

## TERMS AND CONDITIONS OF SUPPLY

These Terms apply where **Ruson Industries Pty Ltd** trading as BKB Pumping Solutions (ABN 64 159 795 703) (**Supplier**) supplies Goods and/or Services to a Buyer.

### 1. Definitions

In these Terms:

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the relevant State and Territory fair trading acts;

**Business Day** means any day which is not a Saturday, Sunday or public holiday in Victoria;

**Buyer** means the person, entity, firm or corporation that acquires Goods or Services from the Supplier pursuant to these Terms and includes the Buyer's permitted assigns and successors;

**Confidential Information** means any information or data that is by its nature confidential, is designated by the Supplier as confidential, or that the Buyer ought reasonably to know is confidential and which is disclosed, made available, communicated or delivered to the Buyer by the Supplier (or any of its employees, officers, agents or contractors) directly or indirectly in connection with these Terms and includes, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods or Services or the Supplier's business, but excludes any information that is in or becomes part of the public domain otherwise than through a breach of these Terms or an obligation of confidence owed to the Supplier;

**Consequential Loss** means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity;

**Consumer** has the meaning given to it in section 3 of the Australian Consumer Law;

**Consumer Guarantee** means any right or statutory guarantee under Division 1 of Part 3-2 of the Australian Consumer Law;

**Contract** means the contract of purchase of Goods or Services between the Supplier and the Buyer which comprises any Commercial Credit Account Application (to which the Buyer is a party) these Terms and all orders for Goods or Services placed by the Buyer and accepted by the Supplier;

**Defective Goods** means Goods that are defective in design, performance or workmanship;

**Defective Services** means Services that are defective in performance;

**Goods** means goods supplied by the Supplier to the Buyer;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999*;

**Insolvency Event** means the happening of any of these events:

- (a) a party suspends payment of its debts generally;
- (b) a party is or becomes unable to pay its debts when they are due, or is or becomes insolvent within the meaning of the *Corporations Act 2001* (Cth);
- (c) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (d) a receiver, receiver and manager or similar official is appointed over or in respect of any of the assets or undertakings of a party;
- (e) a liquidator or provisional liquidator is appointed in respect of a party;
- (f) an administrator is appointed in respect of a party;
- (g) a trustee is appointed in respect of any of the assets or undertaking of a party;
- (h) an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party's prior consent;
- (i) a party goes bankrupt; or
- (j) a party ceases, or threatens to cease, to carry on business;

**Intellectual Property Rights** means:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or

subject matter in which copyright subsists and may in the future subsist;

- (c) Confidential Information;
- (d) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
- (e) proprietary rights under the *Circuit Layouts Act 1989* (Cth).

**Loss** means any losses, liabilities, damages, costs, interest, charges, fines, penalties or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct, indirect, special, consequential or otherwise;

**Personal Information** means 'personal information' as defined in the *Privacy Act 1988* (Cth) any other information that is regulated by, or under, any applicable Privacy Law;

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**Price** means the price for the supply of the Goods or Services as provided for in clause 4;

**Privacy Laws** means all privacy laws including the *Privacy Act 1988* (Cth), the Australian Privacy Principles under that Act, and any other laws relating to data protection, surveillance, direct marketing or the handling of personally identifiable information or data;

**Representatives** means officers, directors, employees, agents, representatives, contractors and/or subcontractors of the relevant party but a party to the Contract and its officers, directors, employees, agents, representatives, contractors and subcontractors are not "Representatives" of the other party to the Contract;

**Services** mean services supplied by the Supplier to the Buyer;

**Tax Invoice** has the meaning given to it in the GST Act; and

**Terms** means these terms and conditions of supply.

## 2. Agreement

- (a) These Terms include all those statutory rights conferred on the Buyer which the Supplier is not capable of excluding, restricting or modifying, including statutory rights conferred on the Buyer under the Australian Consumer Law.
- (b) Subject to clause 2(a), the Supplier and the Buyer acknowledge and agree that these Terms take precedence over all other conditions of supply, and applies to the exclusion of all other documents, prior discussions, representations, understandings and arrangements (written or oral, express or implied) and other representations (contractual or otherwise), whether or not endorsed or delivered with or referred

to in any order or other documents delivered by the Buyer to the Supplier.

