



# Convic Australia Pty Ltd

ABN: 64 161 851 742 A.C.N 086 787 920  
366 – 368 Settlement Road, Thomastown Vic 3074  
Ph: 03 9464 1655 Fax: 03 9464 1661

## Account Application Form

The Customer identified below applies to Convic Australia Pty Ltd (ACN 086 787 920) (**Convic**) for an account with Convic in respect of the supply of goods and/or services by Convic to the Customer (**Application**):

Full Legal Name ("Customer"): \_\_\_\_\_

Name of Trustee [only if Customer operated through a trust] \_\_\_\_\_

(Please Tick)  Sole Trader  Partnership  Company

Other \_\_\_\_\_

ACN [only if customer operated through a company]:

ABN [only if Customer operated through a trust or partnership or sole trader]:

Business/Trading Name \_\_\_\_\_

Contact person \_\_\_\_\_

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

\_\_\_\_\_ Postcode \_\_\_\_\_

Postal Address: \_\_\_\_\_

\_\_\_\_\_ Postcode \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_

Registered Business Address \_\_\_\_\_

\_\_\_\_\_ Postcode \_\_\_\_\_

Type of Business \_\_\_\_\_ Years Established \_\_\_\_\_

Bank \_\_\_\_\_ BSB \_\_\_\_\_ Account No \_\_\_\_\_

Credit Card Details (Optional) \_\_\_\_\_ Expiry \_\_\_\_\_

Estimated purchases per month \$ \_\_\_\_\_

Requested month trading account limit \$ \_\_\_\_\_

The requested trading account limit is only binding if accepted by Convic, otherwise the trading account limit specified by Convic from time to time will apply

**Payment terms:** [30] days from the date of the applicable invoice

Accounts Contact: \_\_\_\_\_

Phone ( ) \_\_\_\_\_

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

**Details of Directors/Partners/Proprietors**

Name & Position \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Address: \_\_\_\_\_

Suburb and postcode: \_\_\_\_\_

Name & Position \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Address: \_\_\_\_\_

Suburb and postcode: \_\_\_\_\_

PLEASE NOTE: Invoices will be emailed only, so please provide an email address below to send our invoice to:

Email \_\_\_\_\_



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366 – 368 Settlement Road, Thomastown Vic 3074  
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## Account Application Form

### Trade references

BusinessName \_\_\_\_\_ Contact: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_

Email: \_\_\_\_\_ Average monthly purchases: \_\_\_\_\_

Business Name \_\_\_\_\_ Contact: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_

Email: \_\_\_\_\_ Average monthly purchases: \_\_\_\_\_

Business Name \_\_\_\_\_ Contact: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_

Email: \_\_\_\_\_ Average monthly purchases: \_\_\_\_\_

**Privacy Notice:** Convic collects, holds, uses and discloses personal information in accordance with its privacy policy available on Convic's website at [\[insert link to privacy policy\]](#) (Privacy Policy).

This Application must be completed in full with no alterations or deletions. Any such alterations or deletions may void the Application and a new Application will have to be completed if requested by Convic.

By signing this Application the signatory or signatories, for and on behalf of the Customer (except in relation to items 6 and 8 below):

1. applies for an account with Convic on the terms contained in this Application and acknowledges and agrees that if an account is approved, the terms and conditions attached to this Application (which include security provisions) (**Terms and Conditions**) will govern and be applicable to the supply of any goods or services by Convic to the Customer;
2. acknowledges and agrees that all statements and representations made by or on behalf of the Customer in this Application and any other information given in support of this Application are true and complete in every detail;
3. warrants that it is, the Customer is and each director/partner/proprietor referred to in this Application is solvent and can each pay their respective debts as and when due and no steps have been taken to place any of them in bankruptcy, voluntary administration, liquidation, receivership or receivership and management and it will promptly notify Convic of any material changes to the Customer or its financial position;
4. agrees that the Customer will inform Convic of any changes in ownership, proprietorship, control, structure or management of the Customer or part thereof and that if there is any such change, Convic may require that a new application be made by the Customer and a new account opened;

5. *acknowledges and warrants that it has read and understood this document (including the attached Terms and Conditions) and that it has been advised and been given a reasonable opportunity to seek independent legal advice;*
6. *acknowledges and warrants that it is authorised on behalf of the Customer to complete and sign this Application and to bind the Customer in contract and each person placing an order with Convic on behalf of the Customer will be duly authorised to act on behalf of the Customer and to place the relevant order;*
7. *acknowledges and agrees that:*
  - (a) *completing and submitting this Application does not infer that an account will be granted by Convic and that Convic reserves the right to refuse an application for an account without explanation; and*
  - (b) *Convic may in its absolute discretion suspend, withdraw, vary or terminate the account or trading limit;*
8. *acknowledges and agrees that the signatory or signatories have read and understood the Privacy Policy and:*
  - (a) *authorises Convic to make such enquiries, as it deems necessary, about the signatory or signatories, including about the signatory's or signatories' consumer or commercial credit history, for the purpose of assessing, or otherwise in connection with, this Application from time to time, including (but not limited to) the making of enquiries with persons nominated in this Application as trade references, bankers, any other credit provider, or a credit reporting body (as identified in Convic's privacy policy) (Information Sources);*
  - (b) *authorises the Information Sources to disclose to Convic personal information, including credit-reporting personal information, about the signatory or signatories which is within the possession of the Information Sources and which is requested by Convic;*
  - (c) *agrees that the personal information provided in, or otherwise obtained by Convic in connection with, this Application may be disclosed by Convic to any of the other Information Sources; and*
  - (d) *otherwise consents to the collecting, holding, using and disclosing of their personal information as set out in the Privacy Policy and the Privacy Acknowledgement and Consent contained in section 0 of this Application.*
9. *In consideration of Convic granting an account to the Customer in accordance with this Application, the Customer undertakes to pay all amounts owing to Convic in accordance with the Terms and Conditions attached to this Application.*

#### **Privacy Acknowledgement and Consent**

In providing an account and/or its goods and/or services Convic may collect, hold, use and disclose personal information in accordance with the Privacy Policy. The Privacy Policy sets out how Convic will collect, hold, use, disclose and otherwise manage personal information, including credit-related personal information, in accordance with the *Privacy Act 1988* (Cth) (**Privacy Act**) and the 13 Australian Privacy Principles (**APPs**) in the Privacy Act.

The individual(s) providing personal information in, or in connection with, this application form, are required to read this Privacy Acknowledgement and Consent together with Convic's Privacy Policy.

The individual(s) about whom Convic may need to collect, hold, use and disclose personal information may include the Customer or the Customer's director(s) or any other individuals relevant to the Application including but not limited to signatories of this form and any individual applying to be a guarantor (**Relevant Individuals**). In particular Convic may require personal information about Relevant Individuals for the purposes set out in the Privacy Policy, including the purposes of assessing this Application or any other applications for an account or whether to accept a Relevant Individual as a guarantor. This may include Convic collecting a Relevant Individual's personal information from, or disclosing a Relevant Individual's personal information to an Information Source. Where a Relevant Individual's personal information is disclosed to a credit reporting body, the credit reporting body may include the information in reports provided to other credit providers to assist those credit providers to assess the Relevant Individual's credit worthiness.

