

# TERMS AND CONDITIONS

## Definitions

- (a) "Contract" means the combination of any tender, invoice, order and/ or quotation and these Terms which are referenced therein.
- (b) "Customer" or "You" means the party specified in the tender, invoice, order and/or quotation.
- (c) "Electronic Signature" has the same meaning as in clause 6.4.
- (d) "Engagement" has the same meaning as in clause 3.
- (e) "Fill Service" has the same meaning as in clause 4.
- (f) "Goods and Services" means the products and or services specified in the applicable tender, invoice, order and/or quotation.
- (g) "Operator" means contractors of the Supplier who supply goods and services to the Customer.
- (h) "Signature" means a manual personalised signature.
- (i) "Supplier" means the following entities and their employees and agents together with, where the context admits, entities that are related or affiliated with them in the provision of the Goods and Services: "EPH Enterprises Pty Ltd (ACN 109 822 246)", "EPH NSW Pty Ltd (ACN 154 376 173 )", "EPH Queensland Pty Ltd (ACN 159 368 715)", "EPH Contracts Pty Ltd (ACN 153 936 273)", "EPH Contracts (QLD) Pty Ltd (ACN 628 420 173 )", "ESG Manningham Pty Ltd (ACN 134 678 381)", "ESG Pinkenba Pty Ltd (ACN 140 030 431)", "ESG Bangholme Pty Ltd (ACN 153 803 886)", "ESG Bellarine Pty Ltd (ACN 140 481 036)", "ESG Coldstream Pty Ltd (ACN 153 124 442)", "ESG Deer Park Pty Ltd (ACN 628 454 080)", "ESG Dingley Pty Ltd (ACN 158 977 381)", "ESG Epping Pty Ltd (ACN 159 368 760)", "ESG Ferntree Gully Pty Ltd (ACN 158 977 201)", "ESG Northern Pty Ltd (ACN 150 100 342)", "ESG Projects Pty Ltd (ACN 143 027 632)", "ESG Sunshine Pty Ltd (ACN 151 619 055)", "ESG Whittlesea Pty Ltd (ACN 159 368 742)" and "ESG Woodstock Pty Ltd (ACN 148 108 034)" .
- (j) "Supplier Application" means the Supplier's iPhone or Android application which can be downloaded from the iTunes or other applicable websites or applications for the purposes of completing a tender, order, quotation or other requirements to enable the Supplier or an Operator to supply Goods and Services to the Customer.
- (k) "Terms" means these terms and conditions.

## Application

1. Any Goods and or Services are supplied to the Customer by the Supplier or the Operator and are supplied on the following Terms.
2. These Terms apply to the supply of all Goods and Services either directly by the Supplier and/ or by the Operator in accordance with clause 3 of these Terms. The Terms form part of a Contract between the Supplier and the Customer unless the Supplier states in writing that these Terms shall not apply. A Contract shall be governed by the Terms which can only be varied by any other terms agreed in writing between the Supplier and the Customer.
3. The Supplier is an agent on behalf of Operators. The Customer may hire an Operator and/or hire the Operator's plant through the Supplier acting as a booking agent ("the Engagement"). When doing so, the Customer acknowledges and agrees that it is contracting directly with the Operator. Acceptance of these terms is a condition of the Supplier accepting your booking of the Operator. By Engaging the Operator, you indicate your acceptance of the Terms herein.

4. In addition to using its Services as a booking agent, you can pay the Supplier to have fill removed from site, or you can obtain fill through the Supplier from one of our customers (“the Fill Service”).
5. The granting of credit to the Customer is at the absolute discretion of the Supplier, who may vary the terms and conditions of credit with reasonable notice.