- (c) The Supplier may alter these Terms on 14 days' notice to the Buyer and the altered terms shall then:
  - (1) apply to orders placed by the Buyer after such notice period has elapsed; and
  - (2) supersede all previous terms and conditions imposed by the Supplier regarding such orders.
- (d) Acceptance by the Buyer of these Terms, as amended from time to time in accordance with clause 2(c), may be by any of the following ways:
  - (1) by signing and returning a copy of these Terms;
  - (2) by performing an act that is done with the intention of adopting or accepting these Terms, including continuing to order Goods or Services after receiving these Terms or an amended version of them from the Supplier; or
  - (3) by oral acceptance.
- (e) The Buyer warrants it does not intend to use the Goods or Services predominantly for personal, domestic or household purposes.

## 3. Orders

- (a) Each order placed by the Buyer will constitute an offer by the Buyer to acquire the Goods or Services from the Supplier on and subject to these Terms and will form part of the Contract if accepted by the Supplier.
- (b) The Supplier may refuse to accept an order, or part of an order, placed by the Buyer without giving reasons.
- (c) Other than under clause 3(d) or as permitted under the Australian Consumer Law, the Buyer may not without the Supplier's consent cancel an order after the Supplier has accepted the order. If the Supplier consents to the cancellation of an order, the Buyer will be liable for any costs incurred by the Supplier up to the time of cancellation, to the extent permitted by law.
- (d) Despite any acceptance of an order by the Supplier, the Supplier may amend or cancel an order if the Supplier identifies any error in the order including but not limited to clerical errors, omissions or oversights. If such an error is identified the Supplier must give the Buyer the option to the cancel the order.

## 4. Price

- (a) All prices quoted are in Australian dollars and except as otherwise expressly stated, exclusive of insurance, delivery charges, GST and any other sales, value added or similar tax.
- (b) The price of the Goods and/or Services will be:

- (1) in the absence of a quoted price given in writing by the Supplier, the Supplier's price at the date of the Supplier's acceptance of the order according to the Supplier's current price list; or
- (2) subject to clause 3(d), the Supplier's quoted price which will be binding on the Supplier for a period of 30 days from the date of quotation and which may be accepted by the Buyer, by written notice to the Supplier, at any time within those 30 days unless earlier revoked by the Supplier.

## 5. Payment

- (a) Time for payment for the Goods and/or Services is of the essence and will be stated on the Supplier's invoice, quotation or any other order forms. If no time is stated by the Supplier then payment must be made on delivery of the Goods or the performance of the Services (as applicable).
- (b) All payments are to be made on or before the due date as a condition precedent to future deliveries or supplies under this or any other contract.
- (c) The Supplier may require the payment of a deposit, which must be paid by the Buyer upon the Supplier accepting the order.
- (d) Unless otherwise agreed in writing between the parties, the Supplier may withhold delivery of the Goods until the Buyer has paid for them in full, in which case payment must be made on or before the delivery date.
- (e) The Buyer must pay the Price for Goods or Services supplied to the Buyer using one of the following payments:
  - (1) credit card (plus any charges that may be applicable); or
  - (2) direct debit; or
  - (3) bank transfer; or
  - (4) any other methods as agreed to between the Buyer and the Supplier.
- (f) No amount owing by the Buyer to the Supplier may be offset against any amount owing to the Buyer from the Supplier under the Contract or on any other account whatsoever.
- (g) Without prejudice to any other rights or remedies of the Supplier, if the Buyer fails to make (whether in full or in part) any payment required under these Terms on or before the due date for payment, then:
  - (1) the Buyer must pay to the Supplier interest on the unpaid amount at 2% per annum above the average of the most recent prime rate, indicator rate, or reference rate (however

described) for business overdrafts published by Westpac Banking Group; and

- (2) such interest will accrue from the date payment was due to the date payment is made, will be calculated daily and capitalised monthly and must be paid by the Buyer upon demand by the Supplier.

- (h) If the Supplier takes steps or action to recover any amount due to it the Buyer will be responsible for all Loss incurred by the Supplier in recovering the monies due.

