



## TERMS OF CREDIT

### 1 General acknowledgements

The Applicant acknowledges and agrees that:

- (a) if accepted by Melbourne Brick Company Pty Ltd (ACN 006 995 491) (**Supplier**), this credit application, together with the Supplier's Terms and Conditions of Sale (**Terms**), all accepted orders placed by the Applicant, and the guarantee and indemnity (if applicable), will constitute the contract between the Supplier and the Applicant pursuant to which the Supplier makes all supplies of goods and services to the Applicant (**Contract**);
- (b) credit may be reviewed, altered or withdrawn at any time without prior notice from the Supplier at the Supplier's absolute discretion and that the Supplier will have no liability or responsibility for any loss, howsoever arising, incurred by the Applicant due to such review, alteration or withdrawal;
- (c) any change in respect to ownership, legal entity, name or address must be notified in writing by the Applicant to the Supplier at least 7 days before that change occurs;
- (d) if the account is overdue, the Supplier at its discretion, reserves the right to refer the account to a debt collection agency (and to disclose any information required to be provided to the debt collection agent in order to do so) for collection and the Applicant agrees to be responsible to meet all reasonable costs and commissions in employing the said debt collection agent to collect the overdue account; and
- (e) it grants security interests to the Supplier under the Contract and that the Contract constitutes a 'security agreement' pursuant to which all such security interests are granted for the purposes of the Personal Property Securities Act 2009 (Cth).

### 2 Credit Information

The Applicant, and each individual who signs this application as a director, partner or proprietor (each a **Principal**) acknowledges and agrees that the Supplier may to the extent permitted by law:

- (a) obtain credit eligibility information containing information about the Applicant's, and each Principal's consumer or commercial credit arrangements from a credit reporting body for the purposes of assessing this application or in connection with any attached Guarantee and Indemnity;
- (b) give a credit reporting body information to allow the credit-reporting body to create and maintain credit reporting information about the Applicant and each Principal;
- (c) disclose information about the Applicant and each Principal (including a credit eligibility information or any personal information as defined in the Privacy Act 1988 (Cth) (as amended)) derived from the credit information, and any information about the Applicant's or a Principal's personal or commercial arrangements to any agent of the Supplier assisting in processing the application and any other provider of credit to the Applicant to the extent that it is contained in credit reporting information from a credit reporting body; and
- (d) exchange information about the Applicant and its Principals (including banker's opinions, credit eligibility information and other information relating to creditworthiness) with other credit providers and any collection agent of the Supplier for purposes including (i) assessing the Applicant's application for credit; (ii) notifying other credit providers of the Applicant's defaults; (iii) exchanging information about the Applicant's credit status where the Applicant is in default with another credit provider; (iv) assessing the Principals' creditworthiness; and (v) any other purpose authorised by law.

The Applicant warrants and represents that it has the future ability to pay all debts as and when they fall due.

### 3 Privacy

The Supplier collects the personal information requested in or relating to this application (including through its contractors and agents) for the purpose of determining whether or not to extend commercial credit, to administer the Contract and/or to communicate with the Applicant and its personnel. Supplier may use and disclose such personal information (including to recipients based outside Australia) to its related companies, agents, merchants, contractors (including credit reporting bodies and debt collection agents) for these purposes and such other purposes permitted by law. The Applicant (and each Principal) understands that it (and they) need not give any of the personal information requested in this application. However, without this information the Supplier may not be able to process this application or provide the Applicant with an appropriate level of service or extend commercial credit to the Applicant. The Applicant and each Principal have the right to request that credit reporting bodies do not use or disclose credit reporting information for the purposes of pre-screening or direct marketing by credit providers. If the Applicant or any Principal has been or is likely to be a victim of fraud, it can ask a credit reporting body not to disclose credit reporting information about it.

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The Supplier's Privacy Policy, located at <https://www.melbournebrick.com.au/info/privacy/>, contains information about:

- (a) how to seek access to personal information the Supplier holds and seek the correction of such information; and
- (b) how to complain about a privacy breach or a credit reporting complaint and how the Supplier will deal with such complaints.

By signing this application, the Applicant and each Principal:

- (a) authorises the Supplier to collect, maintain, use and disclose its personal information/the personal information of its Principals and other personnel (including directors, officers and representatives) in accordance with the *Privacy Act 1988* (Cth) and the terms of this clause 3; and
- (b) agrees that information about transactions under the Contract may be used by the Supplier or its subsidiaries in a de-identified manner for marketing and other commercial purposes.

