outside Australia.

5.3 Delivery

- (a) We offer delivery of Goods on the following terms:
- (i) Free on Truck (FOT);
 - (ii) Free in Store (FIS);
 - (iii) Ex Works (EXW); or
 - (iv) other terms as agreed between the parties.
- (b) We may deliver and invoice the Goods in separate instalments.
- (c) Unless expressly stated in a Sales Contract, any delivery dates provided by us are a guide only and are not guaranteed.

- Where late delivery is within a reasonable time of the original delivery guideline (taking into account the relevant circumstances), you must accept the delivery of Goods and we will not be liable for any loss or damage incurred by you as a result of late delivery (except where the late delivery is caused by our gross negligence or acting in bad faith).
- (d) We are not responsible for delayed delivery caused by any of the following: your delay in providing us with any necessary information; the delays, action or inaction of any third party (expressly including freight and carrier companies); changes in a Sales Contract (whether requested by you, or required to cater for changes as per clause 5.1(e)); any Force Majeure Event; or us exercising our rights under clauses 6.4 or 11.1. If any of the preceding events causes a delay, we may, by Written Notice to you, extend any delivery date by any period we deem reasonably necessary.
- (e) Delivery of Goods is taken to occur at the time that:
- (i) you or your nominated carrier takes possession of the Goods at our address or any other nominated address; or
- (ii) the Goods are delivered to your nominated address even if you are not present. Goods may be delivered to you by us, our nominated carrier, or by the manufacturer/importer of the Goods.
- (f) You must either receive or collect the Goods whenever they are tendered for delivery. If you are unable to take delivery of the Goods as arranged, we will arrange for the Goods to be stored and:
- (i) provided that the Goods are stored in an appropriate location and adequately protected, you must pay for the Goods as if they had been delivered;
- (ii) we are entitled to charge a reasonable fee for storing the Goods and arranging for redelivery when appropriate; and
- (iii) we reserve the right to claim for Goods stored, and will provide insurance certificates for that purpose; and
- (g) we reserve our right to set-off any amounts due and payable by you under clause 5.3(f) against any amounts payable to you under this Agreement.
- 5.4 Acceptance**
- (a) Upon delivery, it is your responsibility to inspect the Goods and delivery to confirm they fulfil the Sales Contract and meet any agreed specifications. You must give us Written Notice within 14 days of delivery if you consider that the Goods or the delivery contains a defect.
- (b) The delivery and Goods are deemed to be accepted if you confirm that you accept them, or if we do not receive a Written Notice under clause 5.4(a) within 14 days.
- 5.5 Risk and Title**
- (a) You bear all risk of damage to or loss of the Goods:
- (i) *for FOT*: from the time the Goods are loaded onto the truck for delivery;
- (ii) *for FIS, EXW, or absent any other designation*: from the time of delivery under clause 5.3(e);
- (iii) *for another agreed designation*: in accordance with the usual terms of risk associated with that designation.
- (b) The parties agree that title of the Goods will not pass until:
- (i) we have received all amounts owing relevant to the Goods in cleared funds; and
- (ii) you have met all of your other obligations to us in relation to the supply of those Goods.
- (c) If any of the Goods are damaged or lost at any time prior to title passing to you (even if risk has passed to you), we are entitled to receive all insurance proceeds payable for the Goods to offset against the amount you owe us for the Goods. Our production of these Terms is sufficient evidence of our right to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.
- 6. Price and Payment**
- 6.1 Price**
- (a) You must pay us the Price as and when set out in the relevant Sales Contract, and as varied in accordance with this Agreement. We will issue you with a tax invoice (or tax invoices, as applicable) for the Price.
- (b) In addition to the Price, you must pay the following:
- (i) any surcharges incurred under clause 5.1(f);
- (ii) any delivery fees incurred under clause 5.3(a);
- (iii) any fees for the return of non-defective Goods incurred under clause 10.6(c).
- (c) Any price list attached to a Quotation or otherwise provided to you by us supersedes all previous price lists provided by us. We reserve the right to amend our fees, rates, prices, and/or price lists applicable to our goods and services from time to time and without prior notice to you.
