

## **Appendix C — Terms and Conditions**

In Consideration of the party named in Appendix A as “the Credit Provider” and any associated and or related entities (hereinafter referred to as “the Credit Provider”) providing commercial credit facilities to the party (hereinafter referred to as “the Applicant”) completing the application being Annexure A annexed to these conditions:-

- (i) **The Applicant** acknowledges and agrees that the following applies to and forms part of any contract for the supply of Goods and/or Services by **the Credit Provider** and that these Terms and Conditions take precedence over any terms and conditions which may be contained in any document provided by **the Applicant**. Any request from **the Applicant** to the Credit Provider for the supply of Goods and / or Services shall constitute acceptance of these general terms and conditions.
- (ii) The Applicant acknowledges that where the Applicant consists of more than one party or entity, liability shall be joint and several.

### **TERMS and CONDITIONS**

1. **The Applicant** must pay all monies owed to **the Credit Provider**, strictly within the Payment Terms described in Appendix A;
2. In the event that **the Applicant** fails to comply with the Payment Terms in Appendix A:
  - (a) interest will accrue on all monies owed by **the Applicant** to **the Credit Provider** at a rate of 12% per annum, calculated daily from the date such monies become due and owing;
  - (b) **the Credit Provider** may debit the Credit Card and/or Bank Account described in Appendix B in full or partial settlement of all monies, interest and/or legal costs owed to **the Credit Provider**; and
  - (c) **the Credit Provider** may notify any credit reporting agencies of **the Applicant's** remittance history.
3. **The Applicant** will incur a 2.5% surcharge on all credit card payments made to **the Credit Provider**;
4. Ownership and property in all goods supplied by **the Credit Provider** to **Applicant (Goods)** is retained by the Credit Provider until **the Applicant** has paid all amounts owing to **the Credit Provider**. Until ownership of such Goods has passed to **the Applicant**, the Applicant agrees to hold each item of the Goods as bailee for **the Credit Provider**, store each item of the Goods in such manner as enables them to be readily identified and distinguished from other property in the possession of **the Applicant**, and deliver the Goods to **the Credit Provider** upon demand.
5. In the event that **the Applicant** fails to comply with these Terms and Conditions, or commits an act of bankruptcy, or has a receiver or administrator appointed, or goes into liquidation, including but not limited to provisional liquidation, then, without prejudice to any other rights of **the Credit Provider**, **the Applicant** authorises **the Credit Provider** to enter upon any premises where the Goods are stored and to retake possession of the Goods.
6. **The Applicant** indemnifies the Credit Provider against any loss, damage, claim or expense, howsoever arising in connection with these Terms and Conditions, including but not limited to:
  - (a) all legal costs on an indemnity basis, incurred by **the Credit Provider** in connection with the enforcement of Applicant's Obligations and/or in connection with **the Credit Provider's** rights pursuant to these Terms and Conditions (**Indemnity**); and
  - (b) All costs and charges incurred by **the Credit Provider** as a result of any dishonoured cheque provided by **the Applicant**, or any lack of funds within the Applicant's nominated bank account or credit card.
7. **The Applicant** charges all of its rights and interest in any real estate which it owns now, or may own in the future, in any capacity (**Real Estate**), and any and all other property of any kind and whether tangible or intangible with the performance of the obligations imposed upon it by these Terms and Conditions;
8. **The Applicant** agrees and consents to the registration of any number of mortgages and/or caveats by **the Credit Provider** over **the Applicant's** Real Estate, for the purpose of protecting the charge created by these Terms and Conditions.
9. **The Applicant** agrees that the provision of credit is subject Credit Provider's ongoing discretion.
10. By accepting any goods from **the Credit Provider**, or signing this document, **the Applicant** accepts and agrees to be bound by these Terms and Conditions described herein.
11. **Jurisdiction**
  - (a) This agreement shall be construed in accordance with laws of the State of Victoria and, where applicable the Commonwealth of Australia and **the Applicant** submits to the non-exclusive jurisdiction of the courts of **Victoria**.
  - (b) **The Credit Provider** shall have exclusive right to nominate the Court in which any legal action is to be commenced and conducted.
12. **Personal Property Securities Act**  
In this clause:  
"The Applicant" means the person who buys or has agreed to buy the Goods and includes the "grantor" for the purposes of the PPSA;  
"Financing Statement" has the meaning given to it by the PPSA;  
"Financing Change Statement" has the meaning given to it by the PPSA;  
"Goods" means all goods which are supplied to The Applicant by Credit Provider under any agreement



between The Applicant and Credit Provider;

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

**"PMSI"** means a Purchase Money Security Interest within the meaning of the PPSA;

**"Security Agreement"** means the security agreement under the PPSA created between The Applicant and Credit Provider by these Terms of Trade;