Convic collects, holds, uses and/or discloses personal information, including identity particulars, information about previous or existing credit accounts or applications for credit accounts (including the relevant credit provider, the amount of credit and details of repayments or failures to make repayments), information about other credit providers having accessed or made a request for information in connection with applications for consumer or commercial credit, information about repayment history over the previous two years, default information, information about any commercial activities or commercial credit worthiness, other information provided by a credit reporting body (as identified in the Privacy Policy) or otherwise lawfully collected within the Australian credit reporting system, in accordance with Convic's Privacy Policy, the Privacy Act, the APPs or other applicable law.

Convic may collect, hold, use or disclose a Relevant Individual's personal information for the purposes of assessing the Application or whether to accept a Relevant Individual as a guarantor; if the Application is successful, the purpose of establishing, administering and extending credit under the financing arrangement; facilitating repayments that the Customer or Relevant Individual owes to Convic; assisting the Customer or Relevant Individual to avoid defaulting; providing the Relevant Individual with information about products and services offered by Convic, its related bodies corporate or selected third parties; and any other purposes set out in the Privacy Policy.

Convic may also disclose a Relevant Individual's personal information to, and collect the Relevant Individual's personal information from, the Customer or the Customer's or Convic's related bodies corporate, professional advisors, business partners, contractors, suppliers, consultants, insurers or third party service providers that assist Convic or the Customer with the provision or management of goods and/or services and/or administrative requirements; other credit providers; credit reporting bodies (as identified in the Privacy Policy); any other Information Sources; debt collection and recovery service providers; guarantors or prospective guarantors; entities that may have an interest in Convic; regulatory bodies; and any other person or entity set out in the Privacy Policy or otherwise authorised by the Relevant Individual or law.

If a Relevant Individual does not provide the personal information as requested, Convic may not be able to consider the Application, provide an account to the Customer, accept a Relevant Individual as a guarantor, or otherwise provide goods or services to the Customer. Relevant Individuals who have any concerns about Convic's handling of their personal information can raise those concerns in accordance with the Privacy Policy. The Privacy Policy contains details of (including how to access the privacy policy of) any credit reporting body with which Convic exchanges personal information including credit-related personal information, how Relevant Individuals can request access to, or correction of, personal information held about them by Convic, or otherwise make complaints or inquiries with respect to the handling of their personal information by Convic, and the ways in which such complaints will be dealt with by Convic.

**The Relevant Individuals acknowledge and give consent to, and the signatory or signatories to this Application otherwise warrant that they have obtained the consent of the Relevant Individuals to, Convic collecting, holding using and disclosing their personal information, including credit related personal information, for the purposes set out in this Privacy Acknowledgement and Consent and otherwise in accordance with the Privacy Policy or as authorised or required by the Privacy Act.**

The Relevant Individuals acknowledge that, if this Application is approved, the Privacy and Acknowledgement and Consent will remain in force until the full amount owing to Convic, or companies related to Convic, under any financing arrangement, is repaid and all related accounts are closed.

**SIGNED** for and on behalf of the Customer by its duly authorised representative:

.....  
Signature of authorised representative

.....  
Name of authorised representative

By signing this Application the signatory warrants that they have the power and authority to enter into this agreement on behalf of the Customer.

**SIGNED** for and on behalf of the Customer by its duly authorised representative:

.....  
Signature of authorised representative

.....  
Name of authorised representative

By signing this Application the signatory warrants that they have the power and authority to enter into this agreement on behalf of the Customer.

**EXECUTED** by **ACN**  
in accordance with section 127 of the *Corporations Act 2001*  
(Cth) by being signed by the following officers:

.....  
Signature of director

.....  
Signature of director/company secretary

.....  
Name of director (*please print*)

.....  
Name of director/company secretary (*please print*)

**EXECUTED** by  
**ACN** in  
accordance with section 127 of the *Corporations Act 2001* (Cth)  
by being signed by:

.....  
Signature of sole director and sole company secretary

.....  
Name of sole director and sole company secretary  
(*please print*)

**Please return Credit Application to:-**

The Credit Manager  
Convic Australia  
366 – 368 Settlement Road,  
Thomastown Vic 3074

or Fax to:  
Attention: Trish Nardella  
(03) 9464 1661

**Please note: ORIGINAL MUST BE POSTED TO CONVIC AUSTRALIA PTY LTD**

**PERSONAL/DIRECTORS GUARANTEE AND INDEMNITY**

IN CONSIDERATION of Convic Australia Pty Ltd (ACN 007 425 532) and its successors and assigns (**Convic**) granting a trading account (**Account**) to:

\_\_\_\_\_  
(ABN/ACN): \_\_\_\_\_ (**Applicant**)

each person that signs below (**Guarantor**) has agreed to provide the guarantee set out in this document on the following terms (**Guarantee**).

1. In consideration for Convic accepting the Applicant's application for an Account, each Guarantor unconditionally and irrevocably guarantees the due and punctual payment to Convic of all monies which are owing to Convic by the Applicant under or in connection with the terms and conditions attached to the application for the Account (**Terms and Conditions**) and the terms of the Account (**Guaranteed Money**).
2. Each Guarantor must on demand immediately pay to Convic an amount equal to any amount of Guaranteed Money not paid by the Applicant by the due date for payment, even if Convic has not made a demand for payment on the Applicant.
3. Each Guarantor indemnifies Convic against any and all loss or damage (including, without limitation, direct, indirect and consequential loss) which Convic suffers as a direct or indirect result of:
  - (a) the Applicant or a Guarantor failing to pay any Guaranteed Money to Convic;
  - (b) the Applicant breaching any provision of the terms of the Account, the Terms and Conditions or any other agreement with Convic; or
  - (c) any Insolvency Event (as the term is defined in the Terms and Conditions) occurring in respect of the Applicant or any other Guarantor.
4. Each Guarantor's obligations under clauses 1, 2 and 3 are that of a principal debtor and not merely as surety.
5. Each Guarantor's obligations under clauses 1, 2 and 3 and its other obligations under this Guarantee:
  - (a) are continuing obligations, separate and independent from the Guarantor's other obligations under this Guarantee;
  - (b) extend to all amounts of Guaranteed Money presently owing or owing at any time in the future; and
  - (c) remain in force until Convic notifies the Guarantor in writing of the discharge of the obligations.
6. Each Guarantor's obligations under this Guarantee are not affected by anything which might otherwise operate to release, affect or discharge them in any way (whether at law or equity).
7. Convic may enforce any right under this Guarantee regardless of whether it has made a demand on the Applicant or enforced any other security.
8. Each Guarantor cannot withdraw from, terminate or revoke this Guarantee.
9. Each Guarantor must not, without the prior written consent of Convic, prove in the insolvency of the Applicant or receive any benefit or distribution in respect of the winding up or liquidation of the Applicant.
10. Each Guarantor must not, without the prior written consent of Convic, exercise any set off or counterclaim right which could reduce or limit the amount of the Guaranteed Money payable to Convic.
11. Convic may credit any amounts it receives under this Guarantee towards the satisfaction of the Guaranteed Money in such order or priority as Convic, in its sole discretion, considers appropriate.
12. Where there is more than one Guarantor, the obligations of each Guarantor will be joint and several obligations. A Guarantor will not be released from its obligations under this Guarantee by reason of another Guarantor not signing this Guarantee, being released from liability under this Guarantee by Convic or otherwise ceasing to have obligations under this Guarantee.
13. Each Guarantor acknowledges that it expects to obtain a commercial benefit as a result of providing this Guarantee to Convic.
14. Words and expressions used in clauses 14 to 21 inclusive which are not defined in this Guarantee but are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the meaning given to them in the PPSA.
15. PPSA
  - (a) as security for the due and punctual payment to Convic of all present and future amounts payable by each Guarantor under or in connection with this Guarantee, each Guarantor grants to Convic:
    - (i) a security interest over all of their present and after acquired Personal Property; and
    - (ii) a charge over all their Other Property (which is any property other than Personal Property), including any real property they own.

