



**APPLICATION FOR COMMERCIAL CREDIT**

**Applicant**

<b>Trading name</b>			
<b>Name of company, trust, person(s) or partnership operating business</b>			
<b>ACN</b>		<b>ABN</b>	
<b>Business street address</b>			
<b>Business postal address</b>			
<b>Contact person</b>		<b>Tel (b/h)</b>	
<b>Fax (b/h)</b>		<b>Email</b>	
<b>Date business commenced</b>		<b>Nature of business</b>	

**Details of partner/director**

<b>Name</b>		<b>DOB</b>	
<b>Address</b>		<b>Drivers licence</b>	
<b>Title</b>		<b>Mobile</b>	
<b>Name</b>		<b>DOB</b>	
<b>Address</b>		<b>Drivers licence</b>	
<b>Title</b>		<b>Mobile</b>	

**Purchasing contact**

<b>Name</b>		<b>Mobile</b>	
<b>Address</b>			
<b>Email</b>			

**Accounts payable contact**

<b>Name</b>		<b>Mobile</b>	
<b>Address</b>			
<b>Email</b>			

**Trade references**

<b>Name</b>		<b>Telephone</b>	
<b>Address</b>		<b>Fax</b>	
<b>Name</b>		<b>Telephone</b>	
<b>Address</b>		<b>Fax</b>	
<b>Name</b>		<b>Telephone</b>	
<b>Address</b>		<b>Fax</b>	

# TERMS AND CONDITIONS

## Part A – General Terms and Conditions (Applicable to All Customers)

### Definitions

- Application for Commercial Credit** means the application by the Applicant for a credit account with the Supplier whether completed prior to or contemporaneously with the acceptance of these terms and conditions.  
**Agreement** means any agreement for Supplier to supply goods to the Applicant pursuant to these terms and conditions and/or any Quote provided by the Supplier incorporating these terms and conditions.  
**Charges** means any charges incurred pursuant to these terms and conditions including charges for any additional services, delivery, interest and defaults.  
**Deposit** means any deposit or upfront payment specified in a Sales Contract or Quote in respect of an Order.  
**Force Majeure Event** has the meaning given in clause 76.  
**Goods** means goods supplied by the Supplier to the Applicant as described on tax invoices, quote or any other forms as provided by the Supplier to the Applicant.  
**Non-UCT Entity** means an Applicant that does not satisfy either of the conditions under s23(4)(b) of Part 2-3, Schedule 2 of the Competition and Consumer Act 2010 (Cth).  
**Order** means any request, contract request or purchase order, whether in writing, electronic or verbal, from the Applicant for the supply of goods from the Supplier.  
**PPSA** means the Personal Property Securities Act 2009 (Cth) and any regulations made under it, as amended or replaced from time to time.  
**PPSR** means the Personal Property Securities Register established under the PPSA.  
**Price** means the cost of the goods as specified by the Supplier or these terms and conditions.  
**Quote** means any document, including contracts generated by the Supplier setting out the terms of sale of goods.  
**Sales Contract** means any sales contract, order confirmation or similar agreement issued by the Supplier in respect of specific Goods or Orders, including any "Sales Contract" used by the Supplier from time to time.  
**Small Business** means an Applicant that does satisfy either (or both) of the conditions under s23(4)(b) of Part 2-3, Schedule 2 of the Competition and Consumer Act 2010 (Cth).
- ### Application of Terms
- The terms and conditions set out in this agreement apply to all supplies of goods and/or services by the Supplier to the Applicant, unless expressly varied in a Quote or Sales Contract signed or accepted by the Supplier.
  - By accepting a quote or placing an order with the Supplier, the Applicant accepts these terms and conditions.
  - These terms and conditions will be accepted by either:
    - signing and returning a copy of the credit application and deed of guarantee and indemnity (if applicable);
    - continuing to trade with the Supplier and/or obtaining credit from the Supplier after receipt of these terms and conditions;
    - paying any Deposit or making any payment towards an Order; or
    - placing any Order or accepting delivery of any Goods after receipt of these terms and conditions.
  - Part B** of these terms and conditions applies only to Non-UCT Entities. **Part C** of these terms and conditions applies only to Small Businesses. Where there is any inconsistency between Part A and Part B or Part C, the provisions of Part B (for Non-UCT Entities) or Part C (for Small Businesses) prevail to the extent of the inconsistency.