#### **4 Guarantee and Indemnity**

Where the Applicant is a company, the Directors (hereafter **Guarantors**) of the Applicant agree:

- (a) to be jointly and severally liable for all indebtedness of the Applicant to the Supplier, in consideration of the Supplier supplying goods on credit to the Applicant;
- (b) that the Supplier may exercise its rights under the guarantee in this clause 4 at any time;
- (c) the Guarantors will pay any amount owing to the Supplier by the Applicant within 3 days of receipt or delivery of a written demand to the last known address of the Guarantors from the Supplier;
- (d) the Supplier is not required to have exercised or exhausted its legal rights against the Applicant prior to making a demand under this Guarantee;
- (e) the liability of Guarantors will continue despite the Supplier entering into any sort of arrangement with the Applicant;
- (f) the guarantee under this clause 4, will continue despite the death of one or all of the Guarantors and may be enforced against the Guarantor's heirs and executors; and
- (g) the provisions of the guarantee under this clause 4 will continue to apply despite any concession or indulgence granted by the Supplier to the Applicant.

#### **5 Acceptance and Acknowledgement**

The Applicant acknowledges and agrees that:

- (a) the Applicant is not aware of any information, notice, or court proceedings that may lead to an Insolvency Event as defined in the Terms;
- (b) none of the Principals have been a director of a company which has experienced an Insolvency Event or have personally been declared bankrupt or entered into an arrangement under the *Bankruptcy Act 1966* (Cth) (as amended);
- (c) the Applicant has read and understood the information provided within this credit application and the Applicant agrees to be bound by Contract;
- (d) all information in this application is true and correct in every detail and if credit is given and it will be provided in reliance upon the information supplied in this application; and
- (e) the Applicant has received and agreed to the attached Terms of Credit and Terms and Conditions of Sale.

**IMPORTANT NOTICE**

It is important that you read this document carefully before entering into it and understand the rights and obligations created under this document. By signing this document you acknowledge and represent to the Supplier that you have read this document carefully and understand the rights and obligations created under it.

**7. Person(s) completing this Application**

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Details and signatures of all                      Directors                       Partners                       Proprietors

.....  
Signature                      Print Full Name                      Print Position                      Date

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Signature                      Print Full Name                      Print Position                      Date

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Signature                      Print Full Name                      Print Position                      Date

## TERMS AND CONDITIONS OF SALE

The following standard terms and conditions (**Terms**) apply where Melbourne Brick Company Pty Ltd (ACN 006 995 491) (**Supplier**) supplies Goods or Services to a Buyer.

### 1. Definitions

In these Terms:

**"Australian Consumer Law"** means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and any other equivalent legislation (such as the Fair Trading Acts (or equivalent legislation) in each State and Territory);

**"Buyer"** means the person or entity who is buying the Goods or Services from the Supplier, the details of which are set out in the Order;

**"Confidential Information"** has the meaning given to it in clause 16;

**"Consequential Loss"** means any loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity or any other loss or damage suffered by a party or any other person which is indirect or consequential;

**"Consumer"** has the meaning given to it in section 3 of the Australian Consumer Law;

**"Consumer Guarantee"** means the guarantees contained in sections 51 to 62 inclusive of the Australian Consumer Law.

**"Contract"** means the contract between the Buyer and the Supplier, which consists of the Credit Account Application (if any), these Terms, the Guarantee and Indemnity (if applicable) and all Orders for Goods and Services placed by the Buyer to the Supplier;

**"Credit Account Application"** means an application for commercial credit completed by the Buyer, in a form approved by the Supplier;

**"Defective Goods"** means Goods that are defective in design, performance or workmanship;

**"Defective Services"** means Services that are defective in performance;

**"Goods"** means all products supplied by the Supplier to the Buyer;

**"GST"** means any goods and services tax and any replacement or similar tax;

**"GST Law"** means A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**"Insolvency Event"** means the happening of any of these events:

- (a) a party suspends payment of its debts generally, is or becomes unable to pay its debts within the meaning of the Corporations Act 2001 (Cth);
- (b) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (c) receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar official is appointed over any of the assets or undertakings of a party, an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party's prior consent;
- (d) a party goes bankrupt; or
- (e) a party ceases, or threatens to cease, to carry on a business;