- (b) Each Guarantor agrees that Convic may at any time:
    - (i) perfect its security interest under clause 14 by effecting a registration on the register against the Guarantor; and/or
    - (ii) register a caveat or other security interest over any Other Property or real property owned by the Guarantor.
  - (c) Each Guarantor agrees to promptly do all things necessary to ensure that any security interest created under this Guarantee is perfected and remains continuously perfected, Convic's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.
  - (d) Each Guarantor must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by Convic for that purpose). Without limiting the foregoing, each Guarantor must:
    - (i) create and implement appropriate policies and systems to register its own security interests; and
    - (ii) where appropriate, take reasonable steps to identify security interests in its favour and to perfect and protect them, with the highest priority reasonably available.
  - (e) Each Guarantor must indemnify, and on demand reimburse, Convic for all expenses incurred in registering a financing statement or financing change statement on the register, registering or stamping any security interest or caveat and for the enforcement of any rights arising out of Convic's security interests.
  - (f) Each Guarantor must not change its name, address or contact details without providing prior written notice to Convic and must not register a financing change statement or a change demand without the prior written consent of Convic.
  - (g) To the extent that the PPSA permits, each Guarantor waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
  - (h) Each Guarantor may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if Convic has given prior written consent.
16. This Guarantee is governed by the laws in force in Victoria and each Guarantor and Convic submit to the non-exclusive jurisdiction of the courts of Victoria.
17. If any provision of this Guarantee is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from this Guarantee without affecting the validity or enforceability of the remaining provisions.

**I/WE FURTHER ACKNOWLEDGE AND AGREE THAT**

18. This Guarantee is additional and in conjunction with the Terms and Conditions and should be read as such.
19. This Guarantee shall constitute an unconditional and continuing guarantee and indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to Convic by the Applicant and all obligations herein have been fully paid, satisfied and performed.
20. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on Convic's part (whether in respect of the Applicant or any one or more of any other guarantor(s) or otherwise) and no failure by any named guarantor to properly execute this Guarantee shall impair or limit the liability under this Guarantee of any Guarantor. Without affecting the Applicant's obligations to Convic, each Guarantor shall be a principal debtor and liable to Convic accordingly.
21. If any payment received or recovered by Convic is voided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and Convic shall each be restored to the position in which they would have been had no such payment been made.
22. This Guarantee shall bind each of the signatories notwithstanding that one or more of the persons named as a "Guarantor" may never execute this Guarantee.
23. The term "Guarantor" whenever used in this Guarantee shall, if there is more than one person named as guarantor, mean and refer to each of them individually and together unless the context otherwise requires.
24. In the event of any default of payment by the Applicant, the Guarantor hereby charges their interest in any and all land registered in their name as security for payment of monies owing pursuant to this Guarantee to Convic, and hereby agrees that Convic may register a caveat over any and all land registered in their name.
25. The above information is to be used by Convic for all purposes in connection with Convic considering this guarantee and the subsequent enforcement of the same.

**Privacy Acknowledgement and Consent:**

I/we acknowledge and give consent to Convic:

- (a) making enquiries about me/us with, and collecting my/our personal information including credit related personal information from, a credit reporting body for the purposes of assessing my/our application to be guarantor/s;
- (b) using and/or disclosing my/our personal information including credit related personal information obtained as a result of or in connection with such enquiries and collection for the purposes of assessing my/our application to be guarantor/s;
- (c) disclosing my/our personal information including credit related personal information to a credit reporting body in connection with this application to be, or the acceptance of me/us as, guarantor/s. This may include disclosure of information about my/our failure to make a payment in accordance with my/our obligations as guarantor/s; and
- (d) otherwise collect, hold, use and disclose my/our personal information as set out in the:
  - (i) Privacy Policy of Convic, which I/we have read and understood; and
  - (ii) Privacy Acknowledgement and Consent contained in the application for the Account, a copy of which I/we have read and understood.

Executed as a deed.

Date:

**GUARANTOR-1**

SIGNED, SEALED AND DELIVERED BY:

SIGNATURE OF GUARANTOR: \_\_\_\_\_

FULL NAME OF GUARANTOR: \_\_\_\_\_

PRESENT ADDRESS: \_\_\_\_\_ SIGNATURE OF WITNESS: \_\_\_\_\_

NAME OF WITNESS: \_\_\_\_\_ OCCUPATION: \_\_\_\_\_

EXECUTED as a Deed this      day of 20

**GUARANTOR-2**

SIGNED, SEALED AND DELIVERED BY:

SIGNATURE OF GUARANTOR: \_\_\_\_\_

FULL NAME OF GUARANTOR: \_\_\_\_\_

PRESENT ADDRESS: \_\_\_\_\_

SIGNATURE OF WITNESS: \_\_\_\_\_

NAME OF WITNESS: \_\_\_\_\_ OCCUPATION: \_\_\_\_\_

- Note:
- 1. If the Customer is a sole trader or partnership the guarantor(s) should be some other suitable person(s).
  - 2. If the Customer is a club or incorporated society the guarantor(s) should be the president and secretary or other committee member.

**WARNING: THIS IS AN IMPORTANT DOCUMENT AND YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE BEFORE SIGNING IT**



## GENERAL TERMS AND CONDITIONS OF TRADE AGREEMENT

### 1. Definitions

In these Terms the words below have the following meanings.

**Account Application** means the form approved by the Company and completed by the Customer for an account with the Company for the provision of Goods and/or Services.

**Agreement** means each Offer which is accepted by the Company under clause 3.2.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

**Business Day** means any day except a Saturday, Sunday or public holiday in Victoria.

**Change in Control** means, in relation to a party:

- (a) the person who Controls the party at the date that party first became bound by these Terms subsequently ceases to have Control of the party;
- (b) a person who does not Control the party at the date that the party first became bound by these Terms subsequently obtains Control of the party; or
- (c) if the party is Controlled by a group or consortium of persons, or if the group or consortium could Control the party were they to act collectively, any material change in the composition of that group or consortium.