- (d) We reserve the right to amend the Price applicable to a Sales Contract prior to delivery to take account of upwards variations in third party supplier or service provider fees (including varying exchange rates). We will provide notice of any such increase as soon as practical. If you do not agree to the amended Price, you may cancel your order under clause 11.2 without penalty, but we are not liable for any loss or damage you incur as a result of your cancellation.
- 6.2 Further payment provisions**
- (a) Time for payment for the Goods being of the essence, the Price will be payable by you in cleared funds on the date/s determined by us, which may be:
- (i) on delivery of the Goods;
- (ii) before delivery of the Goods;
- (iii) by way of instalments/progress payments in accordance with any payment schedule set out in a Sale Contract;
- (iv) the date specified on any invoice or other form as being the date for payment;
- (v) the date specified in clause **Error! Reference source not found.** (where applicable); or
- (vi) failing any notice to the contrary, the date which is 30 days after the last day of the month in which the invoice is provided to you.
- (b) You may pay via cash, cheque, bank cheque, or electronic/on-line banking, or by any other method as agreed between the parties. We reserve our right to pass on to you any surcharge payable by us for accepting the relevant payment method.
- (c) You are responsible for and must reimburse us for any transaction, processing, dishonour, or charge-back fees issued by a financial institution or payment gateway.
- (d) Unless otherwise stated the Price does not include GST. In addition to the Price you must pay to us an amount equal to any GST we must pay for any supply by us under this Agreement for the sale of the Goods. You must pay GST, without deduction or set off of any other amounts, at the same time and
- on the same basis as you pay the Price. In addition you must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6.3 Invoice disputes**
- (a) If you reasonably believe that an invoice contains an error, and wish to dispute that invoice, you must:
- (i) notify us within 7 days of receiving the invoice, and in any event before the due date of the invoice;
- (ii) pay all undisputed fees on the invoice and any other outstanding invoice; and
- (iii) provide detailed information about any disputed fees.
- (b) Provided you have complied with clause 6.3(a), we will not suspend or terminate any supply of Goods for non-payment of the disputed fees while the dispute is being investigated.
- (c) For the sake of clarity, if you do not dispute an invoice under clause 6.3(a) within the required timeframe, you are deemed to have accepted the invoice.
- 6.4 Default in payment**
- Subject to clause 6.3, if you fail to pay any invoice or any part invoice by the due date (including any invoice on credit terms), then without prejudice to our other rights or remedies, until payment is made in full (including for any accrued interest):
- (a) we reserve our right to:
- (i) charge a late payment fee;
- (ii) charge for interest on all overdue amounts at a rate set out in the relevant Sales Contract (or otherwise at 12%) per annum, calculated and compounding daily;
- (iii) immediately suspend the supply of any or all Goods under this Agreement;
- (iv) postpone any delivery or commencement date; and
- (v) retain a lien over all Goods in our possession or where title has not passed to you under clause 5.5(a);
- (b) all invoices will immediately become due and payable, regardless of whether or not they were otherwise due for payment at that time; and
- (c) you are liable by way of liquidated damages for all amounts payable under this clause plus all costs and expenses of debt collection and enforcement.
- 7. Credit account**
- 7.1 Credit Terms**
- (a) Credit Accounts must be paid in accordance with the Credit Account Arrangement between us, or otherwise on or before 30 days from the end of the month in which the Goods are purchased.
- (b) In addition to this Agreement, Credit Account Arrangements are subject to the terms set out in the credit account application.
- 7.2 Credit History**
- (a) You authorise us to make enquiries at any time during the term of this Agreement as to the credit and financial responsibilities of you and/or your directors and/or shareholders in order to qualify your capacity to incur debt and repay any amounts to us. These enquiries may include but are not limited to obtaining reports from credit reporting agencies and references from current and/or past credit providers.
- (b) You agree, in accordance with s18H(3), s18K(1)(b), s.18K(1)(c), s18K(1)(h) and s18N(1)(b) of the *Privacy Act 1988* (Cth)