**"Security Interest"** has the meaning given to it by the PPSA and includes the PMSI created by these Terms of Trade.

- (a) The Applicant grants the Credit Provider a PMSI in all present and after acquired Goods and their proceeds to secure the amounts owing to Credit Provider by The Applicant in respect of the supply of Goods. Upon assenting to these Terms of Trade The Applicant acknowledges and agrees that these Terms of Trade:
  - (i) constitute a Security Agreement for the purposes of the PPSA; and
  - (ii) create a Security Interest in:
    - (A) all Goods previously supplied by the Credit Provider to The Applicant (if any); and
    - (B) all Goods that will be supplied in the future by the Credit Provider to The Applicant;
    - (C) the proceeds of sale of the Goods referred to in (A) and (B).
- (b) The Applicant undertakes to:
  - (i) Promptly sign any further documents and provide any further information, which will be complete, accurate and up to date in all respects, which We may reasonably require to enable it to perfect the Security Interest or otherwise to:
    - (A) register a Financing Statement or Financing Change Statement in relation to the Security Interest on the Personal Property Securities Register;
    - (B) register any other document required to be registered by the PPSA;
    - (C) correct a defect in a Financing Statement or a Financing Change Statement
  - (ii) pay all costs, expenses and other charges incurred by the Credit Provider in relation to the filing of a Financing Statement or a Financing Change Statement or amendments to a Financing Statement or a Financing Change Statement;
  - (iii) not register a Financing Change Statement in respect of the interest on any security interest without the Credit Provider's prior written consent;
  - (iv) not register or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without the Credit Provider's prior written consent;
  - (v) immediately advise the Credit Provider of any material change in The Applicant's business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales;
  - (vi) notify the Credit Provider of any changes to The Applicant's name or other details (including address and telephone number);
  - (vii) allow the Credit Provider to register a Security Interest over any Security Interest that The Applicant may acquire in Goods disposed of to third parties so far as the law allows;
  - (viii) not allow Security Interests to be created or registered over the Goods in priority to the Security Interest held by the Credit Provider;
  - (ix) in the event that the Applicant is placed in external administration, disclose the quantity and volume of the Credit Provider's Goods which are incorporated into manufactured, commingled or mixed goods or otherwise which may be work in progress as at the date of appointment of an external administrator.
- (c) The Security Interest granted by The Applicant extends to all rights available under the PPSA to a holder of a Security Interest, in particular:
  - (i) The right to seize and recover possession of the Goods;
  - (ii) If The Applicant sells the Goods, the right to a Security Interest over the proceeds of sale; and
  - (iii) If The Applicant commingles the Goods with other goods or otherwise incorporate the Goods in manufactured goods the right to a security over the resulting commingled or manufactured Goods and the proceeds of sale thereof.
- (d) You will not have the right to transfer any Goods provided by the Credit Provider to any potential purchaser or purchaser of The Applicant's business, unless the Goods are first paid for in full to the Credit Provider.
- (e) The Credit Provider reserves the right to:
  - (i) dispose of the Goods the Credit Provider have seized ("Recovered Goods") upon an act of default by The Applicant, without notice to the Applicant;
  - (ii) Retain the Recovered Goods upon an act of default by The Applicant without notice to the Applicant.
- (f) The Applicant waives (and provides an ongoing waiver of) The Applicant's right to receive a verification statement in respect of any Financing Statement in accordance with section 157 of the PPSA and agrees, to that extent permitted by law, that:
  - (i) Where the Credit Provider have rights in addition to, or existing separately from those in Chapter 4 of the PPSA, those rights will continue to apply and in particular, will not be limited by Part 4.3 in Chapter 4 (seizure and disposal or detention of collateral); and
  - (ii) The Applicant's rights as debtor under sections 130, 132, 135 and 137 shall not apply to these Conditions.

- (g) The Applicant waives the right to receive any notices dealing with the Goods and default as far as the law allows. To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Credit Provider of an Interest, each party agrees that the following provisions of the PPSA do not apply:
  - (i) to the extent that section 115(1) of the PPSA allows them to be excluded: sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143; and
  - (ii) in addition to the extent that section 115(7) of the PPSA allows them to be excluded including sections 127, 129(2) and (3), 132, 133(1)(b), 134(2), 135, 136(3), 136(4), 136(5) and 137.
- (h) As far as the PPSA allows, property and ownership in the Goods will not pass to The Applicant but will remain with the Credit Provider until payment in full of the purchase price of the Goods and all other amounts are paid to the Credit Provider by The Applicant.
- (i) The conditions of this clause apply notwithstanding any arrangement between the parties under which the Credit Provider grants The Applicant credit on extended terms.

### **13. Payment Terms**

- (a) At the Credit Provider's sole discretion, a deposit may be required prior to any supply.
- (b) In the event of a dispute, the complete undisputed portion of the account must be paid in accordance with the Payment Terms.
- (c) Should it be considered necessary by the Credit Provider to incur legal and/or any other expenses, including any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Applicant, the Applicant shall be liable for all such expenses. The Applicant acknowledges that those expenses may be calculated on a commission basis at a percentage rate of up to 25% of the amount due and expressly agrees to pay those expenses irrespective of the amount of work actually performed by the agency.
- (d) Any payment made by or on behalf of a Applicant which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Applicant's indebtedness and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.
- (e) The Applicant shall be liable for, and expressly undertakes to pay, all fees (including an Administration Fee in an amount to be set from time to time by the Credit Provider) for all costs incurred as a result of any cheque or electronic banking transaction being dishonored for whatever reason.

