

Terms and Conditions of Trade

1. Definitions and interpretation

1.1 Definitions

In this Agreement, including the recitals, unless contrary to or inconsistent with the context, the following words shall have the meanings given to them as follows:

Agreement means this agreement and Terms and Conditions of Trade has the same meaning.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney.

Business Hour means an hour in the period between 9am to 5pm on a Business Day.

Claim means any claim, loss, liability, damage, proceeding, order, judgement, cost, or expense.

Client(s) mean a client or customer of the Company or any Related Entity in respect of whom the Customer, or any other service provider or contractor of the Company or Related Entity, is engaged to provide the Services or services that are the same or similar to the Services.

Commencement Date means the date specified at Item 3 of Schedule 1.

Company means the party specified in Item 1 of Schedule 1.

Confidential Information includes, without limitation, all business and financial information belonging or related to the Company, its Related Entities, its affairs, employees, members, Clients (whether former, present or potential), sales, marketing or promotional information, the terms of this Agreement (including but not limited to the price payable under this Agreement any information that is marked "Confidential"), or any information that, at law, would be considered secret or confidential information of the Company, its Related Entities, or any Clients.

Consequential Loss means any consequential, special, incidental, indirect, punitive or economic losses or damages and includes, without limitation, loss of use, loss of profit, loss of contract, loss of goodwill, loss of opportunity, or additional or wasted overheads.

Credit Account Application means a credit account application in the form as attached to this Agreement at Schedule 2.

Credit Card Authorisation means the credit card authorisation in the form as attached to this Agreement at Schedule 3.

Credit Reporting Body or CRB has the meaning given to that term in the Privacy Act.

Customer means the party specified in Item 2 of Schedule 1.

Delivery Location means the site, or such other place which is specified in the Order, or another place specified by the Customer as the place to which the Company must deliver the Products.

Force Majeure Event means a strike, lockout, riot, industrial action, fire, storm, tempest, act of God, material shortage, any outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority, any government law, regulation, restraint or requirement, or any other cause beyond the reasonable control of the parties (except where any of these events have been caused by the Customer).

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

GST has the meaning given to that term in the GST Act and includes any replacement or subsequent similar tax to that levied under the GST Act or any other Act.

Improvements means all inventions, improvements or discoveries conceived by Customer during the Term and which are related or are in any way connected with the Business or the Business of any of the Company's Related Entities.

Insolvency Event means for a Party, the happening of one or more of the following events:

- (a) in respect of a Party which is a body corporate:
 - (i) an administrator, liquidator or provisional liquidator is appointed or a receiver, receiver and manager or controller of any property of the body corporate is appointed;
 - (ii) the body corporate is dissolved;
 - (iii) the body corporate enters into a compromise or arrangement with creditors or a class of them;
 - (iv) the Party is unable to pay its debts as and when they fall due;
 - (v) any execution, attachment or other process of any court or authority or any distress is issued out against or levied upon any property of the Party and is not paid or satisfied within thirty (30) days of service; or
 - (vi) anything which is analogous or has an effect which is substantially similar to any events in paragraphs (a)(1) to (5) of this definition occurs under any Law.
- (b) in respect of a Party which is a natural person:
 - (i) the person becomes bankrupt under the Bankruptcy Act 1966 (Cth);
 - (ii) the person executes a deed of assignment or deed of arrangement under the Bankruptcy Act 1966 (Cth);
 - (iii) the creditors of the person accept a composition under the Bankruptcy Act 1966 (Cth);
 - (iv) the person is unable to pay his debts as and when they fall due;
 - (v) any execution, attachment or other process of any court or authority or any distress is issued out against or levied upon any property of the Party and is not paid or satisfied within thirty (30) days of service;
 - (vi) anything which is analogous or has an effect which is substantially similar to any events in paragraphs (b)(1) to (5) of this definition occurs under any Law; or
 - (vii) the person dies, ceases to be of full legal capacity or otherwise become incapable of managing its own affairs for any reason.

Intellectual Property includes all present and future rights to intellectual property of the Company that relates to its business, including (without limitation) any inventions and improvements, trademarks, designs, copyright, any corresponding property rights under the laws of any jurisdiction and any rights in respect of an invention, discovery, trade secret, secret process, know how, concept, idea, information, process, data or formula.

Interest Rate means the percentage specified in Item 4 of Schedule 1.