### Payment terms

- Payments are to be made in accordance with the terms outlined in any Quote, Sales Contract or as stated in the tax invoice. To the extent of any inconsistency between a Sales Contract and these terms and conditions in relation to payment for a particular Order, the Sales Contract prevails for that Order only.
- If no terms of payment are outlined, payments are to be made thirty (30) days (or such other period as nominated by the supplier herein) from the end of the month of the date of the Tax Invoice.
- The Applicant must check all invoices and advise the Supplier of any errors or omissions within seven (7) days of receipt.
- Where the Supplier issues a Sales Contract in respect of a particular Order, that Sales Contract forms part of the Agreement between the Supplier and the Applicant for that Order. To the extent of any inconsistency between the Sales Contract and these terms and conditions in relation to that Order, the Sales Contract prevails, but only for that Order.
- Any credit application, guarantee and indemnity or other security granted by the Applicant or any guarantor continues to apply to all Sales Contracts and Orders, and is not limited or affected by the issue, variation, cancellation or performance of any Sales Contract.
- Where a Quote or Sales Contract specifies that a Deposit is payable:
  - the Applicant must pay the Deposit within the time required in the Quote or Sales Contract;
  - if the Supplier terminates the relevant Sales Contract for its convenience or due solely to the Supplier's default, the Supplier will refund the Deposit for that Sales Contract; and
  - if the Applicant fails to pay the Deposit within the required time, the Supplier may, at its option, cancel the relevant Order and/or Sales Contract by written notice to the Applicant without liability.

### Delivery

- Any date or time for delivery stated by the Supplier (including in any Quote or Sales Contract) is an estimate only. The Supplier will endeavour to meet all delivery estimates provided. The Supplier will provide reasonable notice to the Applicant of any changes to the delivery times and notice ahead of the initial estimate provided.
- The Applicant and Supplier together agree that they shall take all reasonable steps to enable goods/services to be supplied at the time and place as agreed to between the parties.
- The Supplier may deliver the goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- If the Applicant requests that goods are delivered either to an unattended location, left outside, or are left outside the Supplier's premises for collection, the Applicant acknowledges that the Supplier will deliver the goods as requested at the Applicant's risk. The Applicant is responsible to insure any goods partly or completely installed or delivered on site against theft or damage.
- The goods will be deemed delivered when the Applicant takes possession of the goods or the Applicant's nominated agent or representative takes possession of the goods, including if the Applicant takes possession of the goods by collection from the Supplier's premises. Delivery of goods to a third party or place nominated by the Applicant is deemed to be proper delivery to the Applicant.
- The Applicant will pay all reasonable storage, insurance charges, delivery and re-delivery charges in relation to the goods in the event that delivery is unable to be completed for any reason, including but not limited to failure by the Applicant or its carrier to take delivery, delays in unloading, port congestion, industrial action, government inspections, quarantine, customs delays or other logistics disruption.
- The Supplier has the right to sub-contract any delivery service.
- The Applicant shall inspect all goods on delivery and shall within seven (7) days notify the Supplier in writing of any alleged defect or shortage in quantity, damage or failure to comply with the description, order or quote. The Supplier will have an opportunity to

- inspect the goods within a reasonable time following delivery and must store the goods appropriately until such time.
- The Applicant is responsible for any and all storage costs incurred by the Supplier as a result of goods ordered by the Applicant, which have not yet been delivered. The storage charges are applicable for the duration of storage by the Supplier.
- The Supplier will not be liable for any loss or damage suffered by the Applicant or a third party if:
  - the goods are not properly stored by the Applicant;
  - the goods are not stored in proper conditions, including conditions that are humid or have drastic changes in temperature; and
  - the goods are stored by the Applicant for excessive periods of time and beyond the reasonable shelf life of the particular goods (the Applicant is responsible for checking the shelf life of the goods).
- The Supplier makes no guarantees or representations to the Applicant in relation to the quality or performance of the goods if the goods are not properly stored or are stored for excessive periods of time.
- Any additional costs reasonably incurred by the Supplier in respect of the delivery, shipment, transport, handling or storage of the goods, including but not limited to ocean and inland freight, detention charges, demurrage, port charges, storage, container hire, container detention, congestion surcharges, war-risk or emergency surcharges, pallet breakages, stevedoring or other ancillary costs associated with delivery, are to be borne by the Applicant and may be invoiced as charges.
- Without limiting clause 23, where the goods are shipped in containers all reasonable container detention, demurrage, storage, handling and related charges are the Applicant's responsibility.

### Jurisdiction

- The Applicant acknowledges and agrees that this agreement will be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
- The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
- The parties to this agreement submit to the exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.
- Before commencing any court proceedings (other than proceedings for the recovery of undisputed monetary sums), a party must give the other party written notice of the dispute and senior representatives of each party must meet (in person or by telephone or video conference) within fourteen (14) days to attempt in good faith to resolve the dispute. If the dispute is not resolved within twenty-one (21) days after that meeting, either party may commence court proceedings.

