

The Customer applies for a credit account to be operated by one or more of the Suppliers in the Customer's name as set out in the Application for Credit and agrees to the following terms and conditions ("Credit Terms"):

## 1. INTERPRETATION

1.1 In these Credit Terms:

- a) Words and phrases in this agreement that are defined in the Personal Property Securities Act 2009 (PPSA) shall be construed as having the meanings thereby attributed to them.
- b) The singular includes the plural and vice versa and any gender includes any other gender.
- c) **"Collateral"** means all of the Customer's present and after-acquired personal property, and all of the Customer's present and future rights in relation to any personal property to which the PPSA applies.
- d) **"Default"** means the occurrence of any event contemplated by clause 10 or clause 11 of these Credit Terms.
- e) **"Goods"** means any goods provided by any Suppliers to the Customer.
- f) **"Other Property"** means any and all of the Customers' interest(s) in any land and any other property other than any Collateral.
- g) **"Secured Money"** means all amounts of any nature which the Customer (whether alone, or jointly, or jointly and severally with any other person) is, or may at any time become, liable (whether actually or contingently) to pay or deliver to any Suppliers (whether alone, or jointly or jointly and severally).

## 2. Purpose for which credit is available

2.1 Subject to paragraph 3, credit (if approved) will be made available to the Customer for the purpose of the purchase of Goods by the Customer from the Suppliers subject to the Sales Conditions.

## 3. Commercial Credit

3.1 Where the Customer is a natural person, the Customer warrants and declares that the credit provided under the credit account is to be applied wholly or predominantly for business or investment purposes (or for both purposes) and not for personal, domestic or household purposes.

## 4. Credit Terms

4.1 The Suppliers may vary these Credit Terms at any time and will notify the Customer accordingly. The Suppliers will give notice of any variation by posting an updated version of these Credit Terms online on the Suppliers website. Any changes will be effective as at the date they are posted, unless a different effective date is specified. The Customer is responsible for checking for updates to these Credit Terms and the continued ordering of Goods after any such changes take effect will constitute Customer's acceptance of such changes.

4.2 The Suppliers may withdraw the approval of credit at any time and will notify the Customer accordingly.

4.3 The due date for payment of any Secured Money under these Credit Terms will be as advised in writing or otherwise by any of the Suppliers at the time of acceptance of the Goods, and may be described on the invoice for the Goods.

## 5. Credit Reports & Verification of Identity

5.1 The Customer and each person signing as guarantor of the Customer's obligations under this credit application (each a "Guarantor") acknowledges and agrees that each of the Suppliers and any related bodies corporate:

- a) may give certain information about them to a credit reporting body or other credit providers (including related bodies corporate of the Suppliers) to the Customer in order to obtain a credit report about them that may include but is not limited to, as relevant, identity particulars and the fact that the Customer has applied for credit or the Guarantor has offered to act as a guarantor; and
- b) may, in assessing whether to grant the Customer's credit application or whether to accept the Guarantor as a guarantor, seek and obtain information about them from a credit reporting body or another credit provider and may give information about them to another credit provider, including information about credit worthiness, history, standing or capacity which credit providers are permitted by Privacy Act 1988 (Cth) to obtain or receive; and
- c) without limiting clauses 5.1(a) and (b), if the Suppliers or any related body corporate considers it relevant to assessing whether to grant the Customer's credit application or whether to accept the Guarantor as a guarantor, seek and obtain personal credit information, or a credit report containing personal credit information, about them from a credit reporting body or another credit provider and may give personal credit information about them to another credit provider.

5.2 The Customer acknowledges, consents and agrees to the Suppliers, and any related bodies corporate:

- a) verifying the identity of the Customer, or any information provided by or on behalf of the Customer in the Application, with the document issuer, credit reporting body, official record holder, or other entity (via third party systems);
- b) obtaining personal information of any primary photographic identification document, or secondary identification document, held by:
  - (i) the transport (roads and maritime) services agency of the relevant State of Australia which the Customer holds such license or identification card, and/or
  - (ii) the Australian Passport Office, the Department of Foreign Affairs and Trade or any department appointed by the Australian Government to administer and issue passports within Australia;
- c) requesting any further information or details that may assist the Suppliers to verify

the Customer's identity and/or information provided within, or in support of, the Application; and

d) in assessing whether to grant the Customer's credit application:

- (i) seeking an assessment from the document issuer, credit reporting body, official record holder, or any other entity or agency maintaining information about the Customer, of the information provided by the Customer; and
- (ii) giving certain information provided by, or about, the Customer within, or in support of, the Application to that body, to the extent permitted or required by law (including but not limited to the *Privacy Act 1988* (Cth), and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth)).