**"Invoice"** means an invoice issued by the Supplier to the Buyer setting out the amount to be paid by the Buyer;

**"Loss"** means all actions, claims, costs (including legal costs on an indemnity basis), damages, expenses, interest, liabilities and

losses (whether direct, indirect, special, consequential or otherwise);

**"Order"** means any order for Goods and/or Services placed by the Buyer with the Supplier;

**"Premises"** means the premises specified in the Order where the Goods are to be delivered and/or the Services are to be performed;

**"Price"** means the price for the supply of the Goods or Services as provided for in clause 10;

**"PPSA"** means the Personal Property Securities Act 2009 (Cth); and

**"Services"** means any services performed by the Supplier in respect of the Goods and any other services that the Supplier agrees to perform on behalf of the Buyer.

### 2. General

(a) The Contract:

- (i) supersedes and excludes all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods and Services including, but not limited to, those relating to the performance of the Goods or Services or the results that ought to be expected from using the Goods or Services; and
  - (ii) overrides any quotes, invoices, accepted or modified Orders and the Buyer's terms and conditions of purchase (if any), exchanged between the parties whether or not such documents expressly provide that they override this Contract or any part of it.
- (b) Unless the Buyer otherwise agrees in writing, the Contract comprises the only terms which shall apply to all Goods or Services supplied by the Supplier.

### 3. Orders

- (a) The Supplier has sole discretion to accept or reject any Order, any part of an Order, or any variation or modification of an Order, requested by the Buyer.
- (b) The Supplier has sole discretion to accept or reject any Order cancellation request by the Buyer. If a cancellation request is accepted by the Supplier, the Buyer will be liable for any Loss incurred by the Supplier in respect of that Order (including, without limitation, payment for any Goods ordered by the Supplier from its suppliers relating to that Order or any costs incurred by the Supplier as at the date of cancellation in respect of the Services).
- (c) The Buyer authorises the Supplier to subcontract the provision and delivery of the Goods and Services at the Supplier's absolute discretion.

### 4. Claims and limitation of liability

(a) The Buyer must:

- (i) promptly inform the Supplier of all complaints or claims relating to any of the Goods or Services;
  - (ii) not admit liability on behalf of the Supplier in respect of any complaint or claim relating to any of the Goods or Services;
  - (iii) not resolve or settle any complaint or claim relating to any of the Goods or Services which may result in the Supplier incurring any liability (whether to a customer, the Buyer or any other person); and
  - (iv) deal promptly with all complaints or claims relating to any of the Goods or Services, which will not result in the Supplier incurring any liability.
- (b) Subject to clause 4(c):
- (i) all conditions, warranties and implied terms, whether statutory or otherwise, are excluded in relation to the Goods and Services; and
  - (ii) the Buyer releases the Supplier from any liability for legal costs and disbursements and, without limitation, any indirect or consequential expense, loss or damage, loss of profits, revenue, use, expectation or opportunity, wasted expenditure, lost production or similar losses

suffered by the Buyer under or in connection with the Contract;

(iii) the Supplier's liability for any Loss suffered or incurred by the Buyer, howsoever caused, which arises out of or in connection with the supply of the Goods or Services under these Terms:

(1) in the case of Goods, is limited to:

- (A) the replacement of the Goods or the supply of equivalent Goods;
- (B) the repair of the Goods;
- (C) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (D) the payment of the cost of having the Goods repaired; or

(2) in the case of Services, is limited to:

- (A) the resupply of the services; or
- (B) the payment of the cost of resupply of the services;

(3) in any other case, will be negated absolutely, such that the Supplier will have no liability to the Buyer.

(c) The Australian Consumer Law provides Consumers with a number of Consumer Guarantees that cannot be excluded or limited. The limitations of liability set out in these Terms are therefore subject to, and will not apply to the extent that they limit or exclude, such Consumer Guarantees applicable to Consumers. However where the Australian Consumer Law permits the Supplier to limit the remedies available to it for a breach of a Consumer Guarantee, the Supplier hereby limits its remedies to such Consumers for a breach of a Consumer Guarantee, in the case of Goods, to the repair or replacement of the Goods, the supply of equivalent Goods or the payment of the cost of having the Goods repaired or replaced or having equivalent Goods supplied and, in the case of Services, to supplying the Services again or paying the cost of having the Services supplied again.