Invention(s) means any discovery, design, invention, idea, concept, technique, secret process or improvement in procedure conceived, made, developed or discovered by the Customer in the course of providing the Services (whether alone or with any other person) which is capable of being used or adapted for use in connection with the activities of the Company.

Invoice means a tax invoice as defined in the GST Act.

Laws and Regulations includes any statute, rule, regulation, proclamation, order, ordinance or by-law (whether federal, state, territorial or local), codes of practice, Australian Standards and compliance codes.

Notice means any notice, demand, consent, approval or communication authorised or required by this Agreement.

Order means an order to purchase the Products in accordance with clause 3.1.

Party means a party to this Agreement and **Parties** has the corresponding meaning.

Personal Guarantee Deed means the Personal / Directors Guarantee and Indemnity attached to this Agreement at Schedule 4.

Personal Information has the meaning given to that term in the Privacy Act.

Personnel means any person who is an employee, agent or contractor of the Customer or otherwise engaged by the Customer to provide or assist in the provision of the Services and includes any director, manager, officer or principal of the Customer.

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

PPSR means the Personal Property Securities Register established under section 147 of the PPSA.

Price means the price payable for the Products (plus any GST where applicable) as determined by the Company in accordance with clause 4.2.

Product(s) means all goods or services supplied by the Company to the Customer at the Customer's request from time to time (where the context so permits the terms 'goods' or 'services' shall be interchangeable for the other).

Privacy Act means Privacy Act 1988 (Cth).

Related Entity or Related Entities means any associated or related entity to the Company, including any parent company or subsidiary.

Supply means delivery or collection of the Products in accordance with clause 3.4.

Term has the meaning given to that term in clause 2.2(c).

1.2 Interpretation

In this Agreement, unless the subject or context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender includes every other gender;
- (c) any reference to a person includes a reference to a corporation, firm, authority, government or governmental agency;
- (d) a reference to any party to this Agreement or to any other deed, agreement, licence, document or other instrument required under this Agreement or for the purposes of this Agreement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (e) the clause headings in, and index to, this Agreement are for reference purposes only and do not in any way influence or affect the meaning of this Agreement;
- (f) where any clause contains sub-clauses, paragraphs or sub-paragraphs, each sub-clause, paragraph and sub-paragraph however called will be read and construed separately and independently of each other;
- (g) a reference to any deed, agreement, licence, document or other instrument (including this Agreement) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time;
- (h) a reference to a document includes any agreement in writing, certificate, notice or other instruction of any kind;
- (i) references to clauses are references to clauses of this Agreement;
- (j) "Writing" and related expressions includes all means of reproducing words in a tangible and permanently visible form;
- (k) a reference to a group of persons or parties is a reference to any two or more of them jointly and to each of them individually;
- (l) where under or pursuant to this Agreement or anything done under this Agreement the day on or by which any act, matter or thing is to be done is not a Business Day such act and matter or thing must be done on the immediately succeeding Business Day.

2. The Agreement

2.1 Agreement

The Company agrees to sell to the Customer, and the Customer agrees to purchase from the Company, the Products in consideration for the Price, and in accordance with the terms of this Agreement.

2.2 Application and Term

- (a) The Customer acknowledges that these terms and conditions constitute the agreement between the parties however the Company reserves the right to incorporate additional terms and conditions to be included in any quotation provided to the Customer in writing or otherwise. Such additional terms and conditions together with the terms and conditions herein will then constitute the agreement between the Company and the Customer.
- (b) The Company reserves the right to review this Agreement and may, at any time, (in its absolute discretion) vary any whole or part of this Agreement by notice in writing to the Customer. Any change to this Agreement will take effect from the date on which the Company notifies the Customer of such change, and shall have no retrospective effect.
- (c) This Agreement will continue unless terminated by agreement between the parties in writing or otherwise in accordance with this Agreement (**Term**).

2.3 Nature of Relationship

Nothing in this Agreement constitutes:

- (a) A partnership;
- (b) A trustee and beneficiary relationship;
- (c) A fiduciary relationship;
- (d) A joint venture;
- (e) An employee and employer relationship; or
- (f) An agent and principal relationship,

between the parties, and accordingly no Party has the right or power to incur obligations or to act on behalf of any other Party or the Company, except where expressly authorised by this Agreement.