5.3 The Suppliers and any related bodies corporate will take steps to verify the identity of, and information provided by, the Customer in order to consider and assess whether to grant the Customer's credit application.

5.4 The Suppliers and any related bodies corporate will, upon receiving the Application from the Customer for consideration by the Suppliers:

- a) apply for an assessment of the information contained within the Application, including particulars of the Customer's identity from a reporting entity;
- b) view and consider the results of the assessment by the reporting entity; and
- c) assess whether to grant the Customer's credit application.

## 6. Grant of Security over Existing and Future Assets

6.1 The Customer grants to each of the Suppliers a security interest in the Collateral.

6.2 The security interest referred to in clause 6.1 secures:

- a) payment of all monies which may become payable by the Customer to the Suppliers, including but not limited to, the payment or delivery of the Secured Money; and
- b) the performance by the Customer of all of the Customer's other obligations to each of the Suppliers at any time;

6.3 the Customer hereby charges its Other Property both present and future in favour of the Suppliers and the Customer consents to the Suppliers lodging a caveat or caveats noting their respective interests pursuant to such a charge.

6.4 The Customer also agrees, if requested by the Suppliers, to execute any other documents in registrable form to better secure this equitable charge.

6.5 The Customer hereby agrees to indemnify the Suppliers for all legal costs and fees in respect to such charge(s) and caveat(s).

## 7. Purchase Money Security Interests

7.1 The Suppliers retain title to and have a purchase money security interest in all Goods and any and all proceeds derived directly or indirectly from any dealing with such Goods within the meaning of sections 14 and 32 of the PPSA until such a time as all Secured Money has been paid to the Suppliers.

7.2 The Suppliers do not, either expressly or impliedly, authorise any disposal of the Goods by the Customer other than as part of the Customer's business as a going concern and in the ordinary course of the Customer's business within the meaning of section 46 of the PPSA.

7.3 The Suppliers apply any payment made to them from the Customer, first, to satisfy any and all unsecured obligations, second, to satisfy obligations that are secured but not by a purchase money security interest and, third, to obligations that are secured by purchase money security interests in the order in which those obligations were incurred consistent within the meaning of section 14(6) of the PPSA.

7.4 The Customer agrees to take reasonable efforts to demarcate or keep separate all Goods so that the Goods are not at risk of becoming comingled until such a time as all Secured Money has been paid to the Suppliers.

7.5 The Suppliers may at their sole discretion require the Customer to:

- a) provide further security as a condition of the Suppliers continuing to provide the Goods to be provided under these Terms and Conditions; and
- b) deliver to the Suppliers on request written notice of the present location of any Goods.

7.6 The Customer agrees to, at its expense, do anything which the Suppliers ask and consider necessary for the purposes of:

- a) ensuring that a security interest, charge or pledge is enforceable and perfected or otherwise effective; and
- b) enabling the Suppliers to apply for any registration, or give any notification, in connection with a security interest so that the security interest has the priority required by a Suppliers; and
- c) enabling the Suppliers to exercise rights in connection with the security interest;

7.7 The Suppliers need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

7.8 A security interest created by this agreement to which the PPSA applies will attach, in the case of:

- a) any present property, when the Customer signs, or assents to this agreement in one of the ways specified in section 20(2) of the PPSA, whichever is earlier;
- b) any after-acquired property, when the Customer acquires any rights in that property.