## 6. Delivery

- (a) The Supplier will use all commercially reasonable efforts to deliver the Goods for which it has accepted an order by the date (if any) specified in the order and in the absence of any date, within a reasonable time.
- (b) The failure of the Supplier to deliver the Goods by the date specified in the order does not entitle either party to treat an order or the Contract as repudiated.
- (c) The Supplier may deliver the Goods by separate instalments. Each separate instalment must be invoiced and paid for in accordance with clauses 4 and 5.
- (d) Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of these Terms.
- (e) Except where the Supplier's liability may not be excluded under the Australian Consumer Law, the Supplier is not liable for any Loss due to the failure by the Supplier to deliver the Goods (or any of them) promptly or at all, other than to refund any Price paid by the Buyer where the Goods are not delivered at all. The Failure of the Supplier to deliver Goods shall not entitle either party to treat a Contract as repudiated.
- (f) Unless otherwise agreed, the Supplier's obligations under an order will be deemed complete and delivery effected when risk in the Goods passes to the Buyer in accordance with clause 7(a).
- (g) The Buyer shall be liable for costs associated with storage of Goods between the agreed delivery time and the actual deliver time where the delays are not caused by the Supplier.

## 7. Title and Risk

- (a) Where the Supplier personally delivers the Goods to the Buyer's delivery location or uses the Supplier's nominated transport provider, risk in the Goods passes to the Buyer upon the Goods being signed for at the delivery location. In all other circumstances, risk in the Goods passes to the Buyer when the Goods are loaded at the Supplier's warehouse for delivery to the Buyer.

- (b) Title to the Goods passes to the Buyer on payment in full of the Price for the Goods and all other amounts payable by the Buyer to the Supplier on any account whatsoever.
- (c) If any of the Goods are damaged or destroyed prior to the title in them passing to the Buyer, the Supplier may, without prejudice to any of its other rights or remedies under these Terms (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the goods. This applies whether or not the Price has become payable under the Contract. The production of these Terms by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- (d) All payments received from the Buyer must be applied in accordance with section 14(6)(c) of the PPSA.
- (e) Until full payment in cleared funds is received by the Supplier for all Goods supplied by it to the Buyer, the Buyer must, at its own cost, insure and keep insured the Goods against such risks as a prudent owner of the Goods would insure at their full cost price, with a reputable insurance company.
- (f) Until full payment in cleared funds is received by the Supplier for all Goods supplied by it to the Buyer, as well as all other amounts payable by the Buyer to the Supplier on any account whatsoever:
- (1) legal title and property in all Goods supplied under the Contract remain vested in the Supplier and do not pass to the Buyer;
  - (2) subject to clause (iii) below, the Buyer must keep the Goods separate from other goods and maintain the labelling and packaging of the Supplier so that they are readily identifiable as the property of the Supplier;
  - (3) the Buyer must not sell the Goods except in the ordinary course of the Buyer's business;
  - (4) the Buyer agrees to the proceeds of any sale, lease or other dealing with the Goods on trust for the Supplier in a separate bank account with a bank to which the Buyer has not given any security;
  - (5) in addition to any rights the Supplier may have under Chapter 4 of the PPS Act, the Supplier may, at any time, demand the return of the Goods and shall be entitled without notice to the Buyer and without liability to the Buyer, to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Supplier, and for this purpose the Buyer irrevocably licenses the Supplier to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Supplier from and against all loss suffered or incurred by the Supplier as a result of exercising its rights under this clause, except to the extent that such loss was directly caused by the Supplier's negligence. If there is any inconsistency between the Supplier's rights under this clause 7(f)(5) and its rights under Chapter 4 of the PPS Act, this clause 7(f)(5) prevails;
- (6) the Buyer acknowledges and warrants the Supplier has a security interest (for the purposes of the PPSA) in the Goods and any proceeds described in clause 7(f)(4) until title passes to the Buyer in accordance with this clause 7. The Buyer must do anything reasonably required by the Supplier to enable the Supplier to register its security interest, with the priority the Supplier requires and to maintain that registration; and
- (7) the security interest arising under this clause 7 attaches to the Goods when the Buyer obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 7 attaches at any later time.
- 8. Shortfalls**
- (a) The Buyer must, as soon as possible after delivery, check the quantity of the Goods delivered against the quantity due to be delivered.
  - (b) To the extent permitted by law, the Supplier is not responsible for making good any shortage unless the Buyer gives the Supplier notice of the shortage within 7 Business Days of delivery.
- 9. Samples and Descriptions**
- (a) As variations will occur in the colour and texture of materials used in the manufacture of products no warranty or guarantee is given by the Supplier that the Goods will correspond in appearance with any sample, display, or goods previously sold, except as required under the Australian Consumer Law.
  - (b) No warranty or guarantee is given by the Supplier whatsoever regarding the quality, condition, colour, merchantability, or fitness for purpose of the Goods, except as required under the Australian Consumer Law.
  - (c) The Buyer expressly acknowledges that for all purposes whatsoever the Buyer has relied entirely on their own knowledge, skills, and judgment in selecting and ordering the Goods.