## 5. Samples and Descriptions

- (a) As variations will occur in the colour and texture of materials used in the manufacture of products no warranty or guarantee is given by the Supplier that the Goods will correspond in appearance with any sample, display, or goods previously sold, except as required under the Australian Consumer Law.
- (b) No warranty or guarantee is given by the Supplier whatsoever regarding the quality, condition, colour, merchantability, or fitness for purpose of the Goods, except as required under the Australian Consumer Law.
- (c) The Buyer expressly acknowledges that for all purposes whatsoever the Buyer has relied entirely on their own knowledge, skills, and judgment in selecting and ordering the Goods.

## 6. Services

- (a) The Supplier will perform the Services (if any) at the Premises.
- (b) If for any reason the Buyer is not ready, willing or able to receive the Services on the date specified in the relevant Order (or as otherwise agreed by the parties), the Supplier can issue an Invoice to the Buyer in respect of such Services.
- (c) The Buyer must ensure that the Premises are sufficiently clean, secure and safe to enable the Supplier to perform the Services and must ensure at all times that it has appropriate occupational health and safety processes and policies in place at the Premises which comply with all applicable laws.

## 7. Delivery

- (a) The Supplier will use all commercially reasonable efforts to deliver the Goods and supply the Services for which it has accepted an Order to the Premises by the delivery date specified in the Order.

(b) The Supplier may deliver the Goods and supply the Services by separate instalments. Each separate instalment will be invoiced and paid in accordance with clause 9.

(c) The Buyer must at all times provide access to the Premises including approved crossing facilities.

(d) In the event the Supplier delivers any pallets with the Goods or Services they must be returned by the Buyer in good order and condition within thirty days of the delivery.

(e) Delivery of the Goods and supply of the Services to a third party nominated by the Buyer is deemed to be delivery or supply to the Buyer for the purposes of these Terms.

(f) The failure of the Supplier to deliver the Goods or supply the Services does not entitle either party to treat these Terms or the Contract as repudiated.

(g) Except where the Supplier's obligation is a Consumer Guarantee, the Supplier is not liable for any Loss whatever due to a failure by the Supplier to deliver the Goods or supply the Services (or any of them) promptly or at all.

## 8. Acceptance

(a) The Buyer must, as soon as possible after delivery of the Goods or the performance of the Services, check whether the Goods or Services are Defective Goods or Defective Services.

(b) The Buyer must provide notice to the Supplier of any Defective Goods or Defective Services within 14 days after delivery or supply of the Goods or Services.

(c) In relation to the delivery of Goods, if the Buyer gives the Supplier notice under clause 8(b), it must:

(i) preserve the Defective Goods in the state in which they were delivered for 14 days after it gives the Supplier notice; and

(ii) at the Supplier's request, return the Defective Goods at the Supplier's cost within 14 days after the delivery date in the condition in which they were delivered and with all packaging material in as new condition as is reasonably possible in the circumstances.

## 9. Risk and title

(a) The risk in the Goods passes to the Buyer when the Goods are loaded at the Supplier's premises for delivery to the Buyer.

(b) the Supplier's rights under this clause 9 secure:

(i) the Supplier's right to receive the Price of all the Goods sold under this Contract; and

(ii) all other amounts owing to the Supplier under this Contract or any other agreement between the Buyer and the Supplier.

(c) All payments received from the Buyer must be applied in accordance with section 14(6)(c) of the PPSA.

(d) Until full payment in cleared funds is received by the Supplier for all Goods and Services supplied by it to the Buyer, as well as all other amounts owing to the Supplier by the Buyer under this or any other Contract:

(i) legal title and property in all Goods supplied under this Contract remains vested in the Supplier and does not pass to the Buyer;

(ii) the Buyer must store the Goods separately and in such a manner and maintain any labelling and packaging of the Supplier, so that the Goods are clearly and readily identifiable as the property of the Supplier;

(iii) the Buyer must not sell the Goods except in the ordinary course of the Buyer's business;

(iv) in addition to any rights the Supplier may have under Chapter 4 of the PPSA, the Supplier may, at any time, demand the return of the Goods and shall be entitled without notice to the Buyer and without liability to the Buyer, to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Supplier, and for

this purpose the Buyer irrevocably licenses the Supplier to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Supplier from and against all loss suffered or incurred by the Supplier as a result of exercising its rights under this clause 9(c)(iii). If there is any inconsistency between the Supplier's rights under this clause 9(c)(iii) and its rights under Chapter 4 of the PPSA, this clause 9(c)(iii) prevails.