2.4 No Exclusivity

The supply of the Products to the Customer under this Agreement is not exclusive and the Company expressly reserves the right to supply the Products to any other person or entity as determined by the Company in its sole discretion.

2.5 Assignment and subcontracting

- (a) The Company may subcontract or assign its rights or obligations under this Agreement at any time in its absolute discretion, so long as such assignment is not to the detriment of the Customer.
- (b) The Customer may not subcontract or assign its rights or obligations under this Agreement except with the prior written consent of the Company.
- (c) Notwithstanding any consent to subcontract, a Party must not be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor and or assignee as though they were the actions of the Party itself.

3. Orders and Supply

3.1 Orders

All Products must be ordered by the Customer on the Company's standard order form or standard method, which order form or method the Company may vary from time-to-time (**Order Form**).

3.2 Acceptance

- (a) The Company shall be deemed to have accepted an Order upon the earlier of:
 - (i) signature by the Company of the Order Form, or some other written acknowledgement from the Company is given to the Customer;
 - (ii) the supply of any Products or the commencement of performance of any services by the Company; or
 - (iii) submission to the Customer by the Company of an Invoice for payment in respect of the relevant Order.

- (b) For the avoidance of doubt, the Company may deal with any Order submitted to it by a Customer in its absolute discretion including, without limitation, by accepting or rejecting same Order.

3.3 Acknowledgements

- (a) The Customer acknowledges that:
- (i) the supply of Products on credit shall not take effect until the Customer has completed a Credit Account Application and / or a Credit Card Authorisation Form (as required by the Company in its absolute discretion) with the Company and it has been approved with a credit limit established for the account; and
- (ii) in the event that the supply of Products requested exceeds the Customer's credit limit and / or the account exceeds the payment terms, the Company reserves the right to refuse supply.
- (b) The Customer acknowledges and accepts that the supply of Products for accepted Orders may be subject to availability the Company reserves the right to, for any reason (including but not limited to the Products not being available, account disputes, or conditions placed on the Company by their suppliers), vary the Price, supply alternative Products, or not to supply Products, subject to prior confirmation and agreement of both parties.
- (c) The Company shall not be liable to the Customer for any loss or damage the Customer suffers due to the Company exercising its rights under this clause 3.2.

3.4 Supply

- (a) Supply of the Products is taken to occur at the time that:
- (i) the Customer (or the Customer's nominated carrier) takes possession of the Products at the Company's address or at another location agreed between the parties; or
- (ii) the Company (or the Company's nominated carrier) delivers the Products to the Delivery Location, even if the Customer is not present at the location.
- (b) Deliveries shall be made during Business Hours.

3.5 Method of Supply

The Parties acknowledge and agree that:

- (a) **(Delivery Fee)** where the Products are delivered a delivery fee may apply, at the Company's sole discretion;
- (b) **(Access)** the Customer shall ensure that the Company has clear and free access to enable the Company to deliver the Products. The Company shall not be liable for any loss or damage to the Delivery Location (including, without limitation damages to pathways, driveways and concreted, paved, or grassed areas) unless due to the negligence of the Company;
- (c) **(Instalments)** the Company may deliver the Products in separate instalments, whereby each instalment shall be invoiced and paid in accordance with this Agreement;
- (d) **(Supply Time)** any time specified by the Company for Supply of the Products is an estimate only. The Customer indemnifies the Company and waives any right to Claim, in respect of any failure of the Company to provide the Products within the specified time, except as otherwise expressly provided for in this Agreement.

4. Invoice and Payment

4.1 Invoice

Upon the placement of an Order by the Customer, the Company will, subject to the Order being accepted in accordance with clause 3.2, provide the Customer with an Invoice outlining (among other things) the Price.

4.2 Price

- (a) At the Company's sole discretion and subject to clause 4.3, the Price shall be either:
- (i) as indicated on any Invoice provided by the Company to the Customer; or
- (ii) the Price, as at the date of Supply, according to the Company's current price list; or
- (iii) the Company's quoted price which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

4.3 Price Changes

- (a) The Customer acknowledges that the Price is subject to change at any time, from time to time, at the Company's absolute discretion.
- (b) The Company will notify the Customer of any change to the Price and will provide the Customer with an updated price list (**Updated Price List**).
- (c) The Customer and Company agree and acknowledge that:
- (i) any change in the Price does not constitute an event of default or a force majeure event, and does not provide the Customer with the right to terminate this Agreement; any Updated Price List provided by the Company to the Customer will replace any previous Updated Price List provided to the Customer; and
- (ii) the Price stated on the Updated Price List will be effective from the date stipulated by the Company.