### Purpose of credit

- 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 and Quotations

- 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 to purchase received by it upon provision of written reasons to the Applicant. Only written acceptance by the Supplier of the Applicant's offer will complete a contract.
- Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions. The Applicant acknowledges that any terms or conditions contained in or accompanying any purchase order, supply request or other document issued by the Applicant are of no effect and do not form part of any Agreement unless expressly accepted in writing by an authorised officer of the Supplier.
- A quote supersedes any prior verbal order, agreement, price or verbal representation unless the terms are subsequently included in the quote.
- A quote is valid for the time set out in the quote and if no time is specified for forty-eight (48) hours only and will expire thereafter, unless a purchase order is submitted within that time.
- Quotations provided by the Supplier may be varied or withdrawn, due to external factors outside of the Supplier's control, including (without limitation) increases in the price of raw materials, resins or feedstock, changes to exchange rates, increases in labour, energy, freight or logistics costs, emergency surcharges, war-risk surcharges or similar imposts, or other material changes in market conditions between the date of provision of a Quote and acceptance by the Applicant.
- The Supplier may vary the price in a quote for the supply of goods where changes to the exchange rate, international or domestic freight rates, emergency or war-risk surcharges, congestion or port charges, or market price cause an increase in the cost to the Supplier between the date of provision of a quote or Sales Contract and the date of shipment or delivery, and the Supplier will provide reasonable notice to the Applicant of any variation to the Price under this clause and, if requested, reasonable supporting information regarding the relevant change in costs.
- The Supplier may charge a deposit or require upfront payment on any order by the Applicant where specified in the Quote or Sales Contract.

### Retention of title

- Title in the goods does not pass to the Applicant until 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 on any account whatsoever (including money owing under any Quote, Sales Contract or Agreement). The Applicant acknowledges that the retention of title under this clause secures all such amounts and constitutes, for the purposes of the PPSA, an "all monies" security interest.
- Whilst 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 and not yet sold.
- Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity 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.
- 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 as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.
- The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 40 thereof unless and until the funds held on trust are remitted to the Supplier.
- The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
- The Applicant will be responsible for the Supplier's reasonable costs and expenses in exercising its rights under clause 42. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
- The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant

hereby grants a licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.

45. For the avoidance of doubt:

- (a) the Supplier's interest in the Goods and their proceeds under clauses 37 to 44 constitutes a "purchase money security interest" (PMSI) and, where applicable, an "all-monies" security interest pursuant to the PPSA;
- (b) the Supplier is entitled to register one or more security interests (including a PMSI and/or an all-present and after-acquired property security interest) on the PPSR to secure all amounts owing by the Applicant to the Supplier.

#### **Cancellation of terms of credit**

46. The Supplier may terminate or suspend the provision of goods/services by written notice to the Applicant in the event of a material breach of these terms by the Applicant. For a Small Business, clause 121 applies instead.
47. Upon cancellation or termination, all liabilities properly incurred by the Applicant become due and payable to the Supplier in accordance with the applicable Part of this agreement

#### **Cancellation and Returns**

48. The Supplier may, subject to payment by the Applicant of reasonable loss and expenses incurred by the Supplier in reliance on the order, agree to the Applicant cancelling an order after acceptance and before delivery. For a Small Business, loss of profits is excluded unless expressly stated in Part C.
49. At its discretion, and provided that all expenses are paid, the Supplier may accept return of the goods provided that they in their original condition (unopened and unused). This will appear as a credit against the Applicant's credit account.

#### **Indemnity, risk and confidentiality**

50. The Applicant agrees to indemnify the Supplier against claims to the extent caused by the Applicant's breach of this agreement, negligence or wilful misconduct. For a Non-UCT Entity, clause 108 applies. For a Small Business, clause 122 applies.
51. Risk in any goods supplied under the credit application agreement will pass to the Applicant upon delivery to the Applicant.
52. The Applicant must keep confidential, and must ensure that its officers, employees, agents and contractors keep confidential, all confidential information of the Supplier, including:
  - (a) the terms of this agreement, any Quote, any Sales Contract and any credit terms offered to the Applicant;
  - (b) all pricing, discounts, rebates, credit limits, volume commitments and commercial arrangements between the parties;
  - (c) all information relating to the Goods or Services supplied by the Supplier (other than information in the public domain through no fault of the Applicant), including product specifications, formulations, technical data, supply arrangements and logistics information; and
  - (d) any other information of the Supplier that is marked or notified as confidential, or that the Applicant ought reasonably to understand is confidential having regard to its nature and the circumstances of disclosure.
53. The Applicant may only disclose confidential information:
  - (a) to its professional advisers, financiers or insurers who have a need to know the information and are bound by confidentiality obligations;
  - (b) if required by law, a stock exchange or a government authority, in which case the Applicant must (to the extent lawful and practicable) give prior notice to the Supplier; or
  - (c) with the Supplier's prior written consent, and the Applicant must ensure that any person to whom it discloses Confidential Information under this clause complies with this clause as if they were the Applicant.

#### **Provision of further information**

54. The Applicant undertakes to comply with any reasonable written requests by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
55. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

#### **Corporations**

56. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors may be required to enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

#### **Trustee capacity**

57. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
  - (a) the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Applicant has the right to be reasonably indemnified out of trust assets;
  - (c) the Applicant has the power under the trust deed to sign this agreement; and
  - (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
58. The Applicant must give the Supplier a copy of the trust deed upon request.