- (v) the Buyer acknowledges and warrants that the Supplier has a security interest (for the purposes of the PPSA) in the Goods and any proceeds described in clause 9(c)(iii) and the Buyer must do anything reasonably required by the Supplier to ensure that such security interest is enforceable, perfected and otherwise effective and has the priority required by the Supplier, which, unless the Supplier agrees in writing otherwise, is first priority; and
- (vi) the security interest arising under this clause 9(c)(v) attaches to the Goods when the Buyer obtains possession of the Goods and the parties confirm that they have not agreed that such security interest attaches at any later time.
- (e) The Buyer warrants that, except where the Buyer is a Consumer, it does not intend to use the Goods predominantly for personal, domestic or household purposes.
- (f) The Buyer must, at its own cost, insure and keep insured the Goods against such risks as a prudent owner of the Goods would insure at their full cost price, with a reputable insurance company.

#### 10. Price and payment

- (a) At the Supplier's discretion, the Price of the Goods and Services will be:
  - (i) the Supplier's current price at the date of the delivery of the Goods or the provision of the Services according to the Supplier's current price list; or
  - (ii) the Supplier's quoted price which will be binding on the Supplier for a period of 30 days from the date of quotation and which may be accepted by the Buyer, by written notice to the Supplier, at any time within those 30 days.
- (b) Time for payment for the Goods and Services is of the essence and will be stated on the Seller's invoice, quotation or any other order forms. If no time is stated by the Supplier then payment must be made on or before delivery of the Goods or the performance of the Services (as applicable).
- (c) The Supplier may withhold delivery of the Goods or the supply of the Services until the Buyer has paid for them in full, in which case payment must be made on or before the delivery / supply date (as applicable).
- (d) Unless prices quoted by the Supplier are stated to include any sales, value added, GST or similar tax which may apply, these taxes are payable by the Buyer in addition to the quoted prices.
- (e) The Buyer must pay the Price for Goods or Services supplied to the Buyer by cash, credit card (plus any charges that may be applicable), direct debit, or in any other way that the Supplier directs.
- (f) Payment by cheque or other negotiable instrument is not regarded as received until it is cleared.
- (g) Without prejudice to any other rights or remedies of the Supplier, if the Buyer fails to make (whether in full or in part) any payment required under these Terms on or before the due date for payment, then:
  - (i) the Supplier may charge the Buyer interest on the unpaid amount at 2% per annum above the average of the most recent prime rate, indicator rate, or reference

- rate (however described) for business overdraft published by Commonwealth Bank of Australia; and
- (ii) such interest will accrue from the date payment was due to the date payment is made, will be calculated daily and capitalised monthly and must be paid by the Buyer upon demand by the Supplier.

#### 11. GST and other taxes and duties

Notwithstanding any other clause in the Contract, to the extent that any supply made under or in connection with the Contract is a taxable supply (as defined by the GST Law), the Buyer must pay to the Supplier, in addition to the consideration provided for under these Terms for that supply (unless it expressly includes GST) an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The Buyer must pay to the Supplier the additional amount at the same time as the consideration to which it is referable. The Buyer is responsible for paying any other duties, taxes or charges, including any stamp duty (if applicable), in relation to the Goods.

#### 12. Termination

(a) The Supplier may terminate:

- (i) the terms of credit provided to the Buyer;
- (ii) any Order placed by the Buyer; or
- (iii) the Contract in its entirety,

by written notice to the Buyer if the Buyer:

- (i) breaches these Terms in a material respect and, in the reasonable opinion of the Supplier, the breach:
  - (A) cannot be remedied; or
  - (B) can be remedied, but is not remedied by the Buyer within 7 days after the Supplier gives the Buyer notice of the breach; or
- (ii) suffers an Insolvency Event.

(b) The Buyer must, within 7 days after the date of expiry or termination:

- (i) pay the Supplier all amounts it owes the Supplier, whether due at that time or not; and
- (ii) return all Confidential Information to the Supplier.

#### 13. Force majeure

- (d) The Supplier is not liable for any failure to perform any of its obligations under these Terms as a result of any event beyond its reasonable control including, without limitation, where the Supplier is prevented or hindered from manufacturing, delivering or supplying the Goods or Services as a result of any strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, products, equipment, facilities or services from usual suppliers on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. In such circumstances, the Supplier may suspend performance of any obligations under these Terms while the event continues. The Supplier shall not incur any liability to the Buyer in respect of such suspension.
- (e) If any of the above events occur for more than 30 days, the Supplier may, without liability, terminate any affected Order and/or the Contract immediately by notice in writing to the Buyer.