4.4 Payment

- (a) At the Company's sole discretion, a deposit may be required.
- (b) Time for payment for the Products being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be (without limitation):
- (i) on or before Supply of the Products;
- (ii) for approved credit account holders either:
- (A) thirty (30) days following the end of the month in which an Invoice is issued to the Customer; or
- (B) seven (7) or fourteen (14) days following the date of any Invoice; or
- (iii) the date specified on any Invoice or other form as being the date for payment; or
- (iv) failing any notice to the contrary, the date which is seven (7) days following the date of any Invoice given to the Customer by the Company.
- (c) Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Company.

4.5 Set Off

- (a) the Company may in its discretion allocate any payment received from the Customer towards any invoice that the Company determines and may do so at the time of receipt or at any time afterwards.
- (b) On any default by the Customer the Company may re-allocate any payments previously received and allocated.
- (c) In the absence of any payment allocation by the Company, payment will be deemed to be allocated in such manner as preserves the maximum value of the Company's Purchase Money Security Interest (as defined in the PPSA) in the Products.
- (d) The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.

4.6 Interest on Overdue Payments

- (a) Without prejudicing the Company's other rights and remedies, the Customer must pay interest to the Company at the Interest Rate on any money due but unpaid by the Customer.
- (b) Interest shall be calculated daily from the due date up to and including the date the Company receives full payment.

- (c) Failure by the Company to promptly claim interest on any money due but unpaid by the Customer does not waive the Company's right to claim interest on that money.

5. Title and Risk

5.1 Title

- (a) The parties agree that ownership of the Products shall not pass until:
- (i) the Customer has paid the Company all amounts owing to the Company; and
- (ii) the Customer has met all of its other obligations to the Company.
- (b) It is further agreed that, until ownership of the Products passes to the Customer in accordance with clause 5.1(a):
- (i) the Customer is only a bailee of the Products and must return the Products upon request;
- (ii) the Customer holds the benefit of the Customer's insurance of the Products on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Products being lost, stolen, damaged or destroyed;
- (iii) the Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business;
- (iv) the Customer should not convert or process the Products or intermix them with other products and/or goods, but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as the Company directs;
- (v) the Customer irrevocably authorises the Company to enter any premises where the Company believes the Products are kept and recover possession of the Products;
- (vi) the Company may recover possession of any Products in transit whether or not Supply has occurred;
- (vii) the Customer shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of the Company;
- (viii) the Company may commence proceedings to recover the price of the Products notwithstanding that ownership of the Products has not passed to the Customer.

5.2 Risk

- (a) Risk of damage to or loss of the Products passes to the Customer as and when the Products are supplied to the Customer in accordance with clause 3.4.
- (b) The Customer acknowledges and agrees that:
- (i) if any Products are damaged or destroyed following Supply but prior to ownership passing to the Customer:
- (A) the Company is entitled to receive all insurance proceeds payable for the Products to the extent of the Customer's indebtedness to the Company; and
- (B) the production of this Agreement by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries; and
- (ii) if the Customer requests the Company to leave the Products outside the Customer's premises for collection or to deliver the Products to an unattended location, then such Products shall be left at the Customer's sole risk.

5.3 Insurance

- (a) The Customer must effect and maintain the following policies of insurance for an amount not less than the amounts specified below:
- (i) Public Liability Insurance in the amount of \$20,000,000.00, unless otherwise specified by the Company; and
- (ii) Product Liability Insurance in the amount of \$1,000,000.00, unless otherwise specified by the Company.
- (b) The policies of insurance referred to in clause 5.3(a) must:
- (i) be held at all relevant times under this Agreement; and
- (ii) note the Company as an interested party.
- (c) The Customer must, immediately upon the request of the Company, provide the Company with evidence of insurance.

5.4 Intellectual Property

- (a) The parties acknowledge and agree that no Intellectual Property rights in respect of the Products are being transferred or granted to the Customer under this Agreement.
- (b) Where the Company has designed, drawn, or developed Products for the Customer, then the Intellectual Property in any designs, drawings, documents and Products shall remain the property of the Company. Under no circumstances may such designs, drawings, documents and / or Products be used without the express written consent of the Company.