(**Privacy Act**) that our use of the relevant information referred to in those sections may occur for the purpose of assessing your credit application.

- (c) You consent to us being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act).
- (d) In accordance with section 18E(8)(c) of the Privacy Act, you acknowledge that we have informed you that certain items of personal information about you contained in/or relating to your Application for credit, and permitted to be kept on a credit information file, might be disclosed to a credit reporting agency, including after the termination of this Agreement.

8. PPSA, Security, and Charges

8.1 PPSA

- (a) In this clause, collateral, financing statement, financing change statement, security agreement, security interest, and commingled goods have the meaning given to them by the *Personal Properties Securities Act 2009* (Cth) (**PPSA**).
- (b) Upon assenting to these Terms you acknowledge and agree that this Agreement constitutes a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by us to you and in all of your personal property (tangible or intangible) that you have an interest in at the time of assent as well as property (tangible or intangible) acquired by you after the assent is made to secure the payment of the Price or any other amount owing under this Agreement from time to time.
- (c) You acknowledge that by accepting this Agreement and by virtue of the retention of title clause as provided for in clause 5.5, the security interest is a purchase money security interest (**PMSI**) as defined under Section 14 of the PPSA for all present and after acquired Goods including any commingled goods.
- (d) The security interest will continue to apply as an interest in the collateral for the purposes of PPSA with priority over registered or unregistered security interest.
- (e) We may register the security interest on the Personal Property Securities Register (**PPSR**) under the PPSA without providing further notice to you.
- (f) You agree that in accordance with section 125(3) of the PPSA, we may delay disposing or taking action to retain the whole or part the collateral beyond the reasonable period.
- (g) You agree that in accordance with section 275 of the PPSA, neither party is required to provide interested persons with information relating to our security interest, unless required under the general law.
- (h) You agree and undertake:
 - (i) to sign any documents and/or provide further information reasonably required by us to register any financing statement or financing change statement on the PPSR;
 - (ii) to indemnify us for all expenses and/or costs incurred by us in registering any financing statement or financing change statement on the PPSR including the costs of amending, maintaining, releasing, and enforcing any security interest in the Goods;
 - (iii) not to register and/or make a demand to alter a financing statement in the collateral without our prior written consent;

- (iv) to provide us with 7 days' Written Notice of any change or proposed change to your company name, address, contact details, or other changes in your details as registered on the PPSR;
- (v) in accordance with section 115 of the PPSA, to waive any rights of enforcement for collateral not used predominantly for personal, domestic, or household purposes;
- (vi) in accordance with sections 142 and 143 of the PPSA, to waive your rights as a grantor and/or debtor;
- (vii) in accordance with section 144 of the PPSA, to waive any rights to receive notices under sections 95, 118, 121, 130, 132 or 135 of the PPSA; and
- (viii) in accordance with section 157 of the PPSA, to waive any rights to receive a verification statement.

8.2 Security and Charge

- (a) In consideration of us agreeing to supply the Goods, you charge the whole of your undertaking, property, and assets (including without limitation all of your interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired, to secure your performance of your obligations under these Terms.
- (b) You irrevocably appoint us and each of our directors (as applicable) as your true and lawful attorney/s to do all things necessary to create and register each such charge or caveat, including but not limited to, signing any document on your behalf.
- (c) Upon our demand, you agree to immediately execute a mortgage or other instrument in terms satisfactory to us to further secure payment of the money payable by you.
- (d) If you fail within 14 days of such demand to execute such mortgage or other instrument, then you acknowledge that we may execute such mortgage or other instrument as your attorney pursuant to clause 8.2(b).
- (e) You indemnify us from and against all our costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising our rights under this clause.

8.3 Lien

- Until ownership in the Goods has passed to you under clause 5.5(a), you agree that:
- (a) ownership of the Goods remains with us;
 - (b) you are in possession of the Goods as a bailee of the Goods and owe us the duties and liabilities of a bailee;
 - (c) you must insure the Goods for their full replacement value and you hold the benefit of such insurance of the Goods on trust for us and must pay to us the proceeds of any insurance claim in the event of the Goods being lost, damaged, or destroyed;
 - (d) you must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If you sell, dispose, or part with possession of the Goods then you must hold the proceeds of any such act on trust for us and must pay or deliver the proceeds to us on demand;
 - (e) you must not convert or process the Goods or intermix them with other goods but if you do so then you hold the resulting product on trust for our benefit and must sell, dispose of, or return the resulting product as we direct;
 - (f) you irrevocably authorise us to enter any premises where we believe the Goods are

kept and recover possession of the Goods without prejudice or penalty to us;

- (g) we may recover possession of any Goods in transit whether or not delivery under clause 5.3(e) has occurred;
- (h) you must not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain our property; and
- (i) we may commence proceedings to recover the Price of the Goods notwithstanding that title of the Goods has not passed to you.