**Company** means Convic Australia Pty Ltd (ACN 007 425 532).

**Confidential Information** means all information and other content disclosed by the Company to the Customer and includes these Terms and the prices of the Goods or Services but excludes information that:

- (a) is public knowledge or becomes available to the Customer from a source other than the Company (otherwise than as a result of a breach of confidentiality); or
- (b) is rightfully known to, or in the possession or control of the Customer and not subject to an obligation of confidentiality in accordance with the terms of an Agreement.

**Consequential Loss** means:

- (a) any form of indirect, special or consequential loss, including loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
- (b) any loss beyond the normal measure of damages.

**Consumer** has the meaning provided to it in section 3 of the Australian Consumer Law.

**Consumer Guarantee** means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

**Control** has the meaning given in section 50AA in the *Corporations Act 2001* (Cth).

**Customer** means the person or entity named in the Account Application who requested that Goods and/or Services be supplied to it by the Company.

**Customer Background Materials** means all material in whatever form (including documents, specifications, designs, names, plans, processes, information and data) owned or licensed by the Customer and provided by, or on behalf of, the Customer to the Company for the purposes of an Agreement.

**Default Rate** means the interest rate which is fixed from time to time under section 2 of the *Penalty Interest Rate Act 1983* (Vic).

**Delivery Fee** means:

- (a) the delivery fee set out in a Quote or otherwise agreed in writing between the parties; or
- (b) if no delivery fee is set out in a Quote or otherwise agreed in writing between the parties, the costs of the Company incurred in delivering the Goods to the Customer.

**Force Majeure Event** means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party including any fire, failure or shortage of power supplies or raw ingredients, abnormally inclement climate or weather conditions, flood, lightning, storm, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, riot, disease, civil commotion, insurrection, political instability, armed conflict, war, terrorist action, strike or other labour difficulty or shortage, unavailability of transport providers, failure or inability to obtain any licence or the threat of any of the foregoing.

**Goods** means the goods to be supplied by the Company to the Customer under an Agreement.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended, varied or replaced from time to time.

**Insolvency Event** means in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver or manager or similar insolvency administrator to that body corporate or

any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.

**Intellectual Property Rights** means any and all intellectual and industrial property rights anywhere in the world, including but not limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets and know how, throughout the world for the full period of the rights and all renewals and extensions.

**Invoice** has the meaning provided to it in clause 4.4.

**Loss** means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

**Offer** has the meaning provided to it in clause 3.1.

**Order** means any order or other request by or for the Customer to the Company for it to supply to the Customer any Goods and/or provide it with any Services, whether such order or request is written, verbal or implied in the circumstances and which may have been given in response to a Quote.

**PDH Goods or Services** means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

**Purchase Price** has the meaning provided to it in clause 4.1, as may be varied under clause 4.2.

**Quotation or Quote** means a quote or proposal, if any, provided by the Company to the Customer in respect of the Goods and/or Services.

**Services** means the services to be supplied by the Company to the Customer under an Agreement.

**Specifications** means any physical, qualitative, technical or descriptive specifications, dimensions, weights or other particulars of the Goods or Services or photographs or illustrations of the Goods which are supplied by the Company or which may be available on the internet, including as provided in any Quote, Order, price list, catalogue, brochure or other document which describes the Goods.

**Tax or Taxes** means any tax, levy, charge, impost, fee, duty, deduction, compulsory loan or withholding (including corporate tax, personal income tax, fringe benefits tax, payroll tax, withholding tax, excise and import duties, consumption tax, value added tax or any other taxes, levies or charges), which is assessed, levied, imposed or collected by any government agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any such amounts.

**Terms** means these Terms and Conditions.

**Trading Limit** means the value of any trading account facility granted by the Company to the Customer pursuant to any account created under the Account Application.

### 2. Application

These Terms apply to and govern the supply by the Company of Goods and provision of Services to the Customer from time to time and, more specifically, apply to and govern the supply by the Company of Goods and/or Services to the Customer which are to be provided under an Offer accepted by the Company.

### 3. Formation of Agreement

3.1 The Customer acknowledges and agrees that by submitting an Order the Customer makes an

irrevocable offer to the Company for the Company to supply it with the Goods and/or provide it with the Services on the terms of:

- (a) these Terms;
  - (b) the Order; and
  - (c) the Quote (if any),
- (Offer).**

3.2 A contract will be formed between the Company and the Customer in respect of each Offer upon the earlier of the Company:

- (a) notifying the Customer in writing that it accepts the Customer's Offer;
- (b) accepting in full or part, payment from the Customer for any Goods or Services the subject of the Offer;
- (c) making delivery of the Goods the subject of the Offer to the Customer; or
- (d) performing the Services the subject of the Offer.

3.3 An Agreement formed under clause 3.2 will comprise these Terms, any Account Application, the Order (only to the extent that any additional terms in the Order are accepted by the Company in writing), the Quote (if any) and the Invoice.

3.4 The Company is not bound to accept any Offer and may decide not to accept any Offer for any reason and in the sole discretion of the Company.

#### 4. Price and payment

4.1 Unless otherwise agreed by the parties, the price the Customer must pay for the Goods and/or Services under each Agreement will be:

- (a) the price for the Goods and/or Services specified in the Quote, via email or made verbally, or, if there is no price provided in an email, verbally or in a Quote, the price specified in the Order; and
  - (b) the Delivery Fee,
- (Purchase Price).**

4.2 The Company may, prior to delivery of the relevant Goods and/or Services amend the Purchase Price by notice in writing to the Customer however if the Customer does not wish to accept the new Purchase Price it may, within **[5]** Business Days of receipt of the notice from the Company, terminate the Agreement by notice in writing to the Company and the Company must refund any monies already paid by the Customer in respect of that Agreement.

4.3 Subject to clause 16, unless otherwise expressly specified by the Company or in these Terms, all prices stated are stated exclusive of Taxes and the Customer is solely responsible for the payment of all Taxes levied or payable in respect of the Goods and/or Services and must immediately upon request by the Company provide the Company with evidence of payment of any Taxes.

4.4 The Company may invoice the Customer for the Purchase Price at any time following formation of the relevant Agreement **(Invoice).**

4.5 The Company may set off any amount owing by the Customer to the Company, whether or not due for payment, against any money due for payment

by the Company to the Customer under any agreement, understanding or arrangement between the Company and the Customer.

4.6 Subject to clause 4.7, unless otherwise agreed in writing between the Customer and the Company the due date for payment by the Customer to the Company of the Purchase Price for the Goods and/or Services supplied pursuant to an Agreement **(Due Date)** is:

- (a) the due date agreed by the Company when accepting the Account Application but only if the value of the Invoice, combined with any outstanding amounts owed by the Customer to the Company, does not exceed any approved Trading Limit; or
- (b) if the conditions set out in paragraph (a) are not satisfied, prior to the scheduled date of delivery for the Goods or provision of the Services.