#### **Partnership**

59. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners may be required to enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
60. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

#### **Insolvency**

61. If the Applicant becomes insolvent, is presumed insolvent, is unable to pay its debts as and when they fall due, enters into any scheme of arrangement with creditors, has an administrator, liquidator, receiver or receiver and manager appointed, is wound up or otherwise becomes subject to an insolvency event (Insolvency Event):
  - (a) the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder and under any Quote or Sales Contract;
  - (b) all amounts owing by the Applicant to the Supplier on any account (whether or not then due for payment) become immediately due and payable without the need for demand;
  - (c) The Supplier may, without liability, suspend or cancel any Agreement, Quote, Sales Contract or Order (in whole or in part), stop goods in transit, and/or withhold further supply of goods or services; and
  - (d) the Supplier's rights as a secured creditor under the PPSA and the Corporations Act 2001 (Cth) continue in full force and effect.
62. Without limiting any other provision of this agreement:
  - (a) the Applicant acknowledges that any retention of title and security interests granted to the Supplier under this agreement, any Quote or any Sales Contract continue to secure all amounts owing notwithstanding the appointment of an administrator, liquidator, receiver, receiver and manager or trustee in bankruptcy to the Applicant;
  - (b) the Applicant agrees that the Supplier's rights as a secured creditor under the PPSA and the Corporations Act 2001 (Cth) are not affected by any disclaimer, purported repudiation or termination of a contract by an external administrator, except to the extent required by law;
  - (c) to the extent permitted by law, the Applicant irrevocably consents to the Supplier enforcing its security interests and exercising its rights to seize, repossess or

otherwise deal with the Goods and their proceeds despite any administration, liquidation or other insolvency event affecting the Applicant; and

- (d) any payments received by the Supplier that are later claimed to be voidable, preferential or otherwise recoverable by an external administrator are taken not to discharge the Applicant's indebtedness for the purpose of this agreement and the Guarantors' obligations, and the Applicant remains liable to the Supplier for the full amount of such payments.

#### **Waiver**

63. 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. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.

#### **Costs**

64. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant under this agreement. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).
65. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including collection costs, debt recovery fees and legal costs on an indemnity basis.
66. Subject to clauses 67 and 68, payments by, or on behalf of, the Applicant will be applied by the Supplier as follows:
  - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 43 and 65.
  - (b) Secondly, in payment of any interest incurred in accordance with clause 72.
  - (c) Thirdly, in payment of the outstanding invoice(s).
67. In circumstances where the Supplier seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Applicant will be allocated in a manner at the Supplier's absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which the Supplier seeks to enforce its purchase money security interest.
68. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its discretion, allocate and/or retrospectively reallocate payments in a manner reasonably required for the operation of the Supplier's securities and accounts, including in a manner inconsistent with clause 66 herein.
69. Payments allocated (and/or reallocated) under clause 66 and/or 67 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.

#### **Taxes and duty**

70. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
71. 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 of competent jurisdiction or by any authority charged with its administration;the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on reasonable written demand.

#### **Interest rates**

72. The interest rate on any outstanding debts is calculated at the Reserve Bank of Australia rate plus five (5) per cent per annum.

#### **Set-off**

73. The Applicant must pay all amounts in full by the due date, even if the Applicant disputes an invoice or claim, except to the extent otherwise provided in Part C. Any dispute will be dealt with in accordance with this agreement and, if upheld, the Supplier will issue a credit note or refund.
74. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier. The Applicant must not initiate any charge-back, reversal or similar retrieval of any payment made to the Supplier through any financial institution or payment platform.

#### **Force Majeure**

75. The Supplier is not liable for any loss caused to the Applicant by reason of any Force Majeure Event.
76. A Force Majeure Event means any event beyond a party's reasonable control, including (without limitation):
  - (a) war, armed conflict, terrorism, sanctions, embargoes or trade restrictions;
  - (b) government intervention, export or import bans, tariffs, quotas or regulatory action;
  - (c) natural disaster, pandemic, epidemic or quarantine;
  - (d) fire, explosion, flood or severe weather;
  - (e) strike, lockout or industrial action;
  - (f) disruption to shipping, port congestion, vessel diversion, closure of sea lanes or airspace, or transport infrastructure failure;
  - (g) shortage of raw materials, refinery or manufacturing disruption (including disruption to petrochemical, resin or polymer supply chains); or
  - (h) failure or interruption of any supply chain or logistics corridor relied on by the Supplier.
77. Where a party is affected by a Force Majeure Event:
  - (a) its obligations under any Agreement, Quote or Sales Contract are suspended to the extent and for the period that they are affected by the Force Majeure Event;
  - (b) it must give the other party written notice of the Force Majeure Event and the obligations affected as soon as reasonably practicable; and
  - (c) it must take reasonable steps to mitigate the effects of the Force Majeure Event, having regard to the nature of the event and the cost and practicality of mitigation.
78. If a Force Majeure Event affecting the Supplier continues for more than sixty (60) days, the Supplier may, by written notice to the Applicant, cancel any affected Order or Sales Contract without liability to the Applicant, other than the obligation to refund any Deposit actually received by the Supplier for Goods that will not be supplied as a result of such cancellation.