### **14. Delivery**

The Credit Provider shall not be liable for any loss or damage, including consequential loss or damage, arising from delay in delivery or failure to deliver Goods, either whole or in part, due to circumstances beyond its control.

### **15. Defects**

- (a) The Applicant shall inspect the Goods upon delivery and will, within 48 hours, notify the Credit Provider of any defects, short deliveries or any failure to fulfill any quotation or order.
- (b) The Applicant will, within a reasonable time following delivery, grant the Credit Provider access to the Goods in order to inspect for any alleged defects.
- (c) Should the Applicant fail to notify the Credit Provider within the specified period then the Goods shall be deemed to be in compliance with the order and free from any defect whatsoever.

### **16. Warranty & Returns**

- (a) The Credit Provider warrants that Goods supplied shall be of merchantable quality.
- (b) The Credit Provider does not warrant that the Goods are fit for a particular purpose and, except or unless otherwise stated herein, warranties relating to title, defects or conformity of the Goods are expressly excluded.
- (c) Returns will be accepted only if prior arrangements have been made with the Credit Provider and charges, including but not limited to re-stocking fees, may apply.
- (d) Any costs associated with the return of Goods for the purpose of a warranty claim shall be the responsibility of the Applicant.

### **17. Risk**

- (a) Notwithstanding Retention of Title provisions as per clause 4 hereof, the risk in Goods purchased shall pass to the Applicant upon delivery to the Applicant or its agent or a carrier nominated by the Applicant.
- (b) If any of the Goods are damaged or destroyed prior to the title passing to the Applicant, the Credit Provider is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods.

### **18. Cancellation**

- (a) The Credit Provider may cancel the delivery of Goods at any time before delivery by giving notice to the Applicant by any means.
- (b) The Credit Provider shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation.
- (c) The Applicant may cancel the delivery of Goods at any time before delivery by giving notice to the Credit Provider by any means.
- (d) In the event that the Applicant cancels delivery of Goods, the Applicant shall be liable for any costs incurred by the Credit Provider up to the time of the cancellation including, but not limited to, any re-stocking fees incurred by the Credit Provider.

## 19. Limitation of Liability

- (a) The liability of the Credit Provider to the Applicant for any reason related to the performance of Goods under this agreement shall be limited to the replacement or repair of the Goods or the amount paid or payable by the Applicant in respect of the particular Goods.

## 20. General

- (a) The Credit Provider accepts no responsibility for changes in any law which may affect supply.
- (b) Neither the Credit Provider nor the Applicant shall be liable for any breach of any provision of any contract between them arising from an act of their respective God, natural disaster, terrorism, war or any other, specified or un-specified, occurrence beyond the control of either party.
- (c) The invalidity or unenforceability of any provision of these General Terms and Conditions shall not affect the validity or enforceability of the remaining provisions.
- (d) The Applicant acknowledges that all purchases are made relying solely upon the Applicant's own skill and judgment.
- (e) The Applicant warrants that all purchases under this agreement are for commercial purposes only and, accordingly, the provisions of the Consumer Credit Act will not apply.
- (f) These terms and conditions, including any Credit Limits set by the Credit Provider, are effective from the date of acceptance by the Applicant and may be amended or superseded from time to time by notice given by the Credit Provider by any means. Unless or except specifically excluded herein, the Credit Provider and the Applicant retain any rights and remedies available to them in any prior or pre-existing agreement.
- (g) "Goods" and/or "Collateral" shall mean all goods and/or services supplied by the Credit Provider to the Applicant, or ordered by the Applicant but not yet supplied, and includes goods described in any quotation, invoice, purchase order or any other document and over which the Credit Provider may intend to register a Security Interest.
- (h) "Price" shall mean the cost of the Goods as referred to in the Credit Provider's price lists, prepared quotes and / or specific arrangements and shall be subject to change from time to time without notice.
- (i) Service of any document or notice required to be given by any party to this Agreement (including service of any complaint in the Magistrates Court of Victoria) may be given or served, as the case may be by fax or email to the fax or email of such party appearing in this Agreement or by post by Priority mail addressed to the party at its address set out in this Agreement and when given by post shall be deemed to be so served at the expiration of three business days from the date of the posting of such document or notice.

## The Applicants Sign

Executed as a deed.

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signed by, for, or on behalf of the Applicant

----- Signature  
----- Print Full Name  
----- Position/Authority

Before me

----- Signature of Witness  
----- Print  
----- Name of Witness  
----- Address of Witness

Guide

This panel must be:

1. Signed by the Applicant, or an authorised representative of the Applicant;

And

2. Signed by an independent witness