#### 14. Indemnity

The Buyer indemnifies the Supplier against any Loss which the Supplier suffers, incurs or is liable for in connection with the Contract including, but no limited to:

- (a) any act or omission of the Buyer;
- (b) any breach of the Contract by the Buyer; and
- (c) enforcing any security interest arising in connection with the Contract.

## 15. General lien

In addition to any right of lien to which the Supplier may be entitled under the common law, the Supplier shall be entitled to exercise a general lien over all items in its possession belonging to the Buyer until the Buyer has paid in full for all Goods or Services supplied by the Supplier to the Buyer. The Supplier may in its sole discretion sell any item that is subject to a lien, provided that the Supplier shall pay to the Buyer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to the Supplier in respect of unpaid Goods and all reasonable costs of sale incurred by the Supplier.

## 16. Confidential information

- (a) In this clause 16, Confidential Information means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods or Services or the Supplier's business.
- (b) The Buyer is authorised to use the Confidential Information for the sole purpose of using or selling the Goods or Services supplied under these Terms and must not otherwise use or disclose any Confidential Information.

## 17. Severance

If any provision of the Contract or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall, so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of the Contract shall not in any way be affected or impaired.

## 18. Variation and assignment

The Contract may be varied by agreement between the parties in writing only. The Buyer may not assign its rights under the Contract without the Supplier's prior written consent.

## 19. Governing law

The Contract is governed by the law of the State of Victoria. The Supplier and the Buyer submit to the non-exclusive jurisdiction of the courts of the State of Victoria, Australia.

## 20. Waiver

Waiver by the Supplier of a breach of the Contract or of any right or power arising on a breach of the Contract must be in writing and signed by the Supplier. A right or power created or arising on a breach of the Contract is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

## 21. No right to offset

No amount owing, whether present or future, actual, contingent or prospective and on any account whatsoever, by the Buyer to the Supplier may be offset against any amount owing whether present, future, actual, contingent or prospective to the Buyer from the Supplier hereunder or on any other account whatsoever.

## 22. Intellectual property

The purchase of Goods or Services under the Contract does not confer on the Buyer any licence or assignment of any copyright, patent, design or trademark, or any other intellectual property right (whether registered, registrable or not) that subsists in the Goods and/or Services.

## 23. Confidentiality and PPSA

Subject to section 275(7) of the PPSA, neither party will disclose information of the kind mentioned in section 275(1) of the PPSA.

## 24. Enforcement of security interest

If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under the Contract, the Buyer agrees that the following provisions of the PPSA will not apply:

- (f) section 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Buyer;

- (g) section 121(4) (enforcement of liquid assets – notice to Grantor);
- (h) section 130 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Buyer;
- (i) paragraph 132(3)(d) (contents of statement of account after disposal);
- (j) subsection 132(4) (statement of account if no disposal);
- (k) section 135 (notice of retention);
- (l) section 142 (redemption of collateral); and
- (m) section 143 (reinstatement of security agreement).

## 25. Notices under the PPSA

The Supplier does not need to give the Buyer any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

## 26. Further assurances

If at any time:

- (n) the Supplier determines that the PPSA applies, or will at a future date apply, to the Contract or any of the transactions contemplated by the Contract; and
- (o) in the reasonable opinion of the Supplier, the PPSA adversely affects or would adversely affect the security position, or the rights of the Supplier under or in connection with the Contract or the Goods or compliance with the PPSA is necessary or advisable for the Supplier to maintain a first priority perfected security interest in the Goods or any other personal property of the Buyer under applicable law,

then the Buyer must, upon the Supplier's request, cause the Contract and/or the security interest or ownership interests created under the Contract, to be registered with the applicable registry in accordance with and to the extent possible under the PPSA and must cause all other filings and recordings necessary or advisable under the PPSA and all such other action (including amending the Contract) required under the PPSA to be effected and taken, in order to maintain, protect and perfect the respective right, title and interests of the Supplier thereunder. All costs and expenses arising as a result of actions taken pursuant to this clause 26 will be for the account of the Buyer.

## 27. Benefit of contract

The Supplier holds the benefit of the Contract for itself and on trust for each of its agents, servants and employees and any related bodies corporate as defined in the Corporations Act 2001 (Cth).

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