#### **Miscellaneous**

79. The Supplier is not liable for indirect or consequential loss suffered by the Applicant as a result of the goods and/or services supplied under this agreement or any Quote or any Sales Contract, except to the extent liability cannot lawfully be excluded or limited, and subject to Part B or Part C as applicable.
80. Despite clause 28, the parties may agree to submit a dispute to mediation before commencing court proceedings. For a Non-UCT Entity, clause 113 applies.
81. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register, perfect and maintain the security interest granted by the Applicant under the PPSA, including providing all information required for registration, promptly signing any further documents and ensuring that any error in a registration is corrected.
82. 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.
83. The Applicant further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
84. The Applicant grants the Supplier the right, with reasonable prior notice (or immediately if a payment default has occurred and immediate action is reasonably necessary), to enter upon the Applicant's property or premises, or any other premises where the goods are

stored, to exercise the Supplier's rights under the PPSA. For a Small Business, clause 124 applies.

85. 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 the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

#### Severance

86. 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.
87. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

#### Variation

88. Any variation to these terms and conditions must be made in accordance with the applicable provisions of Part B or Part C.
89. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
90. Variations requested by the Applicant will only be binding upon the Supplier if they are accepted in writing.

#### Consent to register

91. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.

#### Entire agreement

92. 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.
93. 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

94. The Applicant agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* contained in this document.

### Part B – Additional terms applying only to Non-UCT Entities

The following clauses apply only to a Non-UCT Entity and prevail to the extent of any inconsistency with Part A.

#### Acceptance and variation

95. In addition to clause 4 of Part A, these terms and conditions will be accepted if the Applicant does not advise the Supplier that it takes issue with any of the terms and conditions within fourteen (14) days after receipt of these terms and conditions.
96. Primaplas Pty Limited ACN 003 720 474 and their related bodies corporate (as that term is defined in the Corporations Act 2001) (Supplier) may, at any time, upon the provision of 48 hours' written notice to the Applicant, vary the terms and conditions of trade.
97. If the Applicant does not agree with the variations proposed by the Supplier, they must notify the Supplier in writing within fourteen (14) days from receipt of the written notice that the variations are not agreed to. The Supplier and/or the Applicant will then be at liberty to suspend/withdraw credit facilities if no agreement can be reached between the parties regarding the proposed variations. Absent notice from the Applicant, the varied terms and conditions of trade may be deemed accepted.
98. Failing advice from the Applicant that the invoice contains any errors or omissions, the invoice may be deemed accepted by the Supplier.
99. Should the Applicant not pay for the goods, including but not limited to charges for shipping, detention charges or pallet breakages, 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 ten (10) percent of the amount of the invoice payable.

#### Delivery and storage

100. Failure to meet delivery estimates will not give rise to grounds for cancellation or termination or claim for loss and damages by the Applicant
101. If the Applicant fails to notify the Supplier in accordance with clause 19 of Part A, then the goods shall be deemed to have been delivered free from any defect or damage at the expiration of seven (7) days after delivery.
102. If the goods are in anyway damaged or the quality of the goods deteriorates during storage by the Supplier, the Supplier is not liable for any loss or damage which may be suffered by the Applicant or a third party if the goods do not perform as required. The Supplier makes no representations to the Applicant in relation to the quality of the goods following storage

#### Security and deposits

103. 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 as capacity as trustee, the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
104. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Applicant (in the event that there is no default by the Applicant in carrying out its obligations hereunder).
105. 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 as defined in the Personal Property Securities Act 2009 (PPSA)) 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 securities to reflect the terms herein.
106. Where a Quote or Sales Contract specifies that a Deposit is payable, the Deposit is non-refundable to the Applicant if the Applicant cancels the relevant Order or otherwise fails to perform its obligations in relation to that Order, and the Supplier is not obliged to deliver any Goods up to the value of the Deposit in those circumstances.
107. The Supplier reserves the right to terminate or suspend the provision of goods/services by written notice to the Applicant in the event of any breach of these terms by the Applicant. The Supplier will not be liable to the Applicant for any loss or damage suffered as a result of such termination.