## 10. Defective Goods or Services

- (a) The Buyer must, as soon as possible after delivery of the Goods or the performance of the Services, check whether the Goods or Services are Defective Goods or Defective Services when delivered and/or performed.
- (b) Goods and/or Services will be considered to have been delivered and supplied in good condition, with due skill and care, within a reasonable time, fit for purpose and to the satisfaction of the Buyer unless the Buyer gives the Supplier notice of the damage or defect within 7 Business Days after delivery.
- (c) If the Buyer gives the Supplier notice under clause 10(b) in relation to Goods, it must:
  - (1) preserve the Goods in the state in which they were delivered for #[Insert number of days]# Business Days after it gives the Supplier the notice; and
  - (2) during that period, allow the Supplier access to the Buyer's premises to inspect the Goods; or
  - (3) at the Supplier's request return the Goods, at the Buyer's cost within #[Insert number of days]# Business Days after the delivery date in the condition in which they were delivered and with all packaging material in as new condition as is reasonably possible in the circumstances.
- (d) The Buyer must, as soon as possible after the Services have been provided give the Supplier notice of any Defective Services within 7 Business Days after the relevant Service has been provided.

## 11. Returns where Goods are not Defective Goods

- (a) Except where the Buyer has rights to return Goods under the Australian Consumer Law which cannot be lawfully excluded, restricted or modified:
  - (1) orders may only be cancelled or Goods returned for credit with the prior written approval of the Supplier, provided the Goods are returned in the same re-saleable condition as when they were originally sold, and the costs of return shall be borne by the Buyer;
  - (2) unless returns are due to an error by the Supplier, the Buyer may be charged a reasonable fee which constitutes a genuine pre-estimate of the Supplier's loss arising from the cancellation or return of the Goods; and
  - (3) any Goods manufactured, processed or purchased on behalf of the Buyer that meet the Buyer's specific request may not be accepted for credit.

## 12. Claims and limitation of liability

- (a) The Australian Consumer Law provides Consumers with a number of Consumer Guarantees that cannot be excluded or limited. The limitations of liability set out in these Terms are therefore subject to, and will not apply to the extent that they limit or exclude such Consumer Guarantees.
- (b) The Buyer must:
  - (1) promptly inform the Supplier of all complaints or claims relating to any of the Goods or Services;
  - (2) not admit liability on behalf of the Supplier in respect of any complaint or claim relating to any of the Goods or Services;
  - (3) not resolve or settle any complaint or claim relating to any of the Goods or Services which may result in the Supplier incurring any liability (whether to a customer, the Buyer or any other person); and
  - (4) deal promptly with all complaints or claims relating to any of the Goods or Services which will not result in the Supplier incurring any liability.
- (c) Subject to clauses 12(a) and 12(d), the Supplier's liability for any Loss suffered or incurred by the Buyer, howsoever caused, which arises out of or in connection with the supply of the Goods or Services under the Contract:
  - (1) in the case of Goods, is limited to:
    - (A) the replacement of the Goods or the supply of equivalent goods;
    - (B) the payment of the cost of replacing the Goods or of acquiring equivalent goods; and
  - (2) in the case of the Services, is limited to:
    - (A) the supplying of the Services again; or
    - (B) the payment of the cost of having the Services supplied again; and
  - (3) in any other case, is excluded such that the Supplier shall not be liable to the Buyer, except to the extent that the Loss suffered or incurred by the Buyer was directly caused by an act or omission of the Supplier.
- (d) The Supplier's liability in respect of a breach of or a failure to comply with an applicable Consumer Guarantee will not be limited in the way set out in clause 12(c) if:
  - (1) the Goods or the Services supplied are goods or services 'of a kind ordinarily acquired for personal, domestic or household use or

consumption', as that expression is used in section 64A of the Australian Consumer Law;