6. Defects, Warranties and Returns

6.1 Inspection

- (a) The Customer must inspect the Products on Supply and must within forty-eight (48) hours of Supply notify the Company in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote.
- (b) Upon such notification the Customer must allow the Company to inspect the Products.

6.2 No Warranty

- (a) Except to the extent required under applicable State, Territory and Commonwealth Law (including, without limitation the *Competition and Consumer Act 2010* (Cth) (**CCA**)) or as expressly stated in this Agreement, the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Products.

6.3 Replacement of Products

- (a) If the Company is required to replace the Products under this clause or the CCA, but is unable to do so, the Company may refund any money the Customer has paid for the Products.
- (b) Subject to this clause 6, returns will only be accepted provided that:
- (i) the Customer has complied with the provisions of clause 6.1; and
- (ii) the Company has agreed that the Products are defective; and
- (iii) the Products are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (iv) the Products are returned in as close a condition to that in which they were delivered as is possible.
- (c) Notwithstanding anything contained in this clause if the Company is required by a law to accept a return then the Company will only accept a return on the conditions imposed by that law.

6.4 Limited Liability

- (a) the Company's liability in respect of these warranties is limited to the fullest extent permitted by law.
- (b) If the Customer is:
- (i) a consumer within the meaning of the CCA, the Company's liability is limited to the extent permitted by section 64A of Schedule 2; or
- (ii) not a consumer within the meaning of the CCA, the Company's liability for any defect or damage in the Products is:

- (A) limited to the value of any express warranty or warranty card provided to the Customer by the Company at the Company's sole discretion;
 - (B) limited to any warranty to which the Company is entitled, if the Company did not manufacture the Products; or
 - (C) otherwise negated absolutely.
- (c) Notwithstanding clauses 6.1 to 6.4 but subject to the CCA, the Company shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (i) the Customer failing to properly maintain or store any Products;
 - (ii) the Customer using the Products for any purpose other than that for which they were designed;
 - (iii) the Customer continuing the use of any Products after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (iv) the Customer failing to follow any instructions or guidelines provided by the Company;
 - (v) fair wear and tear, any accident, or act of God.

7. Liability

7.1 Indemnity

The Customer shall at all times indemnify and hold harmless the Company, its officers, employees and agents from and against any Claim arising from or in connection with:

- (a) any wilful, unlawful or negligent act or omission of the Customer or any officer, employee or agent of the Customer;
- (b) a breach by the Customer or any officer, employee or agent of the Customer of the Customer's obligations or any warranties given under this Agreement;
- (c) personal injury or death or loss of or damage to property in the performance or non-performance of the Customer's obligations under this Agreement and use of the Products; or
- (d) the resale, supply or use of the Product by the Customer.

7.2 Consequential Loss

The Company will not be liable to the Customer under or arising in connection with this Agreement, whether arising in contract, negligence or otherwise for any Consequential Loss.

8. Confidentiality

8.1 Title

The Customer agrees and acknowledges that:

- (a) The Company is the sole and exclusive owner of all Confidential Information; and
- (b) The Customer will not, as a result of entering into this Agreement, acquire any right or interest in or licence to, including the right to use, any Confidential Information, or to receive any benefit from use of or access to the Confidential Information.

8.2 Non-disclosure

The Customer agrees and warrants that it will:

- (a) not, either during Term or at any time thereafter, use or disclose to any person or entity any of the Confidential Information except:
 - (i) as required by law, although the Customer must notify the Company immediately upon becoming aware that it will be required to disclose any Confidential Information in accordance with this clause 8.2(a)(i); or
 - (ii) as authorised by the Company in writing;
- (b) hold the Confidential Information in trust and confidence;
- (c) not copy any document containing Confidential Information, except as necessary to perform its obligations under this Agreement;
- (d) use its best endeavours to prevent the unauthorised use or disclosure of any of the Confidential Information by third parties;
- (e) return all documents and/or copies of documents containing Confidential Information to the Company on termination of this Agreement; and
- (f) ensure that its officers, employees, agents and/or subcontractors comply with this clause 8.