7.9 For the purposes of this clause, a reference to a term defined in the PPSA has the meaning it has in the PPSA.

# CREDIT TERMS (continued)

## 8. Dealing with Security

### 8.1 The Customer must not:

- a) sell, lease or dispose of, or permit the sale, lease or disposal of, any Collateral, or permit to subsist any other security in relation to any Collateral other than Collateral which is subject to a purchase money security interest without the written consent of the Suppliers;
- b) do, or omit to do, or allow to be done or omitted to be done, anything which might adversely affect any interest(s) it has in the Collateral or the security interest or charge provided for under these Credit Terms;
- c) allow any Collateral to become an accession to any property that is not Collateral, or to be affixed to any land;
- d) create or permit to subsist any security interest over the whole or any part of the Collateral, except:
  - (i) a lien arising by operation of law and securing obligations that are not overdue;
  - (ii) a purchase money security interest in any present or after-acquired Goods (which may extend to any Proceeds of those Goods) taken by the seller of those Goods as part of an ordinary trading transaction that is:
    - (I) created solely in the ordinary course of business on arm's length commercial terms and for proper value; and
    - (II) in respect of obligations that are not overdue; or
    - (III) in favour of the Suppliers;
  - (iii) any subsequent security interest granted by the Customer, provided the Customer seeks the prior written consent of the Suppliers which consent will not be unreasonably withheld
- e) change its entity or trading name without first notifying the Suppliers of the new name not less than 14 days before the change takes effect;
- f) change its place of incorporation (if the Customer is a company) or relocate the principal place of business of the Customer outside Australia;
- g) move any of the Collateral outside Australia; or
- h) allow any accounts to be subject to any right of set-off or combination of accounts (other than rights that arise solely by operation of law).

## 9. Covenants Relating to Collateral and Other Property

### 9.1 The Customer covenants with the Suppliers that so long as any Secured Money remains outstanding:

- a) it will not, either by one transaction or a series of transactions, whether related or not and whether over a period of time, dispose of or otherwise deal or agree to deal with any Collateral or Other Property other than in accordance with these Credit Terms;
- b) it will not dispose of, lend, factor, subordinate, part with possession of or otherwise deal with any Collateral or Other Property, nor attempt or threaten to do any of those, other than:
  - (i) with the prior written consent of the Suppliers, or as permitted by this Agreement;
  - (ii) in the case of Collateral or Other Property that is inventory or money, in the ordinary course of, and for the purpose of carrying on, its ordinary business;
  - (iii) in the case of Collateral or Other Property that is accounts, to collect in and realise those accounts; or
  - (iv) in the case of equipment, to replace or renew any equipment (other than serial numbered Goods), in the ordinary course of its ordinary business and for at least equal value and without the creation of a purchase money security interest in such equipment;
- c) it will promptly pay all Proceeds from any dealing with the Collateral or Other Property into its usual working current account with the Suppliers or such account as may from time to time be designated by the Suppliers for that purpose.

## 10. Acceleration

### 10.1 If any amount due and payable by the Customer:

- a) under the Sales Conditions or Credit Terms; or
- b) to any related body corporate of the Suppliers,

is not paid on or before the due date, all amounts actually or contingently owing under the Sales Conditions and Credit Terms, whether or not due and payable, become immediately due and payable to the Suppliers.

## 11. Breach

### 11.1 If the Customer:

- a) breaches the Credit Terms or Sales Conditions;
- b) makes any false representation (whether by act or omission) in respect of the Customer's application for credit, including any false representation (whether by act or omission) in relation to the Customer's financial position; or
- c) becomes subject to the provisions of paragraph 12 then, without limiting any other rights of the Suppliers,

each of the Suppliers may:

- a) terminate these Credit Terms; and/or
- b) refuse to supply any Goods to the Customer.

## 12. Receiver

### 12.1 The Suppliers may (whether or not they have exercised any other power) appoint any

person or persons to be a Receiver of all or any of the Collateral:

- a) after a Default occurs; or
- b) if the Customer requests.

12.2 The Suppliers may remove any Receiver and may appoint a new Receiver in place of any Receiver who has been removed, retired or died.

12.3 In addition to, and without affecting, any other powers and authorities conferred on a Receiver (whether under the Corporations Act 2001 or at law or otherwise), a Receiver has the power to do all things in relation to the Collateral and the Customer's business as if the Receiver has absolute ownership of the Collateral and carried on the Customer's business for the Receiver's own benefit.