- (2) it is not 'fair or reasonable' for the Supplier to rely on such limitation in accordance with section 64A(3) of the Australian Consumer Law; or
  - (3) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the Australian Consumer Law.
- (e) Except only for those rights and remedies that the Buyer has in respect of the Goods or Services under the Australian Consumer Law which cannot be lawfully excluded, restricted or modified:
- (1) the Supplier excludes any liability for Consequential Loss;
  - (2) all conditions, warranties and implied terms, whether statutory or otherwise, are excluded in relation to the Goods and/or Services; and
  - (3) the Supplier is not liable to the Buyer for any Loss which the Buyer suffers, incurs or is liable for in connection with supply of the Goods or Services under the Contract, except in accordance with this clause 12.

### 13. Intellectual Property

- (a) The Supplier remains the owner or licensee (as the case may be) of all Intellectual Property Rights owned or used by the Supplier prior to the Contract and any other agreement with the Buyer.
- (b) Where any designs or specifications have been supplied by the Buyer then the Buyer warrants that the use of those designs or specifications for the manufacturing, processing, assembly or supply of the Goods does not infringe the rights of any third party.
- (c) The parties agree that any Intellectual Property Rights created or developed under or in connection with the Contract or in the course of supplying the Goods are owned by the Supplier. For the avoidance of doubt, where the Supplier has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings remain vested in the Supplier, and may only be used by the Buyer at the Supplier's discretion.

### 14. GST

- (a) Words or expressions used in this clause 14 that are defined in the GST Act have the same meaning given to them in that Act.
- (b) Unless otherwise stated, any amount specified in the Contract as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.
- (c) If a party makes a taxable supply under the Contract (**Supplier**), then the recipient of the taxable supply

(**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

- (d) Despite anything stated in this clause 14, the Recipient is not obliged under the Contract to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.
- (e) If an adjustment event arises in relation to a taxable supply made by a Supplier under the Contract, the amount paid or payable by the Recipient pursuant to clause 14(c) will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.
- (f) If a third party makes a taxable supply and the Contract requires a party to the Contract (the **Payer**) to pay for, reimburse or contribute to (**Pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the Payer must Pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

### 15. Termination

- (a) Either party (**Terminating Party**) may immediately terminate the Contract by written notice to the other party if the other party (**Defaulting Party**):
  - (1) breaches the Contract in a material respect and, in the reasonable opinion of the Terminating Party, the breach:
    - (A) cannot be remedied; or
    - (B) can be remedied, but is not remedied by the Defaulting Party within **7 Business Days** after the Terminating Party gives the Defaulting Party notice of the breach; or
  - (2) suffers an Insolvency Event.
- (b) The Buyer must, within **14 Business Days** after the date of expiry or termination of the Contract:
  - (1) pay the Supplier all amounts it owes the Supplier, whether due at that time or not; and
  - (2) return all Confidential Information to the Supplier.
- (c) If the Contract is terminated under this clause 15, the Supplier will have an immediate right to possession of Goods held by the Buyer and all amounts owing by the Buyer in respect of the Goods together with all other debts owing by the Buyer to the Supplier will become due and payable and must be paid by the Buyer on demand by the Supplier. Further, the

Supplier will be entitled (without prejudice to any other right or remedy provided under these Terms or otherwise) to do any one or more of the following:

- (1) suspend indefinitely all further deliveries of Goods in respect of any orders being processed for delivery and cancel any order or refuse to accept any further orders;
- (2) cancel any credit facility provided to the Buyer;
- (3) require the return of all Goods the property in, and ownership of, has not passed in accordance with clause 7; and
- (4) exercise its rights under clause 7 to enter the Buyer's premises wherever situated without impediment, and with the full co-operation and assistance of the Buyer, to locate, retrieve and take possession of Goods held by the Buyer.