### **Acknowledgment & Acceptance**

- 6.1 By engaging the Operator, requesting a tender/quote and/or submitting an Order from/to the Supplier, the Customer acknowledges and agrees that:
  - (a) the Customer has read and understood these Terms, and
  - (b) the Customer is bound by these Terms.
- 6.2 Ordering Goods and Services with the Supplier or through an Operator may require use by the Customer of a Supplier Application which may require the Customer to acknowledge its agreement with terms and conditions (including these Terms) by clicking an “I Accept” button or affixing the Signature of the Customer’s representative through the Supplier Application on an iPhone, android or other electronic devices on which the Supplier Application has been downloaded.
- 6.3 By selecting the "I Accept" button or affixing a Signature to the Supplier Application, the Customer acknowledges and agrees that it has affixed its Electronic Signature to the Contract.
- 6.4 In these Terms, ‘Electronic Signature’ means:
  - (a) The Customer agrees that an electronic signature is the legal equivalent of Signature in a Contract;
  - (b) By selecting "I Accept", the Customer consents to be legally bound by these Terms which form part of a Contract;
  - (c) The Customer further agrees that use of an iPhone, Android device, keypad, mouse or other device to select an item, button, icon or similar act/action, or to otherwise provide the Supplier instructions regarding accessing or making any transaction regarding any Contract, including any acknowledgment, consents, disclosures or conditions, constitutes the Customer’s Electronic Signature, acceptance and agreement as if actually signed by the Customer in writing.
  - (d) The Customer also agrees that no certification authority or other third party verification is necessary to validate an Electronic Signature and that the lack of such certification or third party verification will not in any way affect the enforceability of an Electronic Signature on behalf of the Customer or any resulting Contract.
  - (e) The Customer also represents that its employees, contractors or other representatives are authorised to enter into a Contract for all persons who own or are authorised to access any of the Customer’s accounts and that the Customer will be bound by the terms of the Contract.
  - (f) The Customer further agrees that each use of an Electronic Signature constitutes its agreement to be bound by these Terms of the Contract as at the date of the Electronic Signature.
7. Services refers to any matter concerning, the Fill Service the Engagement or attempted Engagement and/or any other Services provided to the Customer by the Supplier.

### **Order, Quotation & Specification**

8. The Supplier may vary or withdraw any Quote at any time prior to acceptance. Unless otherwise stated by the Supplier any Quote shall remain valid for thirty (30) days from the date specified in the Quote. All verbal Quotes are subject to written confirmation by the Supplier.

9. The customer acknowledges that prices may vary and are subject to change due to weather conditions, tipping conditions, changed load rates, weight of fill material and any other conditions outside of the Supplier's immediate control.
10. The customer acknowledges that any claim for a credit and/or refund must be submitted in writing to the Supplier within fourteen (14) days from the date of the invoice, failing which any such claim for a credit/refund will be null and void as against the Supplier. The Supplier shall accept or reject any claims for a credit/refund in its absolute and unfettered discretion. The Supplier shall not act unreasonably in this regard.
11. Goods and Services shall be supplied in accordance with these Terms and the Customer is responsible for satisfying itself as to the suitability of such Goods and Services for the Customer's use or application.
12. The Supplier is not bound by any representation concerning the scope of supply performance or characteristics of Goods or Services unless that representation is expressly incorporated in the contract.
13. Each Order accepted by the Supplier shall be a separate individual Contract.
14. All Orders for the supply of Goods and/or Services must be placed by the Customer in writing and are subject to review and acceptance by the Supplier. The Customer acknowledges that by placing an Order with the Supplier, the Customer is making an unconditional offer to enter into a legally binding contract with the Supplier subject to these Terms.
15. An Order will be binding on the Supplier and the Customer if: (a) written acknowledgment and acceptance of the Order is forwarded by the Supplier to the Customer; or (b) the Goods and/or Services the subject of the Order is delivered/supplied by the Supplier to the Customer, the Customer's employees, contractors or agents; or (d) the Supplier accepts payment from the Customer in whole for the Goods and/or Services.
16. No Order may be cancelled or altered by the Customer in any way without the prior written consent from the Supplier, which consent may be withheld by the Supplier in its absolute discretion or made conditional on the occurrence of a specified event, and the Customer agrees to indemnify the Supplier against all losses and expenses associated with or arising out of any variation of an Order permitted by the Supplier in accordance with this clause.
17. In the event that the Supplier approves a cancellation in whole or in part of an Order, the Supplier will be entitled to payment for all work carried out to date, all Services rendered to date and any other costs incurred by the Supplier in producing or rendering such Goods and/or Services(as applicable).
18. The granting of credit to the Customer is at the absolute discretion of the Supplier, who may vary the terms of credit without further notice.