12.4 All amounts received by the Suppliers or any Receiver, whether in the exercise of that person's powers or otherwise, in relation to any Collateral will be applied in accordance with the provisions of the PPSA. All amounts received by the Suppliers or any Receiver, whether in the exercise of that person's powers or otherwise, in relation to any Other Property will (subject to the claims of all secured and unsecured creditors (if any) ranking in priority over that Other Property) be applied:

- a) first, in payment of all expenses (including legal expenses on a full indemnity basis and all taxes thereon and the remuneration of the Receiver, but subject to any direction in respect thereof made by any court); and
- b) secondly, in payment to the Suppliers of the Secured Money.

## 13. Other Documentation

13.1 The Customer expressly agrees and acknowledges that it is a condition of the Suppliers approving the Customer's application for credit that any supply of Goods by the Suppliers is subject only to the Sales Conditions. In no circumstances may the Customer introduce or attempt to introduce contractual terms governing such supply which are inconsistent with the Sales Conditions.

13.2 The parties hereby acknowledge that no representations or warranties have been made other than those expressly recorded in these Credit Terms and the Sales Conditions and that, in respect of these Credit Terms or any part including the transactions contemplated pursuant to this Agreement, no party has relied or will rely upon any representations or information, whether oral or written, previously provided to or discovered by it.

## 14. Agreement

14.1 The Customer has read and agrees to the Credit Terms and warrants that all information provided by the Customer to the Suppliers is true, complete and correct. The Customer requests the Suppliers to accept this credit application and upon acceptance by the Suppliers the Customer agrees to be bound by these Credit Terms and the Sales Conditions.

14.2 Subject to any contrary intention expressed in writing, the Suppliers accept this credit application by conduct upon supplying any Goods to the Customer post-dating this credit application.

## 15. Governing Law

15.1 The Suppliers and the Customer agree that these Credit Terms and Sales Conditions and any agreement for the supply of Goods by the Suppliers to the Customer is governed by the law of New South Wales and agree to submit to the nonexclusive jurisdiction of the Courts in New South Wales and any court hearing appeals from those Courts.

## 16. Waiver

16.1 The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

# SALES CONDITIONS

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

ABN / ACN / ARBN: \_\_\_\_\_

The Suppliers will supply Goods to the Customer on the following Sales Conditions unless otherwise notified or agreed to by the Suppliers in writing.

## 1. INTERPRETATION

1.1 In these Sales Conditions:

- a) The singular includes the plural and vice versa and any gender includes any other gender.
- b) "**Containers**" means any containers, pallets, pallets, crates or tanks used for the delivery of Goods, but excludes any cardboard packaging.
- c) "**Customer**" means the purchaser of the Goods set out in the credit application to which these Sales Conditions are referred or, where there is no credit application, the purchaser of the Goods set out in the invoice.
- d) "**Force Majeure Event**" means circumstances beyond the reasonable control of the Suppliers, including (without limitation) strikes, blockades, lock-outs, accidents, explosions, war, terrorism, sabotage, storm, fire, flood, earthquake, drought, disease (including any pathogen outbreak such as salmonella or campylobacter which poses a food safety risk to the public or a risk to live bird health or welfare), pandemics, epidemics, quarantine restrictions, breakdown of plant or machinery, unavailability or shortage of raw materials or utilities such as power, gas and water from normal source of supply, act of God or any unforeseen order or direction of any government, government authority or instrumentality affecting the production of the Goods.
- e) "**FIS**" means free into the Customer's nominated store in state capital cities (excluding Darwin).
- f) "**Goods**" means the Goods delivered by the Suppliers to the Customer.
- g) "**GST**" means a tax, levy, duty, charge, or deduction together with any related additional tax, interest, penalty, fine or other charge imposed by or under the GST Act.
- h) "**GST Act**" is a reference to A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended.
- i) "**Interest Rate**" means a rate equal to 3% per annum above the indicator lending rate, for the time being, of Westpac Bank accruing and calculated on a daily basis until payment is made.
- j) "**Invoice**" means the document which may be provided to the Customer on or after delivery of the Goods describing those Goods, their price and which may contain these Sales Conditions.
- k) "**Laws**" means the common law and the laws of the Australian Commonwealth, State or Territory legislation.
- l) "**Purchase Price**" means the price to be paid for the Goods as shown on the Invoice calculated by reference to the Suppliers' current price list for the Customer and such other terms as may be agreed by the Customer and the Suppliers from time to time subject to conditions 2.2. The Purchase Price is inclusive of GST.
- m) "**Taxable Supply**" has the meaning given in the GST Act.

