

## TERMS AND CONDITIONS

### Payment terms

1. The Applicant must pay the price of goods and services ordered and any other amount payable in respect of such order immediately on acceptance of the order by the Supplier, except that while the Applicant complies with the provisions of this Agreement and is not Insolvent the terms of payment are thirty (30) days from end of month in which the invoice was dated (or such other period as nominated by the Supplier).
2. The Supplier may vary this Agreement at any time on giving the Applicant 48 hours' notice. If the Applicant does not agree with a variation proposed by the Supplier it must notify the Supplier in writing within fourteen (14) days from the date of the Supplier's notice. Absent notice from the Applicant within that time, the variation is deemed accepted. The Supplier may correct clerical errors (e.g. spelling or grammatical errors) without notice.
3. The Applicant must check all invoices and advise the Supplier of any errors or omissions within seven (7) days of receipt. Failing advice from the Applicant that the invoice contains any errors or omissions within that time, the invoice may be deemed accepted by the Supplier.
4. If the Applicant does not pay for goods or services supplied by the Supplier in accordance with the credit terms as provided herein after issuing a written demand to the Applicant demanding payment within fourteen (14) days, the Supplier will be entitled to charge an administration fee of 10 percent of the amount of the invoice payable.

### Delivery

5. Any time for delivery for availability for collection of goods or services of which the Supplier informed the Applicant, whether or not it is a provision of this Agreement, is an estimate only, and the Supplier will not be liable for any loss suffered by the Applicant caused or contributed to by goods or services not being delivered, supplied or made available for collection when specified in that estimate, for clarity, whether or not such delay is excused by any of clauses 72 to 74.
6. The Applicant accepts that the Supplier may deliver or make available for collection goods or services by instalments and require payment for each separate instalment in accordance with the payment terms and other relevant provisions of this Agreement.
7. If the Delivery Driver or any member of Supplier personnel determines in good faith that goods cannot or should not reasonably be delivered to the Delivery Address because it is difficult to access; it cannot be ascertained that the Delivery Address exists or is correct; delivery to the Delivery Address would be unsafe for the Delivery Driver, the Delivery Vehicle, any other person or the goods; a person purporting to have the right to do so instructs the Delivery Driver not to deliver the goods, or for any other reasonable cause without limitation, the Supplier may:
  - (a) deliver the goods to the roadside or other location near the Delivery Address (**Substitute Delivery Location**) and in that case delivery of the goods to the Substitute Delivery Location discharges the Supplier's obligation to deliver the goods to the Applicant; or
  - (b) transport the goods to another location selected by the Supplier, without liability to the Applicant, and notify the Applicant of that fact (**Delivery Failure Notice**).
8. If the Supplier gives a Delivery Failure Notice the Applicant must within three (3) Business Days (**Redelivery Notice Period**) notify the Supplier in writing that either the issue with delivering the goods to the Delivery Address has been rectified and that the Supplier should again endeavour to deliver the goods to that address, or specify an alternative Delivery Address (**Redelivery Notice**).
9. If the Applicant does not give a Redelivery Notice within the Redelivery Notice Period, or any additional period allowed by the Supplier (of which it is not required to notify the Applicant) the Supplier may treat the Applicant as having repudiated this Agreement. If clause 7 applies on a second or any subsequent occasion in respect of the same goods, the Supplier may:
  - (a) treat the Applicant as having repudiated this Agreement; or
  - (b) give another Delivery Failure Notice, in which case clauses 7 and 8 and this clause 9 apply again.
10. If the Supplier gives a Delivery Failure Notice the Supplier may charge the Applicant its reasonable costs of transporting the goods from the Delivery Address or apparent Delivery Address and storage of the goods until they are delivered and the subsequent delivery of the goods, and the Applicant must pay the Supplier that amount in addition to the price of the goods.
11. Where the Supplier is obliged to deliver goods to the Delivery Address or where it delivers the goods to a Substitute Delivery Location, risk in the goods passes to the Applicant when the Delivery Vehicle arrives at the Delivery Address or at the Substitute Delivery Location (for clarity, in either case, before the goods are unloaded) except that if goods are lost, damaged or destroyed at the Delivery Address or Substitute Delivery Location before being unloaded due to the wrongful act or omission of the Delivery Driver they are at the risk of the Supplier after Delivery Vehicle arrival in respect of that specific act or omission only.
12. Where the Supplier is obliged to make goods available for collection by the Applicant or a third party engaged by it at a specified location, risk in each separate item of the goods or (if packaged) each package of items comprising the goods passes to the Applicant when a personnel involved in loading the vehicle first handles the goods, manually or using a machine.
13. The Applicant must inspect the goods immediately upon delivery and must within seven (7) days after the date of inspection give written notice to the Supplier with particulars of any claim that the goods are not in accordance with this Agreement. If the Applicant fails to give notice within that period then, to the extent permitted by law, the goods are treated as having been accepted by the Applicant and the Applicant must pay for the goods in accordance with this Agreement.
14. Goods cannot be returned without the Supplier's written agreement. The Applicant acknowledges and agrees that any return will incur a handling and administration charge of 5 per cent of the purchase price of the returned goods.