9. Confidentiality and Intellectual Property

9.1 Confidentiality

- (a) The recipient of any Confidential Information must keep such information secret and confidential and must not disclose it to any third party without written consent of the disclosing party. The recipient of any Confidential Information must take or cause to be taken such reasonable precautions as may be necessary to maintain secrecy and confidentiality and to prevent disclosure, including obtaining confidentiality agreements from its employees, agents, and other contractors.
- (b) Despite clause 9.1(a), either party may use or disclose Confidential Information strictly to the extent necessary to carry out its obligations under this Agreement, comply with any law, binding directive of a regulator or a court order, comply with the listing rules of any stock exchange on which its securities are listed, or obtain professional advice where the advisors agree to be bound by the same obligation of confidentiality.

9.2 Intellectual Property

- (a) You acknowledge that Intellectual Property we own is licensed to you only to the extent it is incorporated into our services and only for the duration of this Agreement. No Intellectual Property is assigned to you under this Agreement.
- (b) You agree that all Intellectual Property made or developed by us in the course of providing you with any services and in connection with the Goods or any services, vests immediately in us upon its creation.

10. Disclaimers and Limitation of Liability

10.1 Disclaimers

- (a) Other than as set out in this Agreement, and to the fullest extent allowable at law, we do not warrant or guarantee:
 - (i) the supply of Goods are uninterrupted or error free;
 - (ii) the Goods for any standard, quality, condition, fitness, durability, suitability, performance, or compatibility;
 - (iii) that use of the Goods will bring you into compliance with any particular legislation or standard;
 - (iv) that you will achieve any specific or general results by use of the Goods.
- (b) You must satisfy yourself as to the standard, quality, and suitability of the Goods for the purpose(s) for which they are being purchased and as to their compliance with their description (if any) at time of purchase.

10.2 Responsibility for Own Actions

Each party agrees to release and hold harmless, indemnify and defend the other party and its Indemnified Officers against any Claim or Liability from or in relation to its own negligence or malpractice, or reckless or intentional misconduct, and its own failure to perform its obligations and responsibilities under this Agreement.

10.3 Indemnity

- (a) You agree to release and hold harmless, indemnify and defend us and our Indemnified Officers against any Claim or Liability from or in relation to:
- (i) the misuse of any Goods by you or anyone whom you allowed to access the Goods, whether deliberately or otherwise;
 - (ii) your breach of any law or infringement of any third party rights;
 - (iii) your instructions causing us to be in breach of any law or to infringe any third party rights;
 - (iv) your breach of your obligations or warranties under this Agreement.
- (b) You agree to release and hold harmless us and our Indemnified Officers against any Claim or Liability arising from or in relation to:
- (i) the acts or omissions of third parties;
 - (ii) the use or inability to use any Goods, by you or anyone whom you allow to access the Goods;
 - (iii) us exercising any of our rights under this Agreement; and
 - (iv) actions taken in relation to this Agreement in accordance with our obligations at law or any order issued by a court of law or relevant government authority,
- whether directly or indirectly arising in connection with the Goods, even if we knew or should have known about the possibility of such Claim or Liability.
- (c) You indemnify us for any reasonable legal expenses we incur as a result of your breach of this Agreement, including expenses for enforcement, on a solicitor and own-client basis.

10.4 Defence

We reserve the right, at our own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defences.

10.5 Limitation of Liability

- (a) Where Goods are covered by a manufacturer's or importer's warranty, you have the right to contact the manufacturer or importer directly in relation to a warranty claim for Goods and associated materials.
- (b) We only accept liability to you as set out in this clause, or as required by consumer or other laws that cannot be excluded by contract.
- (i) We are not liable for any loss or damage incurred due to a Force Majeure Event, the acts or omissions of you or those of any third parties, or any other circumstances outside of our control.
 - (c) To the fullest extent allowable at law:
 - (i) we are not liable for any Consequential Loss under any circumstances. You acknowledge this express limit of liability and agree to limit any claim accordingly;
 - (ii) our liability, and the liability of our Indemnified Officers under these Terms is (at our sole discretion):
 - (A) limited to the value of any express warranty provided to you by us; or
 - (B) limited to any warranty to which we are entitled, if we did not manufacture the Goods; or
 - (C) limited to a refund (which may be provided in the form of store credit) or replacement of affected Goods, repair of affected Goods, or the cost of anything in this clause 10.5(c)(ii)(C) (at our sole discretion); or
 - (D) otherwise negated absolutely.