8.3 Duty to prevent unauthorised disclosure

The Customer must:

- (a) take all reasonable precautions to prevent any unauthorised disclosure, loss, theft, or misuse of the Confidential Information;
- (b) at all times, store all Confidential Information safely and securely;
- (c) immediately notify the Company in writing of any actual, threatened or suspected unauthorised disclosure, loss, theft or suspected misuse of any Confidential Information; and
- (d) take all reasonable measures to minimise any unauthorised dissemination of any Confidential Information which is in any way related to or resulting from an act or failure to act by the Customer.

8.4 No Merger

The obligations of this clause 8 survive expiry or termination of this Agreement.

9. Personal Guarantee and Security

9.1 Personal Guarantee

If the customer is not an individual, a suitable guarantee must be provided in the form attached to this Agreement at Schedule 4, unless otherwise agreed between the parties.

9.2 PPSA

- (a) In this clause, "financing statement", "financing change statement", "security agreement", and "security interest" have the meanings given to those terms under the PPSA.
- (b) This Agreement constitutes a security agreement for the purposes of the PPSA and by signing this Agreement the Customer grants to the Company a security interest over all Products and / or collateral (being a monetary obligation of the Customer to the Company) that have previously been supplied and that will be supplied in the future by the Company to the Customer.
- (c) The Customer undertakes to:
 - (i) Promptly sign any further documents and / or provide any further information which the Company may reasonably require to:
 - (A) register a financing statement or financing change statement in relation to a security interest on the PPSR;
 - (B) register any other document required to be registered by the PPSA; or
 - (C) correct a defect in a statement referred to in clauses 9.2(c)(i)(A) or 9.2(c)(i)(B);
 - (ii) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Products charged thereby;
 - (iii) not register a financing change statement in respect of a security interest without the prior written consent of the Company;

- (A) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products and / or collateral in favour of a third party without the prior written consent of the Company;
 - (iv) immediately advise the Company of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.
- (d) The parties acknowledge and agree that:
- (i) sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by this Agreement;
 - (ii) the Customer waives their rights:
 - (A) to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA;
 - (B) as a grantor and / or debtor under sections 142 and 143 of the PPSA; and
 - (C) to receive a verification statement in accordance with section 157 of the PPSA.

- (e) The Customer must unconditionally ratify any action taken by the Company under clauses 9.2(c) and 9.2(d)(ii)(A).
- (f) Subject to any express provisions to the contrary (including those contained in this clause 9) nothing in this Agreement is intended to have the effect of contracting out of any of the provisions of the PPSA.

9.3 Security and Charge

- (a) In consideration of the Company agreeing to supply the Products, the Customer charges in favour of the Company all of the Customer's PPSA Property, to secure the performance by the Customer of its obligations under this Agreement (including, but not limited to, the payment of any money) and the Customer unequivocally consents to the Company registering any interest so charged (including, but not limited to, registering a caveat over the Customer's land and / or realty). "PPSA Property" means all of its present and after-acquired property including within the meaning of the PPSA and its present and future real properties.
- (b) The Customer indemnifies the Company from and against all of the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause 9.
- (c) The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney(s) to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Customer's behalf.

10. Order, Cancellation and Suspension

10.1 Company Cancellation and Suspension

- (a) Without prejudice to any other rights available to the Company under this Agreement or at law, the Company shall be entitled to cancel or suspend all or any part of any Order by notice in writing to the Customer (**Default Notice**), if:
 - (i) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make payment when it falls due;
 - (ii) the Customer is in breach of any obligation (including those relating to payment) under this Agreement;
 - (iii) the Customer has exceeded any applicable credit limit provided by the Company; or
 - (iv) the Customer suffers an Insolvency Event.
- (b) Upon giving a Default Notice to the Customer, all amounts owing to the Company by the Customer under this Agreement (including any interest) shall, whether or not due for payment, become immediately payable.

10.2 Customer Cancellation

In the event that the Customer cancels or varies the supply of the Products after an Order has been submitted, the Customer shall be liable for any and all loss incurred by the Company (whether directly or indirectly) as a result of the cancellation or variation (including, but not limited to, any Consequential Loss) and any change in Price.

10.3 Indemnity and release

- (a) The Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering any debt owed by the Customer to the Company (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, and bank dishonour fees).
- (b) The Company will not be liable to the Customer for any loss or damage suffered by Customer arising from the cancellation or suspension of an Order under this clause 10.