### Description of goods

15. The Applicant acknowledges and agrees that all descriptions, specifications, illustrations, drawings, samples, data and dimensions contained in any catalogue, price list, advertising material or other document without limitation, whether in print, online or otherwise without limitation are approximate and intended to be a general description only.
16. The Applicant acknowledges and agrees that goods may be produced with modifications as necessary from the descriptions, specifications, illustrations, drawings, samples, data and dimensions of the goods of which the Applicant was previously aware.
17. The Supplier is not liable for any loss or damage suffered by the Applicant as a result of the Applicant relying upon the descriptions, specifications, illustrations, drawings, samples, data and dimensions referred to in clause 15.

### Customer specifications

18. The Supplier is not liable for any:
  - (a) loss or damage suffered as a result of goods being unfit for purpose, not being of merchantable quality or having any other defect whatever without limitation where the goods were produced wholly or partly:
    - (i) in accordance with a design, specification or drawing; or
    - (ii) with materials, supplied by the Applicant; or
  - (b) any loss incurred by the Applicant arising from goods produced as specified in clause 18(a).
19. The Supplier may provide an updated cost and delivery estimate following receipt of a request to produce goods wholly or partly in accordance with a design, specification or drawing, or using materials, supplied by the Applicant.

### Jurisdiction

20. This Agreement and any tort claim (including a claim for negligence) arising out of or in connection with it will be governed by the laws of Western Australia and the laws of the Commonwealth of Australia which are in force in Western Australia, without regard to choice of law rules which would result in the substantive law of any other place governing the parties' rights and obligations.
21. This Agreement is taken to be formed at the Supplier's head office address.
22. The parties to this Agreement submit to the non-exclusive jurisdiction of the courts of Western Australia and the federal courts and courts competent to hear appeals from those courts.

### Security/charges

23. The Applicant charges in favour of the Supplier all of its estate and interest in any real property, whether held in its own right or in its capacity as trustee, which the Applicant owns at present or in the future with the obligation to pay its indebtedness hereunder.
24. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property, whether held in its own right or in its capacity as trustee, which the Applicant owns at present or in the future with the obligation to pay its indebtedness hereunder.
25. The Applicant appoints as its duly constituted attorney the Supplier's authorised representative from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage or charge, bill of sale or consent to any caveat the Supplier may lodge against real property that the Applicant

may own in any Land Titles Office in any State or Territory of Australia, upon notice to the Applicant.

26. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security interest (including a Security Interest) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this Agreement and will secure all indebtedness and obligations of the Applicant under this Agreement. The Supplier may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other security interests to reflect the terms herein. Where the Applicant is in breach of any of its obligations under this Agreement the Supplier may exercise its rights under any one or more of those charges, mortgages or other security interests and such charges, mortgages or other security interests (including Security Interests) arising under this document which secure the whole or any part of the Applicant's relevant obligation, in its absolute discretion.