- (d) If we are required to replace the Goods under this clause 10 but are unable to do so, we may refund any money you have paid for the Goods.
- (e) If you resupply the Goods to a consumer (as that term is defined in the *Competition and Consumer Act 2010* (Cth) (**CCA**)), and the Goods are not of a kind ordinarily acquired for personal, domestic, or household use or consumption, our liability under section 274 of the CCA is limited to the fullest extent allowable under section 276A of the CCA.
- (f) Despite any other provision to the contrary, you agree that our total liability and the total liability of our Indemnified Officers in connection with this Agreement whether under contract or tort, will not in any circumstances exceed an amount equivalent to the money you have paid to us for the affected Goods under this Agreement.
- (g) The limitation of liability under this clause 10.5 has effect in relation both to any Liability expressly provided for under these Terms and to any Liability arising by reason of the invalidity or unenforceability of any term of these Terms.

10.6 Return of Goods

- (a) Subject to this clause 10, returns of defective Goods will only be accepted provided that:
- (i) you have complied with the provisions of clause 5.3(f)(iii) and we have agreed that the Goods are defective; and
 - (ii) the Goods are accompanied by proof of purchase evidencing that the Goods were purchased from us when new; and
 - (iii) the Goods are returned within a reasonable time at your cost (which we may reimburse if we agree the Goods are defective); and
 - (iv) the Goods are returned in as close a condition to that in which they were delivered to you as is possible, and the provisions of clause 10.5(c)(ii) will then apply.
- (b) We are not liable for any defect or damage in any Goods which you were notified of prior to purchase, or which may be caused or partly caused by or arise as a result of:
- (i) you failing to properly maintain or store any Goods;
 - (ii) you or any other person using the Goods for any purpose other than that for which they were designed;
 - (iii) you or any other person continuing to use the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (iv) you or any other person failing to follow any instructions or guidelines provided in relation to the Goods; or
 - (v) fair wear and tear, any accident, or act of god.
- (c) We may in our absolute discretion accept non-defective Goods for refund or exchange. To request a refund or exchange for non-defective Goods, you must deliver the Goods back to us in good condition. We will then inspect the Goods and may in our absolute discretion:
- (i) offer a full or partial refund or an exchange; or
 - (ii) return the Goods to our supplier for their inspection and pass on any full or partial refund from the supplier; or
 - (iii) refuse to accept the returned Goods and notify you that you must arrange to have the Goods returned to you.

- (d) We reserve our right to provide any refund under clause 10.6(c) in the form of store credit.
- (e) We reserve our right to charge a fee for handling any non-defective returns of up to 15% of the value of the returned Goods plus any freight costs. We further reserve our rights to deduct this fee from any monies we offer you under clause 10.6(c).

11. Suspension and Termination**11.1 Suspension**

- (a) Without prejudice to any other remedies we may have, we may suspend the supply of Goods under any or all Sales Contracts and issue you with a Default Notice if you are in breach of any obligation (including those relating to payment) under this Agreement.
- (b) Suspension under this clause does not affect your liability to make payment and will immediately end when the issue giving rise to the suspension is remedied.

11.2 Termination for convenience

- (a) Subject to clause 11.2(b), either party may for any reason by 30 days' Written Notice to the other party:
- (i) cancel any one or more Goods under any one or more Sales Contracts;
 - (ii) terminate any one or more, or all, Sales Contracts in their entirety (and if all, these Terms will also be terminated); or
 - (iii) terminate these Terms,
- but in the case of clause 11.2(a)(iii), the termination date of these Terms will be the date on which every Sales Contract has either expired or been validly terminated.
- (b) You may not cancel any order for custom or non-pricelist Goods once an order has been placed unless we consent (which we are not obliged to do).