11. Termination

11.1 Termination for breach

- (a) Without prejudice to any other rights a Party may have under this Agreement or at law, a Party may terminate this Agreement immediately by notice in writing if the other Party (**Defaulting Party**) is in breach of a term of this Agreement and:
 - (i) if capable of remedy, such breach is not remedied twenty-one (21) days after the non-defaulting Party serves written notice requiring the Defaulting Party to rectify the breach; or
 - (ii) if not capable of remedy, the Defaulting Party fails to pay the non-defaulting Party's Claim arising from the breach twenty-one (21) days after the non-defaulting Party serves written notice requiring the Defaulting Party to provide payment.

11.2 Obligations upon termination

- (a) Upon termination of this Agreement for any reason:
 - (i) all amounts owing to the Company by the Customer under this Agreement (including any interest) shall, whether or not due for payment, become immediately payable;
 - (ii) the Customer shall immediately deliver to the Company all Intellectual Property, Confidential Information, and any other records of whatsoever nature or description which are in the Customer's possession or under the Customer's control which in any way relate to the business of the Company, its Related Entities, or Clients (whether current or former);
 - (iii) the Company may cancel any Order at any time before the Products are supplied by giving written notice to the Customer. On giving such notice, the Company shall, subject to clause 4.5, repay to the Customer any money paid by the Customer for same Products.
- (b) Upon termination by the Company in accordance with clause 11.1, the Customer will pay the Company the unavoidable and substantiated costs incurred by the Company as a direct result of the termination, including any Consequential Loss.
- (c) The Company shall not be liable for any loss or damage whatsoever arising from cancellation in accordance with clause 11.2(a)(iii).

11.3 Rights upon termination

Any termination of this Agreement is without prejudice to the rights of one Party against the other Party in respect of any acts or omissions under this Agreement prior to termination, or in respect of any sums that remain outstanding at the time of termination.

12. Notices

12.1 Services and Notice

A Notice must be:

- (a) In writing and signed by a person duly authorised by the sender; and
- (b) Hand delivered or sent by prepaid post, email or facsimile to the recipient's address as set out in Item 1 and Item 2 of Schedule 1, or as varied by any Notice given by the recipient to the sender.

12.2 Effective on receipt

A Notice given in accordance with this clause 12 is taken to have been served:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the fifth Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by email, upon the return of a receipt which confirms successful transmission of the email to the email address of the recipient or, where no return receipt is produced by the recipient's email system, by the end of the last Business Hour on the day the email as sent; or
- (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within 8 hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5:00pm on a Business Day, the Notice is taken to be received at 9:00am on the next Business Day.

13. GST

- (a) An amount payable by a Party under this Agreement which is taxable under the GST Act, unless expressed to include GST (as that term is defined in the GST Act), represents the GST exclusive value of the supply, and the recipient of the supply must, in addition, pay the supplier the GST applicable in respect of the supply.
- (b) Notwithstanding any other provision in this Agreement, if a Party (**Supplier**) makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as "GST Inclusive"):
 - (i) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (GST exclusive consideration) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable on that supply.
 - (ii) The Supplier may not recover the additional amount under subclause 13(b) above unless and until a valid tax invoice for the supply to which that additional amount relates is issued and delivered to the Recipient.
 - (iii) If any amount to be paid by the Recipient to the Supplier is calculated by reference to an amount, cost or expense incurred by the Supplier, the amount which the Recipient is required to pay the Supplier will be reduced by the amount of any input tax credit to which the Supplier is entitled in respect of that amount, cost or expense.
- (c) The Customer agrees and acknowledges that it will indemnify the Company in respect of any tax deductions or liability that the Australian Taxation Office may seek to recover from the Company in respect of all and any Fees which the Company pays to the Customer under this Agreement.