## 16. Indemnity

- (a) Subject to clause 16(c), the Buyer indemnifies the Supplier and its Representatives against any Loss which the Supplier and its Representatives suffer, incur or are liable for in connection with:
  - (1) any act or omission of the Buyer or its Representatives;
  - (2) any breach of the Contract by the Buyer; and
  - (3) enforcing any security interest arising under the Contract.
- (b) The Supplier holds the benefit of the indemnity in clause 16(a) on trust for its Representatives.
- (c) The indemnity in clause 16(a) will not apply to the extent that any Loss is caused or contributed to by the Supplier.

## 17. Confidential Information

- (a) The Buyer is authorised to use the Confidential Information for the sole purpose of using or selling the Goods or Services supplied under the Contract and must not otherwise use or disclose any Confidential Information to any third party, except with the prior written consent of the Supplier. The foregoing does not prevent the Buyer from disclosing Confidential Information if and to the extent required by law or the rules of a stock exchange provided the Buyer notifies the Supplier prior to making such disclosure (or if prior notice is not legally possible, notice is given as soon as legally possible following compelled disclosure).
- (b) The Buyer must not transfer or disclose Confidential Information or Personal Information received from the Supplier to any recipient outside Australia without the Supplier's prior written consent.
- (c) On request, the Buyer must deliver to the Supplier (or if specifically requested, destroy or immediately cease accessing and otherwise using) all hard copy and

electronic documents, materials and things containing Confidential Information, or Personal Information received from the Supplier, that is in the possession, custody or control of the Supplier or any person it has disclosed it to and certify to the Supplier that it has done so.

## 18. Privacy

- (a) The Buyer consents to the Supplier obtaining from a credit-reporting agency a credit report containing personal credit information about the Buyer in relation to credit provided by the Supplier.
- (b) The Buyer agrees that the Supplier may exchange information about the Buyer with those credit providers named in the application for credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
  - (1) to assess an application by the Buyer;
  - (2) to notify other credit providers of a default by the Buyer;
  - (3) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
  - (4) to assess the credit worthiness of the Buyer.
- (c) The Buyer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.
- (d) The Buyer agrees that Personal Information provided by the Buyer and/or the Guarantor may be used and retained by the Supplier for the following purposes (and for other purposes as may be agreed between the Buyer and the Supplier or required by law from time to time):
  - (1) the provision of Goods and/or Services;
  - (2) the marketing of Goods or Services by the Supplier, its agents or distributors in relation to the Supplier's Goods and/or Services;
  - (3) analysing, verifying or checking the Buyer's credit, payment and status in relation to provision of Goods and/or Services;
  - (4) processing of any payment instructions, direct debit facilities and credit facilities requested by the Buyer; and
  - (5) enabling the daily operation of the Buyer's account and the collection of amounts outstanding in the Buyer's account in relation to the Goods or Services.
- (e) The Supplier may give information about the Buyer to a credit reporting agency for the following purposes:

- (1) to obtain a consumer credit report about the Buyer; and
  - (2) to allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.
- (f) In relation to any Personal Information that the Buyer provides or makes available to Supplier in connection with these Terms, the Buyer warrants that it has complied with all Privacy Laws and that it has all necessary rights and consents required by law for the Supplier to be able to receive, use, disclose and otherwise process such Personal Information in the manner contemplated by these Terms (**permitted dealing**), and that any permitted dealing will not cause Supplier to breach any Privacy Laws. If the Buyer receives any Personal Information from the Supplier in connection with these Terms, the Buyer must:
- (1) handle that Personal Information in accordance with the Privacy Laws and any directions or guidelines issued by the Supplier;
  - (2) use that Personal Information only for the purposes of performing its obligations under these Terms; and
  - (3) unless otherwise expressly permitted by the Supplier or required by law, not disclose that Personal Information to any person.

## 19. Force Majeure

- (a) In this clause 19, **Force Majeure** means an act of God; war, revolution or any other unlawful act against public order or authority; an industrial dispute including strike or other labour disturbances; a governmental restraint; a shortage or unavailability of raw materials, production capacity or transportation; and any other event not within the reasonable control of the Supplier.
- (b) Where Force Majeure prevents or delays the Supplier from performing any obligation under the Contract, the requirement to perform that obligation is suspended as long as the Force Majeure continues.

## 20. PPSA

- (a) Unless a contrary intention appears, words or expressions used in this clause 20 that are defined in the PPS Act have the same meaning as given to them in the PPS Act.
- (b) If at any time the Supplier determines that the Contract (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, the Supplier may apply for any registration, or give any notification, in connection with that security interest and the Buyer must promptly, upon the Supplier's request, do anything (including signing and producing documents,

getting documents completed or signed, obtaining consents and supplying information) to:

- (1) provide more effective security over the relevant personal property;
  - (2) ensure that any such security interest in favour of the Supplier:
    - (A) is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective; and
    - (B) ranks as a first priority security interest;
  - (3) enable the Supplier to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
  - (4) enable the Supplier to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPS Act.
- (c) All costs and expenses arising as a result of actions taken by either party pursuant to clause 20(b) will be for the account of the Buyer. The Buyer must pay the Supplier pursuant to this clause 20(c) within 5 days of a written request.
- (d) If Chapter 4 of the PPS Act would otherwise apply to the enforcement of the security interest created under the Contract, the Buyer agrees that the following provisions of the PPS Act will not apply:
- (1) section 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Buyer;
  - (2) section 121(4) (enforcement of liquid assets – notice to grantor);
  - (3) section 125 (obligation to dispose of or retain collateral);
  - (4) section 130 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Buyer;
  - (5) paragraph 132(3)(d) (contents of statement of account after disposal);
  - (6) subsection 132(4) (statement of account if no disposal);
  - (7) section 142 (redemption of collateral); and
  - (8) section 143 (reinstatement of security agreement).
- (e) The Supplier does not need to give the Buyer any notice required under the PPS Act (including a notice of a verification statement under section 157 of the PPS Act) unless the requirement for the notice cannot be excluded.



- (f) Neither party will disclose to a person or entity that is not a party to the Contract information of the kind mentioned in section 275(1) of the PPS Act unless section 275(7) of the PPS Act applies or that information is publicly available. The obligations of each party under this clause 20(f) are in addition to the obligations of the Buyer under clause 17.

## 21. Lien

- (a) Where the Supplier has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Supplier shall have:
- (1) a lien on the Goods;
  - (2) the right to retain the Goods for the Price while the Supplier is in possession of them;
  - (3) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
  - (4) a right of resale, the foregoing right of disposal provided that the lien of the Supplier shall continue despite the commencement of proceedings or judgment for the Price having been obtained.

## 22. General

- (a) The Contract is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of that State and courts entitled to hear appeals from those courts.
- (b) A reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it.
- (c) In these Terms, the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions do not limit what else is included and must be construed as if they are followed by the words 'without limitation' unless there is express wording to the contrary.
- (d) If a provision in these Terms is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this agreement for the purposes of

that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of these Terms.

- (e) If the Buyer comprises more than one person:
- (1) the Contract binds each Buyer jointly and severally; and
  - (2) the Supplier is only required to give notices, quotes and other information, to one of the Buyers (who undertakes to provide the notices, quotes and information to the other Buyer or Buyers).
- (f) A waiver of any right arising under the Contract must be in writing and signed by the party granting the waiver. Except as provided under clause 2, any variation of the Contract must be in writing and signed by the parties.
- (g) The Supplier and the Buyer are independent contracting parties and nothing in the Contract makes either party the agent or legal representative of the other or grants either party any authority to assume or create an obligation on behalf of the other.
- (h) The Buyer must give the Seller not less than 14 days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to changes in the Buyer's address, facsimile number, or business practice).
- (i) Without limiting or affecting the continued operation of any clause which as a matter of construction is intended to survive the termination of the Contract, clauses 5, 8, 10, 11, 12, 13, 14, 15(b), 15(c), 16, 17, 18, 20 and 21 survive the termination of the Contract.