4.7 If:

- (a) the Customer has previously failed to make any payment to the Company by the due date for that payment (whether under these Terms or otherwise); or
- (b) the creditworthiness of the Customer is, in the Company's sole opinion, unsatisfactory, the Company may require payment of the Purchase Price in full prior to the Company delivering the relevant Goods or providing the Services.

4.8 If the Customer fails to make any payment by the Due Date, breaches any term of an Agreement or is the subject of an Insolvency Event, then, without prejudice to any other right or remedy available to the Company, the Company may, in its sole discretion, elect to do any one or more of the following:

- (a) suspend any further deliveries to the Customer arising from any Agreement;
- (b) cancel any Agreement in respect of any Goods or Services not yet supplied or provided to the Customer in whole or in part by the Company;
- (c) terminate any Agreement in accordance with clause 18.1;
- (d) enter the property of the Customer in order to repossess the Goods and the Customer grants the Company and its agents an irrevocable licence to do so;
- (e) dismantle any other goods into which the Goods have been installed or incorporated and remove the Goods from such goods;
- (f) charge the Customer interest (both before and after any judgment) on the unpaid amount at the Default Rate, which interest will accrue and be chargeable from the first day on which such amount becomes overdue until the Company receives payment of all such amounts (including all interest) by way of cleared funds;
- (g) cancel any Trading Limit or account facilities previously granted to the Customer by the

Company (including under the Account Application);

- (h) cancel or reverse any trade discounts or rebates provided, or otherwise offered, to the Customer under any Agreement or other arrangement; and
- (i) exercise any rights which the Company may have under law, including the *Personal Property Securities Act 2009* (Cth).

4.9 The Customer may not set off or combine any amount owing by the Company to the Customer, whether or not due for payment, against any money due for payment by the Customer to the Company under an Agreement and the Customer must pay, and not withhold, any amount due to the Company under an Agreement notwithstanding the Customer may be in dispute with the Company regarding the Goods or Services supplied by the Company to the Customer.

## **5 Delivery of Goods and provision of Services**

- 5.1 The Company will deliver the Goods to the Customer in the manner:
- (a) determined by the Company; or
  - (b) as otherwise agreed between the Company and the Customer (including collection by the Customer).
- 5.2 The Company will endeavour, but is not obliged, to deliver Goods and provide the Services between the hours of **[6.00am and 4.00pm]** on a Business Day at the place of delivery or service provision.
- 5.3 The Customer expressly authorises and grants the Company and its agents an express, irrevocable licence to enter the premises of the Customer or relevant third party in order for the Company to deliver the Goods or provide the Services.
- 5.4 If the parties have agreed that the Customer will collect the Goods, then the Customer must collect those Goods within **[3]** Business Days of being notified by the Company that the Goods are ready to be collected.
- 5.5 The Customer will be responsible, at its own cost, for the unloading of any Goods at the delivery location and there must be a representative of the Customer present at the delivery location at the time delivery is made of the Goods and, if no such representative is present, a redelivery fee may be charged by the Company.
- 5.6 The Customer must, prior to taking possession of the Goods, inspect the Goods and immediately notify the Company in writing if the Goods are not fit for any purpose for which the Customer intends to use the Goods, have any defect or otherwise do not meet any Specifications.
- 5.7 The Customer acknowledges that a Good which is subject to an Offer may be modified after the time the Customer makes the Offer by the Company or the supplier of the Good as a result of an

improvement in technology or because of a requirement imposed by law.

- 5.8 In the event of the Customer returning or failing to accept any delivery of the Goods (including failure to collect the Goods), the Company shall be entitled to payment for those Goods and to treat the obligation to supply the remainder of the Goods (if any) as cancelled by the Customer.
- 5.9 Without limiting any other rights the Company may have, the Company will be entitled to store at the risk and cost of the Customer any Goods which the Customer refuses or fails to take delivery of (including failure to collect the Goods).
- 5.10 The Company will use its reasonable endeavours to deliver the Goods and provide the Services on any date specified or estimated by the Company or set out in a Quote or Order however such dates are estimates only and the Company will not, in any circumstances or for any reason (including the occurrence of a Force Majeure Event), be liable for late or part delivery of the Goods or provision of the Services and later delivery of Goods or provision of the Services does not entitle the Customer to cancel any order for the Goods or Services.
- 5.11 Without limiting clause 5.10, the Company may deliver or provide a portion of the Goods or Services and may invoice or otherwise charge the Customer for that portion. The Customer may not refuse to accept delivery of the Goods or to pay for the Goods or Services because only a portion of the quantity ordered was delivered or provided and the Customer agrees that the Company will not be liable for any Loss that the Customer suffers as a result of any delay or cancellation.
- 5.12 If there are multiple Agreements in place at any one time then the Company may, in its absolute discretion, determine in which order it satisfies the delivery of the Goods and provision of Services under the Agreements.
- 5.13 The Customer acknowledges and agrees that:
- (a) the Company may, but will not be required to, provide proof of delivery or other similar documentation (whether at the time of delivery or after);
  - (b) it will not request proof of delivery or other similar documentation from the Company; and
  - (c) it will not dispute any Invoice based on (in whole or in part) proof of delivery or other similar documentation not having been provided by the Company.
- ## **6 Title and risk of Goods**
- 6.1 Title to, and property in any Goods supplied under an Agreement remain with the Company and will only pass to the Customer once all moneys owing by the Customer to the Company in respect of the Agreement or any other agreement or arrangement between the Customer and the Company have been paid in full.
- 6.2 Risk in the Goods passes to the Customer:



- (a) if the Goods are being delivered to the Customer, upon the Goods being removed from the Company's premises (or that of the Company's supplier) for delivery to the Customer; and
- (b) if the Goods are to be collected by the Customer, upon the earlier of:
  - (i) the date the Goods are collected by the Customer; and
  - (ii) the date which is **3** Business Days after the date on which the Company notified the Customer that the Goods are ready to be collected,

and:

- (c) the Customer is responsible for arranging, and taking out in its own name and its own cost, any insurance in respect of the Goods from the time risk passes to the Customer under this clause; and
- (d) the Customer indemnifies the Company against any Loss or damage to the Goods, however caused, occurring after the Goods have been removed from and left the Company's premises (or the premises of the Company's supplier).

6.3 In the event that the Customer is required to return any Goods to the Company, risk in the Goods passes to the Company on confirmation of receipt of the Goods by the Company.