11.3 Termination for default

- (a) Either party may terminate these Terms immediately by Written Notice if the other party:
- (i) fails to remedy a Default Notice;
 - (ii) breaches a material term of the Agreement incapable of remedy; or
 - (iii) is guilty of dishonesty, serious misconduct, or serious neglect of duty.
- (b) We may terminate these Terms immediately by Written Notice if you:
- (i) are not meeting your employer or taxation obligations; or
 - (ii) experience an Insolvency Event and:
 - (A) cannot rely on section 588GA(1) of the *Corporations Act 2001* (Cth) for any reason; or
 - (B) section 415D(1) of the *Corporations Act 2001* (Cth) does not apply for any reason.

11.4 Consequences of Termination

- (a) If you exercise your rights under clause 11.2, then in addition to any other rights the parties may have (including those under clause 11.4(b)), you are liable for any and all loss (whether direct or indirect) incurred by us as a result of the cancellation or termination (including, but not limited to, any loss of profits).
- (b) If either party exercises its rights under clauses 11.2 or 11.3, then in addition to any other rights the parties may have (including those under clause 11.4(a)):
- (i) we may issue an invoice for any Goods delivered and not previously invoiced, which will be immediately due and payable;
 - (ii) you must pay all outstanding invoices whether or not due;

- (i) we retain a lien over all Goods in our possession, Goods in which title has not passed to you under clause 5.5(b), equipment, materials, data, and work in progress, including those owned by you in our possession and control until all outstanding invoices are paid;
- (ii) for Goods we have not yet ordered or picked on your behalf, we will either (as applicable):
 - (A) refund any fees for those Goods which we have received from you; or
 - (B) cancel any invoice we have issued for the Goods;
- (iii) for Goods we have ordered or picked on your behalf but which have not yet been delivered to you:
 - (A) where we are able to cancel the order for any Goods with our suppliers or restock the Goods, we will either:
 - (1) refund any fees for those Goods which we have received from you, less any cancellation or restocking fees; or
 - (2) reduce any invoice we have issued to you for those Goods by the amount recoverable from our suppliers or by reselling the Goods. The reduced invoice will be immediately due and payable;
 - (B) where we are not able to cancel the order for any Goods on your behalf or resell the Goods, we will either:
 - (3) not refund any fees received from you for those Goods; or
 - (4) issue you with an invoice for those Goods which is immediately due and payable, and deliver the Goods to your nominated delivery address; and
- (iv) for Goods which have already been delivered, we will not refund any fees which we have received from you for those Goods; and
- (v) we retain the right to offset any amount payable to you under clause 11.4(b) or any other clause of this Agreement against any amount you owe to us under this Agreement.
- (c) A party not in default may pursue any other rights or remedies available at law against a defaulting party, subject to clause 10.

12. General

- (a) You are responsible for all duties, charges and legal fees (on a solicitor and own client basis) incurred in enforcing this Agreement.
- (b) The parties rights and responsibilities under clauses 4, 6, 7, 8, 9, 10, 11.4, and 12 will survive the termination of this Agreement for whatever reason.
- (c) This Agreement is governed by the laws of the state of Queensland, and is subject to any competent court of the jurisdiction of the courts in that state and courts competent to hear appeals from those courts.
- (d) If any provision of this Agreement is ruled by a court to be invalid or unenforceable, it will not affect the validity or enforceability of any other provision or part provision of this Agreement.
- (e) Any delay or failure to enforce any rights in relation to a breach by the other party will not be construed as a waiver of those rights.
- (f) This Agreement contains the entire agreement between the parties and supersedes all previous negotiations or agreements in relation to the subject matter of this Agreement.
- (g) We may assign or novate our rights and obligations under this Agreement at any

time by notice to you. Upon assignment or novation, our rights and obligations are binding on and will benefit our respective representatives, successors and assigns.

- (h) You must not assign or novate your rights and obligations under this Agreement without our written consent.
- (i) You are not entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to you by us.
- (j) Nothing in this Agreement constitutes a partnership or contract of employment. It is the express intention of the parties to deny any such relationship.
- (k) If a party is affected by a Force Majeure Event, they must immediately notify the other party of the circumstances. The parties' obligations under this Agreement are suspended for the duration of and to the extent that they are affected by the Force Majeure. However, either party may end this Agreement if the Force Majeure continues for more than 21 days.
- (l) This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same Agreement.