### Purpose of credit

27. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

### Formation of contract

28. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer received by it for the purchase of goods or services without giving a reason to the Applicant. Only written acceptance by the Supplier of the Applicant's offer will complete a contract for the sale and purchase of goods from the Supplier to the Applicant.
29. Any offer to purchase or acquire goods or services by the Applicant accepted by the Supplier forms a separate agreement, into which this document is incorporated, unless the Supplier states otherwise in its acceptance of the offer. For clarity, however, where a charge, mortgage or other security interest (including a Security Interest and including the retention of title in clause 31) is created under this document to secure all monies payable by the Applicant to the Supplier the obligation to pay money which that charge, mortgage or other security interest secures includes all obligations of the Applicant to pay money to the Supplier under all other agreements for the supply by the Supplier of goods or services to the Applicant.
30. Placement of an order by or for the Applicant to buy or procure goods or services, either verbally or in writing, will imply acceptance of any offer made by the Supplier to sell or supply those goods or services and any terms of sale or purchase sent by the Applicant were incorporated by reference into its order which are inconsistent with this document or any offer or order signed by or for the Supplier are of no effect to the extent of inconsistency.

### Retention of title

31. Title in the goods passes to the Applicant when the Applicant has made payment in full for the goods and, further, until the Applicant has made payment in full of all the other money owing by the Applicant to the Supplier (whether in respect of money payable under a this Agreement, any other agreement for the sale or supply of goods or services by the Supplier to the Applicant or on any other account whatsoever).
32. While the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied.
33. Until payment in full has been made to the Supplier, the Applicant will hold the goods as trustee for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
34. The Applicant will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant will sell the goods as bare trustee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.
35. The Applicant's indebtedness to the Supplier to the extent represented by any money received by the Applicant as trustee for the Supplier referred to in clause 34 will not be discharged by the operation of clause 34 unless and until the funds held on trust are remitted to the Supplier.
36. Without limiting clauses 31 to 35 (both included) the Applicant grants the Supplier the rights which it has under those clauses (to the extent those rights are granted) and the Supplier retains those rights (to the extent they are retained) for purposes which include the purpose of securing performance by the Applicant of its obligation to pay the Supplier the purchase price for the goods and other money owing by the Applicant to the Supplier (whether in respect of money payable under this Agreement, any other agreement for the sale or supply of goods or services by the Supplier to the Applicant or on any other account whatsoever) when due.
37. The Applicant agrees that while title in the goods remains with the Supplier, the Supplier has the right, with prior notice to the Applicant, by its employees, officers, contractors and agents to enter upon any Premises including by force to inspect the goods, and/or to repossess the goods, which are collateral for or secure property under or in respect of a charge, mortgage or other security interest (including a Security Interest and including the retention of title in clause 31) granted by this Agreement when an amount payable by the Applicant to the Supplier is overdue.
38. The Applicant must indemnify and keep indemnified and hold harmless the Supplier and its employees, officers, contractors and agents against and from any loss, liability or damage, including liability for trespass or damage to property, which the Supplier incurs arising out of or in connection with itself or any of the foregoing gaining access to and going on to any Third Party Premises to inspect the goods, and/or to repossess the goods, which are collateral or secure property for any charge, mortgage or other security interest (including a Security Interest and including the retention of title in clause 31) granted by this document when an amount due by the Applicant to the Supplier is overdue.
39. The Applicant must upon demand pay the Supplier its reasonable costs of exercising its rights under clauses 37 and 38. Where the Supplier exercises any right to enter the Premises, including by force, that entry will not give rise to any action of trespass, for damage to property or similar action on the part of the Applicant against the Supplier, its employees, officers, agents or contractors.
40. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods and, in the Supplier's discretion, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable, royalty free, worldwide, sub-licensable and assignable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
41. For the avoidance of doubt, and without limiting the other characteristics of that interest, the Supplier's interest in the goods under causes 32 and 33, to the extent that interest secures payment of the purchase price of the goods and payment of any other monies connected with the sale of the goods which may be secured over goods by a PMSI, is a PMSI.
42. To the extent that a security interest granted by the Applicant to the Supplier under this Agreement is registered, or an application is made to register it, on the PPSR as a PMSI, the collateral (within the meaning of the PPSA) over which the security interest is registered is:
  - (a) goods supplied by the Supplier to the Applicant which are inventory of the Applicant, to the extent and only while, the goods are inventory, within the meaning of the PPSA, of the Applicant (**Inventory**);
  - (b) goods supplied by the Supplier to the Applicant which were Inventory after they have ceased to be Inventory; and
  - (c) goods described in any invoice, purchase order, record of sale, or other document given by the Supplier to the Applicant or vice versa forming part of the Agreement referring to the fact that the Supplier sold or agreed to sell goods to the Applicant, which goods are in, or ever were in, the possession of the Applicant, and, any of such cases, the proceeds of sale by or for the Applicant of those goods (**Collateral**).
43. Each of the definitions of Collateral in paragraphs 42(a) to 42(c) (both included) is a separate and independent definition of the Collateral. If a PMSI cannot validly be registered over Collateral as defined in any of those paragraphs that does not affect the validity of the registration of the PMSI over any other class of Collateral in any other of those paragraphs, or any other collateral being or in respect of goods, over which it can validly be registered.
44. The Applicant irrevocably consents to the Supplier recording any security interest granted by the Applicant or which otherwise arises under this Agreement on the PPSR and agrees to do all things and sign all documents reasonably required by the Supplier to enable it to effect such registration.
45. The Applicant must, at the Supplier's request, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Applicant under the PPSA.
46. The Applicant further agrees that where the Supplier has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