14. Privacy

- (a) The Customer acknowledges, agrees, and consents to:
 - (i) the Company using and retaining (including, without limitation, disclosing and receiving information to and from any third party, such as credit providers) any information about the Customer (including, without limitation, the information specified in clause 14(b)) for the following purposes (without limitation):
 - (A) the provision of Products;
 - (B) analysing, verifying, or checking the Customer's credit;
 - (C) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer;
 - (D) enabling the collection of amounts outstanding in relation to the Products;
 - (E) assessing an application by the Customer;
 - (F) notifying other credit providers of a default by the Customer;
 - (G) determining the status of the Customer's credit account;
 - (H) assessing the creditworthiness of the Customer;
 - (I) obtaining a consumer credit report from a CRB; and / or
 - (J) allowing a CRB to create or maintain a credit information file about the Customer,
 - (K) any other purpose associated with the Company exercising its rights and obligations under this Agreement.
 - (ii) the Company being given a consumer credit report to collect overdue payment on commercial credit.
- (b) The information disclosed to or received from Third Parties may include (without limitation):
 - (i) the Customer's Personal Information;
 - (ii) details concerning the Customer's application for credit or commercial credit;
 - (iii) advice regarding credit status (including whether the Customer is in default or not);

- (iv) information that, in the opinion of the Company, the Customer has committed a serious credit infringement.
- (c) Further information regarding the Company's Privacy policy can be found with the Company's Credit Account Application Form.

15. General Provisions

15.1 Governing law and jurisdiction

This agreement is governed by the law in force in New South Wales, Australia. Each Party submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

15.2 Inconsistencies

If there is any inconsistency between this Agreement and any legislation or any other document or agreement between the parties, this Agreement prevails to the extent of any inconsistency and to the extent permitted by law.

15.3 Survival and no merger

- (a) If this Agreement is terminated for any reason, such termination will not affect any accrued rights or liabilities of either Party nor will it affect the coming into force or the continuance in force of any provision of this Agreement (in so far as it imposes obligations on the Customer) which is expressly or by implication intended to come into force or continue on or after the termination.
- (b) Any liability for a breach of any warranty contained in this Agreement does not merge on completion.

15.4 Enforcement of indemnities

It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

15.5 Waiver

- (a) A right may only be waived in writing, signed by the Party giving the waiver, and no other conduct of a Party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- (b) The waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again.
- (c) The exercise of a right does not prevent any further exercise of that right or of any other right.

15.6 Severability

Any provision of this Agreement which is or becomes illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate the remaining provisions.

15.7 Contra proferentem

A term in this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Agreement or the inclusion of a provision in this Agreement.

15.8 Exclusion of proportionate liability schemes

To the extent permitted by law, any Commonwealth, state or territory law relating to proportionate liability or reduction of liability because of a claimant's contributory negligence is excluded in relation to all and any obligations or liabilities of the Customer under this Agreement or relating to the Services, whether such obligations or liabilities are sought to be enforced in contract, tort or otherwise.

15.9 Independent advice

Each Party warrants to the other that they have:

- (a) read and fully understand the terms and provisions contained in this Agreement;
- (b) obtained, or have had an opportunity to obtain independent advice, including legal advice, in respect of the terms and conditions contained in this Agreement; and
- (c) executed this Agreement based upon their own judgement and advice of independent advisers.

15.10 Accuracy of information

- (a) The Customer warrants that all statements, documents, or any other information provided to the Company or made by the Customer under this Agreement are true and accurate.
- (b) The Customer indemnifies the Company for, and waives any right to any Claim arising from any breach of clause 15.10(a).

15.11 Trusts

If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust (**Trust**) then whether or not the Company may have notice of the Trust, the Customer covenants with the Company as follows:

- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund.
- (c) The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (d) the Customer will not without consent in writing of the Company (Company will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

Dated: _____
[Insert day] [Insert month] [Insert year]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by a duly authorized officer in accordance with section 126 of the *Corporations Act 2001* (Cth) as of the day and year first written above.

Company
Company Name:

By: _____
Name:
Title:

Customer

Company Name:

By: _____

Name:

Title:

Schedule 1 – Details Page

Number	Description	Details
Item 1	Company	<p>Name: MESHCRETE SYDNEY PTY LTD ACN 629 923 379</p> <p>Address: UNIT 1A 42 BIRNIE AVENUE LIDCOMBE NSW 2141</p> <p>Email: omard@meshcrete.com.au</p>
Item 2	Customer	<p>Name: _____ <i>[insert customer name]</i></p> <p>ACN _____ <i>[insert customer ACN]</i></p> <p>Address: _____ <i>[insert customer address]</i></p> <p>Email: _____ <i>[insert customer email]</i></p>
Item 3	Commencement Date	_____
Item 4	Interest Rate	_____

Schedule 2 – Credit Account Application Form

Schedule 3 – Credit Card Authorisation Form

Schedule 4 – Personal / Directors Guarantee and Indemnity