13. Definitions and Interpretation

13.1 Definitions

In this Agreement:

- (a) **Agreement** means the agreement between the parties, comprising the documents as set out in clause 3.
- (b) **Business Hours** means 7.30 am to 4.00 pm AEST, Monday to Friday (excluding any government-gazetted public holiday in the State of Queensland).
- (c) **Claim** means a claim notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a party to these Terms or a third party.
- (d) **Confidential Information** means all spoken, written or electronically stored information belonging to or relating to either party and includes without limitation: any kind of technical, financial or business information; details of employees, suppliers, or customers; material developed under these Terms; and IP, concepts, know-how and trade secrets, but excludes information in the public domain (other than by default under these Terms) or information independently known to the other party.
- (e) **Consequential Loss** includes, without limitation, loss of opportunity, loss of anticipated profits or savings, expenses incurred through default or breach, wasted overheads, loss of contract, loss of business, loss of production, loss of use, loss of goodwill, and all other pure economic loss, and disappointment, distress, stress, and inconvenience.
- (f) **Credit Account Arrangement** means any arrangement agreed by the parties for us to supply Goods to you under a payment plan or in advance of payment.
- (g) **Default Notice** means a Written Notice that states that it is a notice of default, specifies the default with sufficient detail and particulars, and gives a reasonable deadline by which the default must be remedied of not less than 5 Business Days.
- (i) **Deliverable** means any material we develop for you under this Agreement.
- (h) **Force Majeure Event** means an unforeseen event beyond the control of the affected party, including an act of god, war,

terrorism, riot, vandalism, hacking, industrial action, or law or actions of any government or governmental agency.

- (i) **Goods** means any physical goods or any services that you request, order, or purchase from us from time to time in accordance with this Agreement.
- (j) **Indemnified Officers** means, in relation to a party, its directors, employees, contractors, agents and representatives.
- (k) **Insolvency Event** means in relation to a party means any of the following:
 - (i) the party indicates and/or the other party reasonably believes that the party is unable to meet its financial obligations as they become due either under this Agreement or in the ordinary course of the party's business (including employer and taxation obligations);
 - (ii) the party enters into a scheme of arrangement with its creditors, or is wound up or dissolved, or a resolution is passed for winding up, or an administrator, liquidator, or receiver is appointed, or it is placed under official management, or it commits an act of bankruptcy;
 - (iii) the party is charged with a criminal offence; or
 - (iv) judgment is entered against the party for more than \$20,000.00, which remains unsatisfied or unappealed for more than 21 days.
- (l) **IP** means all intellectual property rights, including copyright, inventions, patents (including patent applications), trade marks (whether registered or not), designs (whether registrable or not), eligible circuit layout rights, domain name licences, know-how, trade secrets, and includes the right to register any intellectual property rights.
- (m) **Liability** means any liability (whether actual or prospective), loss, damage, cost or expense of any description, including legal fees on a solicitor and own client basis.
- (n) **Price** means the fees payable for the Goods as agreed between the parties in accordance with clause 5.5(c).
- (o) **Sales Contract** has the meaning given to it by clause 3(e).
- (p) **Terms** means these terms and conditions including schedules and appendices, if any.
- (q) **We, Us, Our** are references to CS Traders Pty Ltd as trustee for CS Traders Trust, our successors and assigns or any person acting on our behalf and with our authority.
- (r) **Written Notice, In Writing** means providing information in writing, including by email.
- (s) **You, Your** are references to the person/s purchasing the Goods as specified in any invoice, document, or order, and if there is more than one person, 'You' is a reference to each person jointly and severally.

13.2 Interpretation

- (a) If something comes within the meaning of Confidential Information in this Agreement and IP in this Agreement, and there is any conflict in this Agreement regarding its provisions concerning IP and Confidential Information, the provisions concerning IP prevail.

14. Acknowledgement

- (a) You acknowledge that you have carefully read, fully understood and agreed to be bound by all the provisions of this Agreement.
- (b) We will not be liable for any loss and/or damages suffered whatsoever, whether directly and/or indirectly, from your failure

to obtain independent legal advice in relation to this Agreement.

I/We the undersigned declare that all information provided to you for the purposes of assessing our suitability for credit, purchase and rental is true and correct in every particular.

I/We the undersigned further acknowledge that I/we have read understand and agree to the terms of this Agreement.

COMPANY NAME:

TRADING NAME:

PERSON SIGNING (PRINT NAME):

TITLE:

SIGNATURE:

DATE:
