

TERMS AND CONDITIONS

1 Dictionary

In these Terms and Conditions, 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.

Cancellation Fee means the greater of:

- (a) \$10; and
- (b) an amount equal to 15% of the price of the Goods and Services the subject of the cancelled Agreement or Offer.

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 Brighton-Best International (AU) Pty Ltd (ABN 79 121 404 939).

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 of the *Corporations Act 2001* (Cth).

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

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 agreed in writing between the parties; or
- (b) if no delivery fee is set out in a Quote or 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.

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, 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.

Invoice has the meaning provided to it in clause 4.5.

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.

Returns Policy means the Company's policy (if any), as amended from time to time, in respect of the return of Goods by the Customer

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 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, duty, charge, impost, fee, deduction, compulsory loan or withholding, 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.

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 or, if there is no Quote, in the Order; plus
 - (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 All prices stated are stated exclusive of any transport, freight, packaging and insurance costs and the Customer acknowledges that it will be responsible for arranging and paying the cost of any transport, freight, packaging and insurance in respect of any Goods which are being supplied to the Customer under these Terms.
- 4.5 The Company may invoice the Customer for the Purchase Price at any time following formation of the relevant Agreement **(Invoice)**.
- 4.6 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.
- 4.7 Subject to clause 4.8, 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 is 30 days from the end of the month in which the relevant Invoice is provided to the Customer **(Due Date)**.
- 4.8 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.
- 4.9 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 judgement) 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 account facility granted by the Company to the Customer pursuant to any account created under the

Account Application or other account facilities previously granted to the Customer by the Company;

- (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).

- 4.10 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 8.00am and 5.00pm Monday to Friday at the place of delivery or service provision (excluding on any public holiday 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 5 Business Days of being notified by the Company that the Goods are ready to be collected.
- 5.5 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 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.
- 5.7 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).
- 5.8 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, 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.
- 5.9 Without limiting clause 5.8, the Company may deliver or provide a portion of the Goods or Services and may invoice or otherwise charge the Customer for that portion.
- 5.10 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.
- 5.11 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 Return of Goods

- 6.1 The terms of this clause 6 (including any Returns Policy) are subject to clause 9 and, if a Good is not of acceptable quality, faulty, defective or damaged, the Customer may have rights under

- the Australian Consumer Law which are not affected by this clause 6 or the Returns Policy.
- 6.2 If:
- (a) there is a Returns Policy, clauses 6.3 to 6.7 will not apply and the Customer agrees to be bound by the terms of the Returns Policy and to only return the Goods to the Company in accordance with the terms of the Returns Policy; and
 - (b) if there is no Returns Policy, then the Customer agrees to be bound by, and only return Goods in accordance with, clauses 6.3 to 6.7.
- 6.3 Subject always to any applicable provisions of the Australian Consumer Law, the Customer may only return the Goods to the Company with the prior written consent of the Company and the Company will be under no obligation to accept Goods returned to it or provide any refund or other remedy in respect of such returned Goods.
- 6.4 Any claims in respect of the Goods made by the Customer to the Company must be made within 30 days of the date of delivery of the Goods by the Company to the Customer.
- 6.5 The Customer will be responsible for the cost of having the Goods returned to the Company.
- 6.6 The provision to the Customer of any refund or other remedy in respect of any Goods which are returned to the Company and determined by the Company to be damaged or not meet the Specifications will be at the Company's sole discretion.
- 6.7 If any Goods which are returned to the Company are not damaged and meet the Specifications, then the Company may, at the Customer's cost, return those Goods to the Customer.
- 7 Title and risk of Goods**
- 7.1 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.
- 7.2 Risk in the Goods passes to the Customer upon the earlier of:
- (a) the Goods being removed from the Company's premises (or that of the Company's supplier or agent) for delivery to the Customer or collection by the Customer from such premises; and
 - (b) if the Goods are to be collected by the Customer, on the date which is 5 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).
- 7.3 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.
- 7.4 Until such time as full title, property and ownership of the Goods passes to the Customer in accordance with clause 7.1, and while the Goods remain in the Customer's full control and possession:
- (a) subject to clause 7.5, 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 and 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;
 - (c) the Company may enter the premises of the Customer or any third party where the Goods are stored during the hours of 8.00am 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;
- (d) 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;
- (e) 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
- (f) the Customer must not remove, deface, alter, obliterate or cover up any names, marks, designs, numbers, code or writing on the Goods.
- 7.5 Notwithstanding that title to the Goods has not passed to the Customer under clause 7.1, 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.
- 7.6 The Customer must immediately cease the resale of any Goods under clause 7.5 if:
- (a) the Company revokes any consent it has given to the Customer to resell the Goods under clause 7.5; or
 - (b) the Customer fails to make any payment under an Agreement by the relevant Due Date.
- 7.7 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.

- 7.8 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.

8 PPSA

- 8.1 Words and expressions used in this clause 8 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.

- 8.2 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.

- 8.3 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.

- 8.4 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.

- 8.5 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.

- 8.6 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.

- 8.7 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.

- 8.8 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.

9 Liability

- 9.1 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.

- 9.2 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.

- 9.3 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.

- 9.4 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.

10 Intellectual Property

- 10.1 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 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 without the prior consent of the Company.

- 10.2 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 and the Company shall not be liable to the Customer for any Loss which the Customer suffers as a result of any such modification, adaptation, variation, reverse engineering, disassembly or copying.

- 10.3 The Customer must not remove, deface, change, distort, delete or cover up any name plate or mark on the Goods which indicates that the Company is the owner of the Goods.

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

- 10.5 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.

11 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; and
- (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.

12 Notification of claims

- 12.1 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.
- 12.2 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.
- 12.3 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 any Consumer regarding the purpose, performance or durability of the Goods, which is in breach of the Australian Consumer Law;
 - (b) take all steps and 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.

13 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.

14 Specifications

- 14.1 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.
- 14.2 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.
- 14.3 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.
- 14.4 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.

15 Confidentiality

- 15.1 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.
- 15.2 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.

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, 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 4.9(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.
- 19.3 If the Company agrees to any request by the Customer to cancel an Agreement or Offer, the Company may charge the Customer the Cancellation Fee which the Customer must pay to the Company immediately upon demand.
- 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:
- the prices and quantity of Goods and/or Services set out in a Quote (if any);
 - these Terms;
 - the Account Application;
 - any other terms of the Quote (if applicable);
 - the Invoice; and
 - 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:
- the singular includes the plural and vice versa;
 - 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;
 - 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;
 - 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;
 - 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 non-exclusive jurisdiction of the courts of Victoria.
- 22.10 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, 12, 15, 16, 18, 21 and 22.
- 22.11 Each party must:
- do all acts necessary or desirable to give full effect to an Agreement; and
 - refrain from doing anything which might prevent full effect being given to an Agreement.
- 22.12 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.
- 22.13 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).