6.4 Until such time as full title, property and ownership of the Goods passes to the Customer in accordance with clause 6.1, and while the Goods remain in the Customer's full control and possession:

- (a) subject to clause 6.5, the Customer must hold the Goods as the Company's fiduciary agent and bailee and must not sell, lease, dispose of or otherwise deal with the Goods in any way without the Company's prior written consent;
- (b) the Customer must insure the Goods for their full replacement value against all insurable risks and shall procure that the Company's interest is noted on such policy of insurance;
- (c) the Customer must store the relevant Goods separately from any other goods and in a way that enables the Goods to be clearly identified as the Company's and referable to a particular Invoice;
- (d) the Company may enter the premises of the Customer or any third party where the Goods are stored during the hours of 9.00am to 5.00pm to inspect the Goods and:
  - (i) the Customer expressly authorises and grants the Company and its agents an express, irrevocable licence to enter the premises of the Customer or relevant third party to inspect the Goods; and
  - (ii) the Customer indemnifies the Company against any Loss that may be incurred or sustained by the Company, its employees

or agents, as a result of the entry of those premises where the Goods are stored;

(e) the Company may at any time after payment is overdue require the Customer to deliver up the Goods to the Company and, if the Customer fails to deliver up the Goods immediately, the Company may enter the premises of the Customer or any third party where the Goods are stored and repossess them and:

(i) the Customer expressly authorises and grants the Company and its agents an express, irrevocable licence to enter the premises of the Customer or relevant third party to remove or arrange for the removal of the Goods; and

(ii) the Customer indemnifies the Company against any Loss that may be incurred or sustained by the Company, its employees or agents, as a result of the entry of those premises where the Goods are stored;

(f) the Customer must not pledge or grant a security interest in or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Company. If the Customer does pledge or in any way charge by way of security, for any indebtedness, any of the Goods for which property and ownership has not passed to the Customer, the Customer must remove the pledge, charge or security interest immediately and all moneys owing by the Customer to the Company will (without prejudice to any other right or remedy of the Company) immediately become due and payable to the Company; and

(g) the Customer must not remove, deface, alter, obliterate or cover up any names, marks, designs, numbers, code or writing on the Goods.

6.5 Notwithstanding that title to the Goods has not passed to the Customer under clause 6.1, the Customer may, subject to obtaining the Company's prior written approval, resell the Goods or any part thereof in the name of the Customer but only as agent for the Company and may deliver any such Goods to the buyer of those Goods but only in the ordinary course of its business and on terms which will not prejudice the Company's ability to obtain the sale proceeds thereof and:

(a) any amount paid or due to be paid by the buyer of such Goods to the Customer (**Sale Proceeds**) must be held by the Customer on trust for the Company and any amounts paid must be banked in a separate bank account relating only to the sale proceeds of any Goods and shall be forwarded as soon as possible to the Company in satisfaction of any amount owed by the Customer in respect of the Goods;

(b) the Customer must keep and maintain separate records in relation to the Sale Proceeds received and held by the Customer and must provide such records to the

Company immediately upon request by the Company; and

- (c) if and when the full amount due to the Company in respect of the Goods has been received by the Company, any further Sale Proceeds may be retained by the Customer.

6.6 The Customer must immediately cease the resale of any Goods under clause 6.5 if:

- (a) the Company revokes any consent it has given to the Customer to resell the Goods under clause 6.5; or
- (b) the Customer fails to make any payment under an Agreement by the relevant Due Date.

6.7 In the event that the Customer processes, incorporates, transforms or installs the Goods (or any portion of them) into any other goods manufactured or produced by the Customer or a third party, then the Customer must:

- (a) keep and maintain records in relation to the Goods which have been processed, incorporated, transformed or installed and the goods in which the Goods have been processed, incorporated, transformed or installed; and
- (b) hold a proportion of any payment (**Relevant Proportion**) received by the Customer for such goods on trust for the Company and the Customer acknowledges that the Relevant Proportion must be not less than the dollar value of the portion of the Goods processed, incorporated, transformed or installed.

6.8 If an Insolvency Event occurs in respect of the Customer then, without the need for notice or demand by the Company, the Customer acknowledges that any sale or purported sale of the Goods will not be in the ordinary course of the Customer's business and the proceeds of any Goods sold in such circumstances will, to the extent of any money owing by the Customer to the Company, be held on trust for the Company by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.

## 7 PPSA

7.1 Words and expressions used in this clause 7 which are not defined in these Terms but are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the meaning given to them in the PPSA.

7.2 Unless a Customer has paid for Goods in respect of an Agreement before they are delivered to the Customer, each Customer acknowledges that:

- (a) the Agreement for the supply of Goods created under these Terms is a security agreement for the purposes of the PPSA, under which the Customer grants the Company a security interest in the Goods and over any amount owed to the Customer in respect of the Goods (**Account**) to secure all monies owing by the Customer to the Company from time to time;

- (b) where the Company has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply; and

- (c) the Company is not obliged to act in any way to dispose of or to retain any Goods which have been seized by the Company or any person nominated by the Company under its rights under the PPSA.

7.3 Without limiting anything else in these Terms, the Customer consents to the Company effecting a registration on the register in relation to any security interest created by or arising in connection with, or contemplated by, these Terms, including in relation to the Goods and any Account. The Customer agrees to promptly do all things necessary to ensure that any security interest created under these Terms is perfected and remains continuously perfected, the Company's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.

7.4 The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by the Company for that purpose in relation to the Goods or the Account). Without limiting the foregoing, the Customer must:

- (a) create and implement appropriate policies and systems to register a security interest in relation to the Goods where the Customer on sells the Goods to a third party; and

- (b) where appropriate, take reasonable steps to identify security interests in relation to the Goods in the Customer's favour and to perfect and protect them, with the highest priority reasonably available.

7.5 The Customer must indemnify, and on demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the register, and for the enforcement of any rights arising out of any of the Company's security interests.

7.6 The Customer must not change its name, address or contact details without providing prior written notice to the Company and must not register a financing change statement or a change demand without the Company's prior written consent.

7.7 To the extent that the PPSA permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.

7.8 The Customer may only disclose information or documents, including information of a kind

referred to in section 275(1) of the PPSA, if the Company has given prior written consent.

## **8 Liability**

8.1 If the Customer is a Consumer and the Company supplies PDH Goods or Services to the Customer, the Company acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Goods or Services supplied by the Company and nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of any such rights.

8.2 If the Customer is a Consumer and any goods or services supplied by the Company to the Customer are non PDH Goods or Services, the Company's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at the Company's discretion) to:

- (a) in the case of 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; and
- (b) in the case of Services:
  - (i) the supplying the Services again; or
  - (ii) the payment of the cost of having the Services supplied again.

8.3 If the Customer makes a claim against the Company which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, the Company expressly excludes all liability in respect of the Goods or Services supplied by the Company to the Customer.

8.4 In relation to the supply of Goods which are non PDH Goods or Services, if the Company is liable to indemnify the Customer under section 274 of the Australian Consumer Law, the Company's liability to the Customer is limited to an amount equal to the lower of:

- (a) the cost of replacing the Goods;
- (b) the cost of obtaining equivalent Goods; or
- (c) the cost of having the Goods repaired.

## **9 Intellectual Property**

9.1 The Customer grants to the Company a non-exclusive, royalty free licence during the term of each Agreement to use, reproduce, modify, adapt and further develop all Intellectual Property Rights in those portions of the Customer Background Materials which are required to enable the Company to supply the Goods or perform the Services.