## 2. Price

- 2.1 Unless otherwise agreed or required by law, the Purchase Price includes: any sales tax, GST, duty or other impost (other than income tax) on the sale of the Goods; delivery (if FIS); and standard packing for delivery.
- 2.2 The Suppliers may vary the price of the Goods at any time in its discretion but will use its reasonable endeavours to provide the Customer with prior written notice of any price increase.

## 3. Supply of Goods

- 3.1 The Customer may order Goods from any of the Suppliers either in writing, by telephone, by electronic means or by such other method as the parties may agree from time to time.
- 3.2 An order for Goods constitutes an offer to purchase the Goods by the Customer subject to the Sales Conditions from any of the Suppliers. Each order must nominate a delivery point for the Goods.
- 3.3 Each of the Suppliers may at its absolute discretion decline any order either in whole or in part.
- 3.4 The Suppliers may from time to time at their absolute discretion vary the Sales Conditions and will notify the Customer accordingly. The Suppliers will give notice of any variation by posting an updated version of these Sales Conditions online on the Suppliers website. Any changes will be effective as at the date they are posted, unless a different effective date is specified. The Customer is responsible for checking for updates to these Sales Conditions and the continued ordering of Goods after any such changes take effect will constitute Customer's acceptance of such changes.
- 3.5 The price of Goods comprised in an order is to be calculated by reference to the Suppliers' current price list as made available to the Customer from time to time and such other terms as may be agreed by the Customer and the Suppliers from time to time.
- 3.6 Acceptance of an order by any of the Suppliers takes effect on delivery (and not before) by the Suppliers of the subject Goods to the delivery point nominated in the order.
- 3.7 No Suppliers undertake to deliver the Goods comprised in an order on any particular date or at any particular time notwithstanding a request by the Customer contained in the order for the Goods or elsewhere.

## 4. Delivery

- 4.1 Unless otherwise agreed, the Suppliers may select the method of delivery and the carrier and is not liable for any loss or damage of any kind whatsoever arising from late delivery.
- 4.2 The Customer acknowledges and agrees that time is not of the essence in relation to delivery and that even if the Goods are delivered after the requested date, where the Customer accepts the Goods it must pay for the Goods by the due date.

## 5. Payment Instalments

- 5.1 The Suppliers may deliver the Goods in instalments and the Customer must pay an amount for that instalment as notified by the Suppliers in the Invoice.
- 5.2 If any of the Suppliers fails to deliver any instalment the Customer must still accept and pay for the balance of the Goods delivered.
- 5.3 If the Customer fails to pay for any instalment in the time required the Suppliers may at their absolute discretion: refuse to deliver any further Goods until all amounts payable, whether due or not, are paid; or terminate the agreement for the supply of the Goods and recover damages.

## 6. Containers

- 6.1 Containers owned by the Suppliers at all times remain the property of the Suppliers. The Suppliers retain the right of possession of any containers not owned by them. Property to the Containers does not pass to the Customer in any circumstances.
- 6.2 All Containers are delivered to the Customer at its risk and the Customer must ensure that the Containers are kept clean, not damaged, and are returned on request to the Suppliers, or such other person as the Suppliers may request, in good condition.
- 6.3 The Suppliers will keep a record of the number and type of Containers delivered to the Customer (which the Customer agrees will be conclusive evidence of the number and type) and may charge the Customer for the replacement cost or such lesser amount determined by the Suppliers for each Container not returned or damaged by the Customer.
- 6.4 The Customer indemnifies the Suppliers against, and must pay the Suppliers on demand, the amount of all losses, liabilities and expenses arising out of or in connection with the possession or use of all Containers (delivered by the Suppliers) by the Customer. For the purpose of this indemnity, the Customer is deemed to be in possession of a Container from the time of delivery by the Suppliers until the Suppliers or the owner of the Container physically resumes possession.