#### Enforcement and liability

108. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim that arises out of the goods and 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.
109. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA (unless otherwise agreed to in writing by the Supplier and the Applicant):
- (a) under section 95 to receive notice of intention to remove an accession;
  - (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
  - (c) under section 121(4) to receive a notice of enforcement action against liquid assets;
  - (d) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
  - (e) under section 130 to receive a notice to dispose of goods;
  - (f) under section 132(2) to receive a statement of account following disposal of goods;
  - (g) under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
  - (h) under section 135 to receive notice of any proposal of the Supplier to retain goods;
  - (i) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
  - (j) under section 142 to redeem the goods;
  - (k) under section 143 to reinstate the security agreement; and
  - (l) under section 157(1) and 157(3) to receive a notice of any verification statement.
110. All payments required to be made by the Applicant under this agreement will be made free of any set off, or counterclaim and without deduction or withholding, unless agreed to otherwise by the Supplier and the Applicant in writing or required by law.
111. The Supplier is not liable for loss of profit, economic or financial loss, loss of revenue, loss of opportunity, loss of production, loss of contract, loss of goodwill, loss of anticipated savings, 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 Quote or any Sales Contract.
112. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.
113. Despite clause 28, if the Applicant is dissatisfied with any Goods and/or Services supplied under this Agreement, any Quote or any Sales Contract, the Applicant must, as a condition precedent to commencing any claim, action or proceeding, first notify the Supplier in writing of the nature of the dissatisfaction and engage in good faith negotiations with the Supplier to resolve this. If the issue is not resolved within 14 days of the notice referred to in this clause, the Applicant must submit the dispute to mediation administered by a mutually agreed mediator, or failing agreement, a mediator appointed by the President of the Law Society of New South Wales.

#### Further Variation

114. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant or by publishing the varied terms and conditions on the Supplier's website. The Applicant will be provided with fourteen (14) days to accept the variation/s, failing which the variations may be deemed accepted by the Supplier

### Part C – Additional terms applying only to Small Businesses

The following clauses apply only to a Small Business and prevail to the extent of any inconsistency with Part A.

#### Variation and payment

115. Any variation proposed by the Supplier to these terms and conditions will only take effect if agreed in writing by the Applicant, except for clerical corrections or changes required by law that do not materially prejudice the Applicant.
116. Should the Applicant not pay for the goods, including but not limited to charges for shipping, detention charges or pallet breakages, 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 may recover its reasonable costs actually incurred in relation to collection and enforcement.
117. Failure to meet delivery estimates will not of itself entitle the Applicant to terminate, but the Applicant retains any rights and remedies available at law in respect of unreasonable delay causing loss that is not excluded by this agreement or by law.

#### Delivery, storage and security

118. If the goods are in anyway damaged or the quality of the goods deteriorates during storage by the Supplier, the Supplier is not liable for any loss or damage except to the extent caused by the Supplier's negligence, breach of this agreement, or liability that cannot lawfully be excluded.
119. The Applicant does not grant any security interest over real property or other assets beyond the Goods supplied, their proceeds, and such other personal property security interests as are reasonably necessary to secure the Supplier's rights under this agreement.
120. Where a Quote or Sales Contract specifies that a Deposit is payable, the Deposit is refundable to the Applicant to the extent the Supplier has not incurred reasonable costs or losses in reliance on the Order, if the Applicant cancels the relevant Order on reasonable notice.

#### Termination, indemnity and PPSA

121. The Supplier may terminate or suspend the provision of goods/services by written notice to the Applicant only for a material breach by the Applicant that is not remedied within fourteen (14) days after written notice requiring remedy, or for an Insolvency Event.
122. The Applicant agrees to indemnify the Supplier only against third party claims to the extent caused by the Applicant's negligence, breach of this agreement or wilful misconduct.
123. The Applicant does not waive rights it would otherwise have under the PPSA, and the Supplier must comply with applicable notice and enforcement requirements under the PPSA except to the extent a waiver is permitted by law and separately agreed.
124. The Supplier may enter upon the Applicant's property or premises, or any other premises where the goods are stored, on reasonable prior notice and at reasonable times, except where immediate entry is reasonably necessary to protect or preserve Goods in respect of which the Supplier has an enforceable security interest.
125. The Applicant may withhold payment of a genuinely disputed amount if it gives prompt written notice of the dispute and the basis of the dispute but must pay all undisputed amounts when due.

#### Liability and disputes

126. The Supplier is not liable for indirect or consequential loss, including loss of profit, loss of revenue or loss of opportunity, except to the extent such loss arises from the Supplier's negligence, wilful misconduct, or a breach of a guarantee or obligation that cannot lawfully be excluded, limited or modified.
127. The Supplier must not require the Applicant to submit to mandatory mediation as a condition precedent to commencing a claim, action or proceeding, but the parties may agree to mediation after a dispute arises.

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>1. Signature</b>		<b>2. Signature</b>	
<b>Name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>Date</b>			
<b>Signature</b>		<b>Signature</b>	
<b>Name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>Date</b>			

### PRIVACY STATEMENT

- This privacy statement encompasses consents, notifications and disclosures under or in relation to the *Privacy Act 1988 (Act)*.
- 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. 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

matters in accordance with s21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what the Supplier may disclose and the Applicant's and/or Guarantor(s)' right to request limitations to the use of their information.