9.2 The Customer represents and warrants to the Company that:

- (a) the Customer is the legal and beneficial owner of, or is entitled to use (or will on creation own or be entitled to use); and
- (b) is entitled to licence to the Company in accordance with clause 9.1, the Intellectual Property Rights in the Customer Background Materials.

9.3 Unless expressly stated by an Agreement, the parties acknowledge and agree that as between the Company and the Customer all Intellectual Property Rights in the Goods and any material created as part of the Services (including in designing or manufacturing the Goods) vests in and exclusively belongs to and are irrevocably assigned to the Company and the Customer agrees that it must not infringe or use the Intellectual Property Rights of the Company which exist in the Goods or materials created as part of the Services (including in designing or manufacturing the Goods) without the prior consent of the Company.

9.4 The Customer must not modify, adapt, vary, reverse engineer, disassemble or copy all or any part of any Good without the prior written consent of the Company.

9.5 The Customer must not remove, deface, change, distort, delete or cover up:

- (a) any name plate or mark on the Goods which indicates that the Company is the owner of the Goods; or
- (b) any patent, copyright or other proprietary notices which appear in writing on or in any part of the Goods.

9.6 The Customer must only sell or promote the Goods using any trade mark, name or brand which is approved in writing by the Company.

9.7 The Customer must not make available for purchase, sell or promote any:

- (a) good which is a copy or imitation, in whole or in part, of any Good; or
- (b) Good which has been modified or varied.

## **10 Indemnity**

The Customer indemnifies the Company and holds the Company harmless from and against all Losses (including all legal costs, and any other associated fees and costs) for which the Company incurs as a direct or indirect result of:

- (a) recovering any amounts the Customer owes to the Company (including any fees paid to a debt collector, mercantile agent or similar);
- (b) any breach of an Agreement by the Customer;
- (c) any negligent or wilful act or omission by the Customer, the Customer's employees, agents,

servants, contractors or others for whom the Customer is legally responsible;

- (d) any infringement or alleged infringement of Intellectual Property Rights owned by a third party in respect of any of the Customer Background Materials; and
- (e) the Customer providing the Company with any incorrect or misleading information, drawings, specifications, data, representations, statements or documents.

## **11 Notification of claims**

11.1 The Customer shall notify the Company immediately if it becomes aware of:

- (a) any claim; or
- (b) any death, serious injury or serious illness, in respect of, or caused by, the Goods or other goods of which the Goods are a component or mixed with and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.

11.2 If Goods are sold by the Customer to a third party for commercial use by that third party, the Customer must impose on the third party an obligation to notify the Customer immediately if the third party becomes aware of:

- (a) any claim; or
- (b) any death, serious injury or serious illness, In respect of the Goods or other goods of which the Goods are a component or mixed with and to take all reasonable steps to mitigate Loss arising as a consequence of the claim, death, serious injury or serious illness.

11.3 The Customer must, and must impose on any third party to whom it sells the Goods an obligation to:

- (a) not, without the Company's express written consent, make any representation to the Customer regarding the purpose, performance or durability of the Goods, which is in breach of the Australian Consumer Law;
- (b) take all steps to do all things necessary to promptly pass on to the Company any claim made by a Consumer arising out of or in connection with the Australian Consumer Law and must; at the Customer's expense, assist the Company to comply with its obligations under the Australian Consumer Law;
- (c) not, other than in respect of any warranties or guarantees which cannot be excluded by law, make on behalf of the Company any undertaking, assertion, statement, warranty, admission or other representation in respect of the Goods which is inconsistent with the Agreement under which the Goods are supplied; and

(d) not agree to settle any claim made by a Consumer without the prior written consent of the Company.

## **12 No representations**

The Customer acknowledges and agrees that:

- (a) it has not relied on any representations, inducements or statements made to it by the Company regarding the supply of the Goods or Services and it has satisfied itself that the Goods and Services are fit for the purpose it requires them for; and
- (b) the Company's employees, contractors, officers and agents are not authorised to make any representations or warranties concerning the Goods or Services.

## **13 Specifications**

13.1 If an Offer has been accepted by the Company, the Customer acknowledges that the Offer was accepted by the Company on the basis of, and in reliance upon, any information, drawings, specifications, data, representations, statements and documents provided by the Customer, set out in an Order or otherwise approved by the Customer.

13.2 The Specifications are approximate only and the Company makes no representation or warranty as to the completeness or accuracy of the Specifications and the Customer is responsible for making its own enquiries in relation to the completeness and accuracy of the Specifications provided.

13.3 Where any instructions, materials or information in whatever form (including documents, specifications, designs, plans, processes, and data) are required to be provided by the Customer to the Company before the Company can proceed with or complete the provision of the Goods or Services such instructions, materials or information must be supplied by the Customer to the Company within a reasonable time (as determined by the Company) so as to enable the Company to deliver the Goods or Services within any agreed time frame.

13.4 The Company may make changes to the specifications, dimensions, weights or other particulars of the Goods as may be required from time to time by law or any safety or manufacturing requirements.

## **14 Confidentiality**

14.1 The Customer:

- (a) may use Confidential Information solely for the purposes of the relevant Agreement;
- (b) must keep confidential all Confidential Information; and
- (c) may disclose Confidential Information only to
  - (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) either have a need to know the Confidential Information (and only to the extent that each



has a need to know), or have been specifically approved by the Company; (ii) as required by law or securities exchange regulation; or (iii) with the prior written consent of the Company.

14.2 The Customer must notify the Company immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

## 15 Privacy

15.1 The Customer acknowledges and agrees that personal information (as that term is defined in the *Privacy Act 1988* (Cth) (**Privacy Act**)) regarding the Customer if the Customer is an individual, or the employees, contractors, officers and agents of the Customer if the Customer is an organisation, may be collected, held, used and disclosed by the Company for the purposes set out in the Privacy Acknowledgement and Consent in the Account Application and otherwise as set out in the Company's privacy policy (which is available on the Company's website or on request from the Company).

15.2 The Customer consents, and where applicable will make all reasonable endeavours to notify its employees, contractors, officers and agents of, and obtain their consent to, the Company collecting, holding, using and disclosing any such personal information for all purposes specified in the Privacy Acknowledgement and Consent in the Account Application and otherwise as set out in the Company's privacy policy.

## 16 GST

Unless otherwise expressly stated in writing in an Agreement, all amounts payable by the Customer in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by the Company under these Terms or under an Agreement, the Customer must pay to the Company, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by these Terms to reimburse or indemnify the Company for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that the Company will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by the Company in respect of the reimbursement or payment. This clause does not merge on completion or termination of the relevant Agreement or contract. In this clause, words and expressions which are defined in the GST Act have the same meaning given to them by the GST Act.

## 17 Force Majeure

17.1 The Company will not be liable for any failure to perform or delay in performing its obligations

under an Agreement if that failure or delay is due to a Force Majeure Event.