## 7. Payment and Credit

- 7.1 Subject to condition 7.2, the Customer must pay the Purchase Price for the Goods in advance or cash on delivery.
- 7.2 If the Customer has the continuing credit approval of the Suppliers, the Customer must pay the Purchase Price in conformity with the Customer's Credit Terms into a bank account nominated by the Suppliers, unless otherwise agreed by the Suppliers.
- 7.3 If there is any dispute in relation to the Purchase Price, the Customer must notify the Suppliers of the reasons for the dispute within 48 hours of the date of the Invoice and must pay the undisputed amount of the Purchase Price in accordance with these sales conditions.
- 7.4 The Suppliers may set off any amount owed by the Suppliers to the Customer from any amount due by the Customer to the Suppliers.

## 7.5 Non-Payment

- 7.6 If payment is not made to any Suppliers when due, any Suppliers may:
  - a) withdraw any credit; and
  - b) not supply further Goods; and
  - c) charge interest on all amounts owing by the Customer to the Suppliers on a daily basis at the Interest Rate.
- 7.7 If payment is not made to any Suppliers when due the Customer will also pay to the Suppliers upon demand an amount equal to the amount of any additional GST that may become payable by the Suppliers as a result of the Customer's non-payment.
- 7.8 Should the Customer default in the payment of any monies due to any Suppliers, then the total of all monies due to any Suppliers by the Customer will immediately become due and payable. The Customer will pay or reimburse any expenses, costs or disbursements incurred or paid by all Suppliers in recovering outstanding monies including bank charges administration costs, debt collection agency fees and commissions and solicitor's costs.

## 8. Goods and Services Tax

- 8.1 In addition to any GST included in the Purchase Price of the Goods, the Customer must pay to the Suppliers on demand any GST payable in relation to any other Taxable Supplies which is subject to these conditions.
- 8.2 If any part of the Purchase Price is referable to both a Taxable Supply and anything that is not a Taxable Supply, the GST-exclusive portion of the Purchase Price will be determined by the Suppliers.
- 8.3 If the Suppliers determine on reasonable grounds that the amount of GST referable to any Taxable Supply which is subject to these conditions differs for any reason from the amount of GST included in the Purchase Price, the amount of GST payable by the Customer will be adjusted accordingly and recovered from the Customer or credited to the Customer's account as appropriate. Where the Suppliers have paid the difference between the two amounts to the Commissioner of Taxation, whether or not as part of a larger sum, no amount will be paid to the Customer under this clause unless the Suppliers are entitled to a refund or credit of such amount from the Commissioner of Taxation.

## 9. Right of Entry and Repossession

- 9.1 The Customer must, without requiring prior statutory or PPSA notice, permit representatives of the Suppliers to enter any premises under the control of the Customer where the Goods are held, for the purpose of inspecting the premises and the Goods to check that the

Customer is complying with these Sales Conditions.

- 9.2 If:
- a) the Customer fails to pay any of the Amount Due; or
  - b) the Customer becomes or, in the reasonable opinion of the Suppliers, is in danger of becoming, insolvent or bankrupt, the Suppliers may retake possession of the Goods.
  - c) If the Suppliers retake their possession of the Goods, the Suppliers may sell or otherwise dispose of the Goods at its absolute discretion.

## 10. Warranties by the Customer

- 10.1 The Customer warrants that it:
- a) has product safety and product recall procedures in place which conform with the requirements of all Laws and the recommendations of the Australian and New Zealand Food Authority;
  - b) will not make any unauthorised use of or any claim to, intellectual or industrial property which pertains to the Goods or is the property of the Suppliers;
  - c) will handle and store Goods at all times as directed by the Suppliers or in the absence of such direction, in accordance with prevailing industry standards or procure them to be so;
  - d) will handle and store Containers safely, with due care, and in accordance with occupational or public health and safety requirements.