Equifax Australia Level 15, 100 Arthur Street NORTH SYDNEY NSW 2060 Tel: 1300 921 621	Creditor Watch Level 13, 109 Pitt Street SYDNEY NSW 2000 Tel: 1300 501 312	NCI Level 2, 165 Grenfell St ADELAIDE SA 5000 Tel: 1800 882 820
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Dun & Bradstreet Level 2, 143 Coronation Drive MILTON QLD 4064 Tel: 07 3360 0600	Experian Level 6, 549 St Kilda Road MELBOURNE VIC 3004 Tel: 03 9699 0100
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- The Supplier may disclose Information to, and about them and the Applicant and/or Guarantor(s) hereby acknowledge that they consent to the disclosure of such information to the Supplier's employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective credit providers of the Applicant and/or Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit, and/or overseas recipients and recipients who do not have an Australian link.
- By reason of the Applicant's and/or Guarantor(s)' consent to the disclosure to overseas recipients hereunder, APP 8.1 will not apply to the Supplier's dealing with the Applicant's and/or Guarantor(s)' Information.
- A full copy of the Supplier's privacy policy and credit reporting policy can be obtained from the Supplier's website (details above) or by making a request in writing directed to the Supplier's privacy officer. The Supplier's privacy policy and credit reporting policy contain information about how to access and seek correction of Information, or how to complain about a breach of the Act, APP, code(s) and how the Supplier will deal with any such complaint.
- The Applicant and/or Guarantor(s) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to the Supplier within 14 days of receipt of this statement that its terms are not accepted, continuing to trade with the Supplier after receipt of this Statement or, if the Applicant and/or Guarantor(s) are directors or guarantors of a customer, by not taking steps to prevent the customer from continuing to trade with the Supplier after receipt of this statement.

## DEED OF GUARANTEE & INDEMNITY

<b>To</b>	Primaplas Pty Limited ACN 003 720 474 and its related bodies corporate		<b>(Supplier)</b>
<b>Name</b>		<b>Address</b>	
<b>Name</b>		<b>Address</b>	

**(Guarantors)** hereby covenant and undertake and if more than one, jointly and severally, as follows.

**Jurisdiction**

1. The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
2. The parties to this guarantee and indemnity submit to the exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

**Application of Terms**

3. Part B of this guarantee and indemnity applies only to guarantors who guarantee the obligations of a Non-UCT Entity. Part C of this guarantee and indemnity applies only to guarantors who guarantee the obligations of a Small Business. Where there is any inconsistency between Part A and Part B or Part C, the provisions of Part B (for Non-UCT Entity guarantors) or Part C (for Small Business guarantors) prevail to the extent of the inconsistency.

**Consideration**

4. In consideration of the Supplier extending or agreeing to extend credit or further credit to the Applicant at the Guarantors' request (testified by the Guarantors' execution of this agreement) for goods sold or to be sold from time to time, the Guarantors guarantee payment to the Supplier of all money which is now or at any time in the future becomes due and payable to the Supplier by the Applicant on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Applicant to the Supplier arising out of or in connection with any Agreement, Quote, Sales Contract or relationship of trustee and beneficiary.

**Guarantee and indemnity**

5. The Guarantors agree to guarantee and indemnify the Supplier against all losses damages or expenses that the Supplier may suffer as a result, either directly or indirectly, of any failure by the Applicant to make due payment of any money owing to the Supplier whether for goods sold or otherwise or to observe the terms of any agreement between the Applicant and the Supplier, including costs on an indemnity basis of any attempt or attempts to recover from the Applicant or any Guarantor and whether successful or not or whether frustrated by the Applicant or Guarantor or by operation of law and including costs ordered by a court to be paid by the Supplier to the Applicant or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier, subject to Part B or Part C (as applicable).
6. This guarantee and indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by the Supplier to the credit of any account of the Applicant or the Guarantors, or deemed to be held on trust by the Applicant for the Supplier, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 4 and 5 of this guarantee and indemnity. This guarantee and indemnity is a principal, continuing and unconditional obligation of each Guarantor and is in addition to, and not in substitution for, any other security or guarantee. It is not affected by any variation, extension, compromise, release, waiver or other dealing between the Supplier and the Applicant, including any variation to the terms of any Agreement, Quote, Sales Contract or credit facility, subject to Part C (if applicable).
7. Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
8. The Supplier will have the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Applicant to pay and with or without notice to the Applicant, as if the primary liability for any money owing was the Guarantors' own. Further, the Supplier will have the right to proceed against the Guarantors notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
9. This guarantee and indemnity will continue in force until such time as the Supplier releases the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Applicant.
10. This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of the Supplier against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
  - (a) any other security taken by the Supplier from the Applicant or from any other person;
  - (b) any waiver or indulgence, whether as to time or otherwise, given to the Applicant or to the Guarantors or any one or more of the Guarantors;
  - (c) by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
  - (d) any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

**Right of subrogation**

11. In the event of the Guarantors and/or the other Guarantors making any payment in respect to an obligation of the Applicant whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Applicant unless and until the Supplier has been paid in full.
12. In the event of the Applicant going into liquidation, the Guarantors will be prohibited from proving in competition with the Supplier unless and until the Supplier has been paid in full.