17.2 If a Force Majeure Event under clause 17.1 exceeds **20** Business Days, the Company may immediately terminate the Agreement by written notice to the Customer.

## 18 Termination

18.1 Without limiting the Company's other rights under these Terms, the Company may terminate any and all Agreements and any account facility under an Account Application with immediate effect by written notice to the Customer if:

- (a) the Customer fails to make any payment under the Agreement to the Company by the due date for that payment;
- (b) the Customer is the subject of an Insolvency Event;
- (c) the Customer has breached any term of the relevant Agreement (including these Terms) and, if the breach is capable of remedy, has not remedied the breach within 14 days or receiving notice requiring the breach to be remedied; or
- (d) in accordance with clause 17.2.

18.2 On termination of an Agreement:

- (a) the Customer must not sell or part with possession (other than as required under clause 18.2(b)) any Goods the subject of the Agreement (other than any Goods which have been paid for);
- (b) the Customer must, at its cost immediately return to the Company all Goods the subject of the Agreement (other than any Goods which have been paid for) and any displays and other promotional and advertising materials in relation to the Goods;
- (c) the Company may enter the premises of the Customer or any third party to repossess any Goods not returned under clause 18.2(b) and the Customer expressly authorises and grants the Company and its agents an express, irrevocable licence to enter the premises of the Customer or relevant third party to remove or arrange for the removal of such Goods; and
- (d) all monies owed by the Customer to the Company shall become immediately due and payable.

18.3 Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.

## 19 Cancellation

19.1 Without limiting clause 4.8(b), the Company may cancel or suspend any Agreement effective immediately upon providing the Customer with written notice of cancellation or suspension where the Company believes (for any reason) that it will be unable to supply the relevant Goods or provide the Services to the Customer, provided that if the Company cancels an Agreement under this clause 19.1 it will refund to the Customer any amounts



already paid by the Customer for the Goods or Services subject to the cancellation and which are not provided to the Customer. The refund of any such amounts will be the Customer's sole remedy against the Company in respect of any cancellation pursuant to this clause 19.1.

19.2 Neither an Agreement nor any Offer that has been submitted can be cancelled by the Customer except with the prior written consent of the Company and without prejudice to any other rights the Company may have, the Customer indemnifies the Company for any Loss incurred by the Company in connection with such cancellation.

## 20 Acknowledgements and representations

20.1 By making an Offer, the Customer warrants and represents to the Company that it has read and understood these Terms prior to making the Offer, and agrees to be bound by them in full.

20.2 Any price list, goods lists or other similar documents or catalogues issued by or on behalf of the Company do not constitute an offer by the Company to supply Goods appearing in those lists or catalogues or an offer by the Company to supply Goods at the prices set out in those lists or catalogues. The Company's price lists and catalogues may be changed by the Company at any time without notice.

## 21 Inconsistency

21.1 Unless otherwise specified in these Terms, in the event of an inconsistency between any of the documents listed in clause 3.3, the following order of precedence shall apply to the extent of the inconsistency:

- (a) the prices and quantity of Goods and/or Services set out in a Quote (if any);
- (b) these Terms;
- (c) the Account Application;
- (d) any other terms of the Quote (if applicable);
- (e) the Invoice; and
- (f) without limiting clause 21.2, any terms in the Order which are accepted by the Company in writing.

21.2 These Terms shall prevail over any Customer terms and conditions, except to the extent specifically agreed by the Company in writing and any terms or conditions included in an Order or other document provided or issued by the Customer will only be binding on the Company if expressly agreed by the Company in writing.

## 22 Miscellaneous

22.1 In these Terms:

- (a) the singular includes the plural and vice versa;
- (b) the word person includes a firm, a body corporate, an unincorporated association, body or organisation established pursuant to international treaty, intergovernmental body, or government authority and other official authority;

(c) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;

(d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;

(e) headings are inserted for convenience and do not affect the interpretation of these Terms;

(f) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms; and

(g) unless otherwise provided, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.

22.2 The Customer must maintain and keep current and complete records of the Goods which the Company has supplied to the Customer (in sufficient detail so as to be readily identified as goods supplied by the Company), including any Goods which are sold by the Customer to a third party and must, immediately upon written request from the Company, provide the Company with access to, or copies of, those records.

22.3 The Customer must not assign or otherwise deal with any of its rights or obligations under these Terms without the Company's prior written consent. The Company may, to the extent permitted by law, assign, subcontract or deal with any of its rights or obligations under these Terms (including any right to be paid or chose in action) at any time in circumstances where, in the opinion of the Company acting reasonably, the assignment will not adversely affect the rights of the Customer.

22.4 For the purposes of clause 22.3, a Change in Control of the Customer shall be considered an assignment of the Customer's rights or obligations under these Terms.

22.5 The Company may, to the extent permitted by law, vary these Terms from time to time with the variation becoming effective as soon as the Company provides the Customer notice of the variation (**Variation Date**). Any variation to these Terms will only apply to any Offer made after the Variation Date and the parties acknowledge that nothing in these Terms requires the Customer to make any further Offers after the Variation Date.

22.6 A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future. Waiver of any rights under these Terms must be in writing and is only effective to the extent set out in that written waiver.

22.7 If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be

severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.

- 22.8 These Terms and the accepted Agreement constitute the entire agreement between the Customer and the Company in respect of the supply of the relevant Goods or Services the subject of the relevant Agreement and supersede all previous communications, representations, understandings or agreements.
- 22.9 These Terms are governed by the laws in force in Victoria, and the Customer and the Company submit to the exclusive jurisdiction of the courts of Victoria.
- 22.10 This contract is deemed to have been entered into in the State of Victoria. Any legal action arising out of, or in respect of the contract and/or the interpretation thereof must be brought only in the State of Victoria. The parties further agree to issue any proceedings in the Melbourne registry of the appropriate court having monetary jurisdiction over the matter.
- 22.11 The termination or expiry of these Terms or any Agreement does not operate to terminate any rights or obligations under an Agreement that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 1, 6, 7, 8, 9, 10, 11, 14, 15, 16, 18, 21 and 22.
- 22.12 Each party must:
  - (a) do all acts necessary or desirable to give full effect to an Agreement; and
  - (b) refrain from doing anything which might prevent full effect being given to an Agreement.
- 22.13 The relationship between the parties is and will remain that of independent contractors, and nothing in these Terms or an Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.
- 22.14 Notices by a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party specified in the Account Application or, if none are specified, in any other part of the Agreement. Notices shall be deemed to have been received by hand upon delivery, by post within two (2) Business Days of sending and by email one hour after the email (unless the sender knows that email has failed to send).

**Acknowledgement**

I/We the undersigned declare that all information provided to the Company for the purposes of assessing the Customer's suitability for credit and provision of Goods is true and correct in every particular.

**I/We the undersigned further acknowledge that I/we have been given prior opportunity and advice to seek independent legal advice and I/we have read understand and agree to the above terms and conditions.**

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

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Date: \_\_\_\_\_