## 11. Warranties by the Suppliers

- 11.1 Subject to condition 12 and to the maximum extent permitted by law, the Suppliers exclude all warranties, conditions, liabilities or representations in relation to the Goods or the correctness of information, advice or other services concerning the Goods or otherwise, except that this does not limit any applicable statutory guarantees provided under the *Competition and Consumer Act 2010* (or any successor legislation) or equivalent legislation that cannot be excluded

## 12. Limitation of Liability

- 12.1 To the extent permitted by law, the liability of the Suppliers and its officers, employees or agents for a breach of any non-excludable guarantee, condition or warranty is limited, at the Suppliers' option, to any one or more of the following:
- a) the replacement (from any source) of those Goods or the supply of equivalent Goods;
  - b) the payment of the costs of replacing those Goods or of acquiring equivalent Goods, by credit to the Customer's account, in cash or by cheque at the Suppliers absolute discretion; or
  - c) repayment of any part of the Purchase Price of those Goods which has been paid by the Customer, by credit to the Customer's account, in cash or by cheque at the Suppliers absolute discretion.
- 12.2 Notwithstanding any of other provision of these Sales Conditions, neither party will be liable to the other party for any claim arising out of or in connection with the supply of Goods (whether arising in contract, in equity, in tort (including negligence) or by way of indemnity, under statute or otherwise at law to the extent the relevant claim comprises any Excluded Loss. In this condition Excluded Loss means any losses in connection with special, exemplary, or punitive damages, loss of production, loss of revenue, loss of profit or anticipated profit, loss of business reputation, business interruptions of any nature, loss of opportunities, loss of anticipated savings or wasted overheads in each case regardless of whether or not the loss may ordinarily be considered to arise naturally from a breach of these Sales Conditions or the event giving rise to the loss; or can reasonably be supposed to have been in the contemplation of the parties at the date of ordering the Goods as a probable result of a breach of these Sales Conditions. This exclusion extends to any promotional

activities, advertising, statement about the Goods or their performance or characteristics of or by the Customer.

## 13. Defective or Damaged Goods

- 13.1 Where Goods are short delivered, defective or damaged on delivery, the Customer must notify the Suppliers from whom the goods and invoice were supplied by telephone quoting the invoice or delivery note number and providing details of the claim within 48 hours of delivery.
- 13.2 The Suppliers will provide an 'Authorisation No.' as a reference to the claim and in authorisation of the goods to be further inspected by the Suppliers representative in assessment of the claim.
- 13.3 If the nature of the defective or damaged goods cause or are likely to cause immediate danger to the health of consumers, the Customer must
  - a) notify the Suppliers immediately and must follow any product recall or withdrawal directions given by the Suppliers
  - b) store the defective or damaged good in an appropriate temperature controlled environment awaiting inspection and/or collection by a the Suppliers representative.
- 13.4 The Customer has no entitlement to return Goods which are outside the "use by" period of those Goods other than in accordance with this clause.
- 13.5 The Customer is deemed to have accepted the Goods if they are not rejected in accordance with this condition 13.

## 14. Force Majeure Events

- 14.1 Any Suppliers may suspend delivery or reduce the amount to be delivered if they are unable to deliver the Goods by reason of a Force Majeure Event.
- 14.2 If the effects of the Force Majeure Event continue for more than one calendar month, any of the Suppliers at their absolute discretion may terminate any agreement for supply of Goods to which these terms and conditions apply.
- 14.3 The Customer will have no claim against the Suppliers for any damages, loss, costs or expenses arising from delay or cancellation under this clause.

## 15. Alteration to Range

- 15.1 The Suppliers reserves the right, at its absolute discretion, to add to or remove from the range of products, including the Goods, supplied by the Suppliers, and may do so at any time without notice to the Customer.

## 16. General

- 16.1 **Waiver.** The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- 16.2 **Severability.** Any provision in these Sales Conditions which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. Otherwise the provision may be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these Sales Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.
- 16.3 **Sales Conditions Prevail.** As between the Suppliers and the Customer, if there is any inconsistency (whether expressly referred to or to be implied from these Sales Conditions or otherwise) between the provisions of these Sales Conditions and those of any document of the Customer, the provisions of these Sales Conditions prevail to the extent of the inconsistency.
17. **Governing Law.** The Suppliers and the Customer accept the law of New South Wales as the proper law of the agreement and agree to submit to the non-exclusive jurisdiction of the Courts in New South Wales and any court hearing appeals from those Courts.