### Cancellation of terms of credit

47. The Supplier reserves the right to refuse to afford the Applicant credit for any order for goods at any time with immediate effect by notice the Applicant, including in respect of an order which the Supplier has accepted (**Accepted Order**).
48. Upon the Supplier cancelling the Applicant's credit in respect of Accepted Order, all liabilities incurred by the

- Applicant in connection with it become due and payable to the Supplier immediately.
- Indemnity**
49. The Applicant must indemnify and keep the Supplier indemnified against any claim by a third party that arises out of the goods or services supplied under this Agreement. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.
- Provision of further information**
50. The Applicant undertakes to comply with any reasonable written request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application or to determine whether to continue to afford credit to the Applicant.
51. If the Applicant is a corporation (except a public listed company), it must advise the Supplier of any alteration to its corporate structure (e.g., a change of directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Applicant must on demand by the Supplier procure that each new director and shareholder executes and delivers to the Supplier a Guarantee and Indemnity.
- Corporations**
52. If the Applicant is a corporation (except a public listed company) the Applicant warrants that all of its directors have signed this Agreement and must on demand by the Supplier procure that each of its directors executes and delivers to the Supplier a Guarantee and Indemnity.
- Trustee capacity**
53. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant enters into this Agreement in both its capacity as trustee and in its own capacity and warrants and represents to the Supplier that it has the power under the trust deed to sign this Agreement; and at all times while any amount is owing by the Applicant to the Supplier, the Applicant;
- (a) has the right to be indemnified out of trust assets against liabilities incurred in its capacity as trustee; and
- (b) will not retire as trustee of the trust or appoint any new or additional trustee, wind up the trust or appoint or distribute any capital of the trust without the Supplier's written consent, which it may withhold in its absolute discretion.
54. The Applicant must give the Supplier a copy of the trust deed upon request.
- Partnership**
55. If the Applicant is a partnership, it warrants that all of the partners have signed this Agreement and must on demand by the Supplier procure that each of its partners executes and delivers to the Supplier a Guarantee and Indemnity.
56. If the Applicant is a partnership, it must not alter the terms of the partnership (e.g. by adding or removing a partner or altering its partnership agreement) without the Supplier's written consent. In the case of a change of partners, the Applicant must on demand by the Supplier procure that each of its partners executes and delivers to the Supplier a Guarantee and Indemnity.
- Insolvency**
57. If the Applicant becomes Insolvent, the Applicant remains liable under this Agreement for payment of all liabilities incurred under this Agreement. The Applicant remains liable under this Agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.
- Waiver**
58. A waiver of any provision or breach of this Agreement by the Supplier must be made by an authorised officer of the Supplier in writing.
59. The Applicant waives the rights which it would otherwise have under sections 95, 96, 118, 121(4), 125, 129, 130, 132(2), 132(3)(d), 132(4), 135, 137(2), 142, 143, 157(1) and 157(3) of the PPSA and any other provision of the PPSA that the Supplier notifies the Applicant after the date of this Agreement, to the extent that the law permits the exclusion of the right.
60. The parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA when requested under that section. The Applicant must do everything necessary to ensure that PPSA s275(6)(a) continues to apply. This clause is solely to allow the Supplier the benefit of PPSA s275(6)(a) and the Supplier is not liable for damages or other compensation or subject to an injunction if the Supplier breaches this clause.
- Costs**
61. The Applicant must pay the Supplier on demand its legal, accounting and business costs relating to any default by the Applicant under this Agreement. The Applicant must also pay all duty and other taxes payable on or in relation to this Agreement (if any) other than income tax payable by the Supplier on its income to the extent represented by any amount paid or payable by the Applicant under this Agreement.
62. The Applicant must pay the Supplier's legal and without limitation other costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis where the Applicant becomes Insolvent, is not pay any amount due to the Supplier when due or breaches any other provision of this Agreement.
- Allocation of payments**
63. Subject to clauses 64 and 65, payments by, or on behalf of, the Applicant will be applied by the Supplier as follows.
- (a) firstly, in payment of any and all costs in accordance with clauses 10, 39, 61 and 62.
- (b) secondly, in payment of any interest incurred in accordance with clause 69.
- (c) thirdly, in payment of the outstanding invoice(s).
64. Where the Supplier holds a PMSI, payments received from the Applicant may be allocated in the Supplier's absolute discretion so as to attribute, to the greatest extent possible, the unpaid balance owing by the Applicant to the purchase money obligation in respect of the Collateral in respect of that PMSI.
65. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, in its absolute discretion, allocate and/or retrospectively reallocate payments in any way whatsoever, including in a way inconsistent with clause 63 herein.
66. Payments allocated (and/or reallocated) under clause 64 and/or 65 will be treated as though they were allocated (and/or reallocated) on the date of payment in the way determined by the Supplier even if that determination was made later.
- Taxes and duty**
67. The Applicant must pay the Supplier an amount equal to the GST for which the Supplier will become liable (without regard to its entitlement to an input tax credit) in relation to any taxable supply made by the Supplier to the Applicant under this Agreement, in addition to any other consideration payable by the Applicant for a taxable supply.
68. If as a result of:
- (a) any legislation becoming applicable to the subject matter of this Agreement; or
- (b) any changes in legislation or its interpretation by a court or by any authority charged with its administration;
- the Applicant is liable to pay any tax, duty, excise or levy in respect of any amount paid by the Applicant, the Supplier must pay the Supplier the additional amount on 48 hours' written notice.
- Interest**
69. The Applicant must pay interest on any amount over due to the Supplier at 10% per annum. Interest is calculated daily on the highest balance outstanding on that day, is capitalised monthly and is payable on demand.
- Set-off**
70. All payments required to be made by the Applicant under this Agreement must be made free of any set-off, or counterclaim and without deduction or withholding.
71. Any amount due to the Supplier from time to time may be deducted from any money which may be or may become payable to the Applicant by the Supplier.
- Miscellaneous**
72. Despite anything to the contrary in this Agreement, the Supplier is not liable for any delay or failure to perform any obligation under this Agreement where a Force Majeure Event causes or materially contributes to the Supplier being delayed in, or prevented from, performing its obligation, or where the Force Majeure Event causes or materially contributes to the Supplier's performance of the obligation being materially more difficult or expensive.
73. Where clause 72 applies the Supplier may, but is not required to as a condition of enjoying its rights under that clause or otherwise, terminate the agreement for the Supply of the particular goods without liability by giving the Applicant notice (**Force Majeure Termination Notice**) and may wait for any period considered appropriate by the Supplier in good faith while the Force Mature Event is in effect and for a reasonable time thereafter, to ascertain whether the Force Majeure Event will cease, or whether it considers it is appropriate to give that notice, before giving that Notice.
74. Where a Force Majeure Event affects the Supplier's ability to deliver goods or supply services, or to supply services deliver goods on time, to some but not all of its customers (including the Applicant) the Supplier has no liability to the Applicant for the way in which it allocates goods which are available, or which are able to be delivered, or resources available for the provision of services, among the orders of its various customers
- (including any order of the Applicant).
75. Where the Supplier gives the Applicant a written statement of the date, time and location of delivery of some or all of the goods, and/or the condition in which goods were delivered and or the location to which they were delivered (**Delivery Statement**), that statement is conclusive evidence of delivery having occurred as stated in it and that the goods were of the condition stated in it when delivered, in the absence of proof of the contrary. A statement by the Customer or any other person (not being an employee or officer of the Supplier) which is inconsistent with anything in a Delivery Statement is not evidence that the whole or the relevant part of the Delivery Statement is incorrect.
76. To the extent the Supplier is not precluded by law from reducing its liability to the relevant extent, the Supplier's liability for breach of any warranty or other provision without limitation about the goods implied into this document by statute is limited to, at the Supplier's election:
- (a) in relation to the supply of goods:
- (i) replacing the goods or supplying similar goods;
- (ii) repairing the goods;
- (iii) paying the cost for replacing the goods or for acquiring equivalent goods; or
- (iv) paying the cost for having the goods repaired; and
- (b) in relation to the supply of services, the Supplier's liability is limited to:
- (i) supplying the service again; or
- (ii) paying the cost of having the services supplied again.
77. The Supplier is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant as a result of the goods and/or services supplied under this Agreement or any other breach by the Supplier of its obligations under this Agreement.
78. The Applicant agrees to accept service of any document required to be served, including any notice under this Agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Applicant or the Applicant's authorised representative.
79. Nothing in this Agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this Agreement of all or any of the provisions of the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.
- Severance**
80. If any provision of this Agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
81. If any part of this Agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.
- This Entire agreement**
82. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by the Supplier and the Applicant in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.
83. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Applicant and the Supplier, these terms and this Agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.
- Privacy Act**
84. The Applicant agrees to the terms of the Supplier's Privacy Statement contained in this document.
- Definitions and Interpretation**
85. The terms and expressions in bold below have the meanings given to them below when used in this document, even though not in bold when in other provisions of this Agreement:
- Applicant** means the person who applied for a credit facility with the Supplier which the Supplier granted (even if subsequently revoked or varied) and includes the buyer or recipient of any goods or services to be sold or otherwise supplied by the Supplier.
- Agreement** means this document and includes any order for goods or services placed by the Applicant and any other document sent from the Supplier to the Applicant or vice versa agreed to by both parties which contains any of the provisions of an agreement for the supply of goods or services by the Supplier to the Applicant.
- Delivery Address** means the address to which the Applicant specifies, either verbally or in writing, in, or in connection with, an order for goods that the goods are to be delivered. If the Applicant does not specify such an address for an order for goods, the Delivery Address is the address which satisfies that criteria for the Applicant's latest prior order for goods.
- Delivery Driver** means the driver of the Delivery Vehicle and includes any other occupant of that vehicle responsible for unloading or assisting to unload goods from it.
- Delivery Vehicle** means the vehicle on which the goods are transported to the Delivery Address or Substitute Delivery Location.
- Force Majeure Event** means any event or circumstance, including the effect of an event or circumstance on the Supplier, where it is beyond the Supplier's ability acting reasonably to control of the event or the effect which it has on the Supplier, including any of the following or their effects on the Supplier: act of God; flood; bad weather; terrorist act or threat; disruption to or failure of transit, communication or utility network or equipment or of utility supply; transit hazard; shortage of or absence of supply to the Supplier of the goods or anything reasonably required to manufacture them; pandemic or outbreak of illness; change of law; executive action; embargo; boycott; fire; explosion; equipment breakdown or malfunction; loss of or corruption to data; computer virus, malware or unauthorised information technology system access; loss of data; labour difficulties including strike, go slow or lockout (whether in the Supplier's business or in the business of any other person); and war, riot, civil unrest or protest.
- GST Act** means the *A New Tax System (Goods and Services Tax Act) 1999 (Cth)*.
- Guarantee and Indemnity** means a deed under which the relevant person gives a guarantee to the Supplier of the performance by the Applicant of its obligations under this Agreement and indemnifies the Supplier against any loss or liability which it suffers or incurs as a result of a breach by the Applicant of its obligations under this Agreement or the Applicant's Insolvency or otherwise without limitation in connection with this Agreement in form and substance satisfactory to the Supplier.
- Insolvent** means, for a company, having a liquidator, receiver, manager, administrator or other external administrator of whatever kind without limitation appointed to it or any of its property, or a process to appoint any of the foregoing is commenced or it admits it is unable to pay its debts as and when they become due and for an individual means being declared bankrupt or committing an act of bankruptcy.
- PMSI** means a purchase money security interest as defined in the PPSA.
- PPSA** means the *Personal Property Securities Act 2009 (Cth)*.
- PPSR** means the Personal Property Securities Register established under the PPSA.
- Premises** means any premises occupied by the Applicant or by any receiver, manager, administrator, liquidator or trustee in bankruptcy of the Applicant.
- Related Body Corporate** has the meaning given in the *Corporations Act 2001 (Cth)*.
- Security Interest** has the meaning given in the PPSA.
- Supplied: goods** are supplied to the Applicant when risk in the goods has passed to the Applicant under the provisions of this Agreement and, for clarity, even if title to the goods has not passed to the Applicant, despite the fact that title has not passed.
- Supplier** means CMI Group (WA) Pty Ltd ACN 646 277 867 as trustee for the CMI Unit Trust ABN 44 196 290 250 trading as Combined Metal Industries (**CMI**) and, in any provision of this Agreement which limits or excludes the liability of the Supplier, including limiting the type of loss for which the Supply may be liable, includes all Related Bodies Corporate of CMI.
- Third Party Premises** means any premises other than Premises where the Applicant has put the goods or on which it has allowed them to be put, including premises where a buyer under a sub-sale has the goods.
86. In this Agreement: the singular includes the plural and vice versa; a reference to any gender includes all genders and the words "includes", "including", "e.g." and similar words are not words of limitation. Words and expressions defined in or for the purposes of the GST Act have the meaning they have for the purposes of that Act. The fact that the Supplier was responsible for preparation of this Agreement or any provision of it is not a reason to prefer the interests of any other party when resolving any ambiguity in this Agreement or in the provision. A reference to any statute includes any regulation or other public law instrument made