**Insolvency of Applicant**

13. No sum of money which the Applicant pays to the Supplier and the Supplier later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Applicant by reason of the *Corporations Act 2001*, *Bankruptcy Act 1966* or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Applicant.

**Costs**

14. The Guarantors agree to pay the Supplier's reasonable costs and disbursements actually incurred in recovering monies secured by this deed, including reasonable debt recovery agency fees and legal costs subject to Part B or Part C (as applicable).

**Variation**

15. The effect of any variation, indulgence or alteration is dealt with in Part B or Part C (as applicable).

**Severance**

16. If any provision of this guarantee and indemnity 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.

**Security/charge**

17. This guarantee and indemnity secures the repayment of all monies owed by the Applicant whatsoever, and this deed constitutes the entire guarantee.
18. Where the Guarantors have previously entered into an agreement with the Supplier by which the Guarantors have granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this deed and will secure all indebtedness and obligations of the Guarantors under this deed

**Personal Property Securities Act**

19. For the avoidance of any doubt, the security interest(s) created by this instrument in favour of the Supplier constitutes security interests pursuant to the *Personal Property Securities Act 2009*.

**Service of notices**

20. The Guarantors agree 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 Guarantors or the Guarantors' authorised representative.

**Privacy Act**

21. The Guarantors agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document

**Part B – Additional terms applying to Non-UCT Entity guarantors**

The following clauses apply only to guarantors who guarantee the obligations of a Non-UCT Entity and prevail to the extent of any inconsistency with Part A

**Costs and enforcement**

22. The Supplier is at liberty from time to time to charge the account of the Applicant with all costs, charges and expenses, legal or otherwise that the Supplier incurs in connection with:
  - (a) the account of the Applicant;
  - (b) this guarantee and indemnity;
  - (c) any other security in respect of the indebtedness of the Applicant to the Supplier;
  - (d) the preparation, completion and stamping of this deed; or
  - (e) the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of this deed; and
 the same will be part of the monies secured by this deed
23. The Guarantors agree to pay the Supplier's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis.

**Variation**

24. The Guarantors authorise the Supplier to give time or any other indulgence or consideration to the Applicant in respect of compliance with its obligations to the Supplier, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity
25. The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by the Supplier making any variation or alteration in the terms of its agreement(s) with the Applicant, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

**Security and PPSA**

26. The Guarantors charge in favour of the Supplier all of their estate and interest in any real property, whether held in their own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 4 and 5.
27. The Guarantors charge in favour of the Supplier all of their estate and interest in any personal property, whether held in their own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 4 and 5.
28. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.
29. The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.
30. The Guarantors appoint as their duly constituted attorney the Supplier's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

**Part C – Additional terms applying only to Small Business guarantors**

The following clauses apply only to guarantors who guarantee the obligations of a Small Business and prevail to the extent of any inconsistency with Part A

**Scope of indemnity**

31. In substitution for clause 5, the Guarantors agree to guarantee and indemnify the Supplier against losses, damages or expenses that the Supplier may suffer as a direct result of any failure by the Applicant to make due payment of any money owing to the Supplier for goods sold or to observe material obligations under any agreement between the Applicant and the Supplier. This indemnity does not extend to indirect or consequential loss, and does not include legal costs on an indemnity basis unless ordered by a court or tribunal.

**Variation**

32. Clause 6 applies, but the guarantee and indemnity may be affected by any material variation to the Applicant's obligations that substantially increases the Guarantor's exposure beyond what was reasonably contemplated at the time of execution, unless the Guarantor consents in writing to the variation.
33. The Guarantors do not authorise the Supplier to make variations to the Applicant's agreements that materially and adversely increase the Guarantors' liability under this deed without the Guarantors' prior written consent. Any such variation made without consent may, at the Guarantors' election, release the Guarantors from liability to the extent the variation increased the Guarantors' exposure.

**Security**

34. The Guarantors do not grant any charge over real property or general personal property beyond such PPSA security interests as are reasonably necessary to secure the Guarantors' obligations in respect of amounts actually owing by the Applicant under Agreements, Quotes and Sales Contracts entered into during the period this guarantee remains in force.
35. The Guarantors do not appoint the Supplier's company secretary or any officer of the Supplier as attorney to execute mortgages, bills of sale or caveats over the Guarantors' property. Any such security must be granted by separate instrument.

**Costs**

36. In substitution for clause 15, the Guarantors agree to pay the Supplier's reasonable and actually incurred external costs of recovering monies secured by this deed, but such costs do not include legal costs on an indemnity basis (unless ordered by a court or tribunal), internal administration costs or notional fees.

**Dated**

**Signed, sealed and delivered by the guarantor**

**1. Signature**

**Name**

**Position**

**Witness signature**

**Name**

**Signed, sealed and delivered by the guarantor**

**2. Signature**

**Name**

**Position**

**Witness signature**

**Name**