under it and any of the foregoing as amended. Where a statute has changed its name, a reference to that statute includes that statute as renamed. Where a statute has been repealed, a reference to the statute is a reference to the statute determined by the Supplier in good faith and notified to the Applicant (before or after the need to do so arises) as being the statute which most closely serves the same purpose as the repealed statute.

87. Any provision of this Agreement which excludes or limits the liability of the Supplier or any of its employees, officers, contractors or agents (including the exclusion of liability for any particular type of loss) applies whether the Applicant's claim is for breach of this Agreement, in any tort (including negligence), for breach

of a statute or in statutory liability, in equity or on or under any other basis or cause of action of any kind whatever without limitation.

88. Where a provision of this Agreement limits or excludes liability of or otherwise without limitation confers a benefit on any of the Supplier's employees, officers, contractors or agents (**Third Party Right**) the Supplier holds the benefit of the Third Party Right on trust and separately as agent for the relevant person and may exercise that right in the relevant person's name or permit the relevant person to exercise the Third Party Right in their own name.

The Applicant hereby applies for the opening of an account and provides the above information in support thereof.

I am/We are authorised to sign this credit application form on behalf of the Applicant and the information given is true and correct to the best of my/our knowledge.

<b>Signature</b>		<b>Signature</b>	
<b>Name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>DOB</b>			
<b>Licence</b>			
<b>Dated</b>			
<b>Signature</b>		<b>Signature</b>	
<b>Name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>DOB</b>			
<b>Licence</b>			
<b>Dated</b>			

#### PRIVACY STATEMENT

- The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
- For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
- The Supplier may collect personal information about the Applicant and/or Guarantor(s) for the Supplier's primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.
- The Applicant and/or Guarantor(s) consent to the Supplier collecting, using and disclosing personal information (including sensitive information) for both their primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
- The Supplier may collect, and may already have collected, Information from the Applicant and/or Guarantor(s), other credit providers, credit reporting bodies and other third parties for the purposes of its functions and activities including, but not limited to, credit, sales, marketing and administration. If the Information was not collected by the Supplier it may restrict or impede upon the Supplier trading with, extending credit to, continuing to extend credit to or extending further credit to the Applicant and/or Guarantor(s) or their related bodies corporate.
- The Applicant and/or Guarantor(s) consent to the Supplier obtaining and making disclosure of Information about the Applicant and/or Guarantor(s) from and to a Credit Reporting Body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose, including for the purpose of the Supplier factoring or otherwise obtaining credit against or on the security of the amount owing or to become owing by the Applicant. The Supplier notifies the Applicant and/or Guarantor(s) that it may use and/or disclose credit eligibility information under section 21G of the Act.
- The Supplier may provide personal information about the Applicant and/or Guarantor(s) to any or all of the credit reporting bodies nominated below. The Supplier intends to disclose default information to any or all of the credit reporting bodies listed below. The Applicant and/or Guarantor(s) consent to such disclosure. The Supplier's credit reporting policy contains a statement of notifiable