#### **Delivery/ Arrival Times**

19. Delivery dates or Arrival times agreed to by the Supplier, are to be taken as estimates only. The Supplier will not be liable in any way for a delay in delivery/arrival time. If there is a delay in delivery/arrival time, the Supplier has the right to extend the time for delivery/arrival time accordingly. If expedited or postponed delivery/arrival time is subsequently requested by the Customer, then the Customer must pay any additional costs incurred by the Supplier as a result including, but not limited to, labor, float/transport costs, and any other costs associated with same.
20. Delivery will be at an address as nominated by the Customer in writing and the cost of transportation of the Goods must be paid by the Customer. Unimpeded access to the material is required from 7am to 4pm on

the preferred start date and subsequent dates unless otherwise agreed with the Customer. The Customer acknowledges that further fees may be charged in the event that access is not provided

### **Limitation of Liability**

21. The Supplier excludes all liability and warranties to the maximum extent possible under law or statute. In particular, the Supplier does not make any representation or warranty that any fill provided to the Customer through the Supplier is free from contamination, or provide any representation or warranty in relation thereto. The Customer agrees and warrants that the Supplier will have no liability to the Customer in respect of any advice or representation as to any matter concerning, the Fill Service the Engagement or attempted Engagement and/or any other Services provided to the Customer by the Supplier.
22. To the extent that any conditions or warranties imposed by law or statute, including the Australian Consumer Law cannot be excluded, the Supplier limits its liability: in the case of an Engagement or attempted Engagement, to booking an operator again; in the case of removing fill, to removing fill again; and in the case of providing fill, to providing fill again and/or any other Services provided to the Customer by the Supplier.
23. The Customer agrees to indemnify the Supplier, its employees, agents, its contractors, its representatives, its officers, successors and assignees and hold them harmless from and against all claims made against the Supplier in respect of any loss, including consequential loss, damage, injury or death arising out of, or in any way connected with: the Engagement, attempted Engagement or failure to perform the Engagement; the provision of, attempted provision of or failure to provide fill; or the removal of, attempted removal of or failure to remove fill and/or any other fill, goods and/or Services provided to the Customer by the Supplier.
24. The Supplier will not be liable to the Customer in contract, in tort or otherwise in relation to the performance of the engagement, or the Services performed or any breach of these terms or any other matter relating to the engagement or Services or in relation to any error (whether negligent or a breach of contract or not) regarding information supplied to the Customer before or after delivery of the Goods and or the provision of the Fill Service the Engagement or attempted Engagement and/or any other Services provided to the Customer by the Supplier.
25. The Customer acknowledges and agrees that: (a) The Customer will rely on the Customer's own knowledge and expertise in selecting any engagement and/or Services for a particular purpose and any advice or assistance given to the Customer by or on behalf of the Supplier will not be deemed to be given to the Customer as an expert or adviser; and (b) the Customer accepts full responsibility on placement of an Order with the Supplier that the Customer has correctly identified the equipment, engagement and/or Services which are to be provided to the Customer by the Supplier. The Supplier will not be liable for any loss or damage suffered by the Customer as the result of incorrect identification of Goods and/or Services, nor give a credit if the Customer orders incorrect Goods and/or Services.
26. To the extent permitted by law, the Supplier will not be liable for injury, loss or damage claimed by the Customer against the Supplier or by a third party against the Supplier arising out of the fill service, the engagement the attempted engagement, Goods and/or other Services are put by the Customer or arising out of the non-delivery/provision or late delivery/provision of them. The Customer agrees to indemnify the Supplier against any such claim

### **The Fill Service**

27. The Supplier may in its absolute discretion refuse to accept fill at any time.
28. The Customer warrants to the Supplier that the fill material delivered to a clean fill site is within the scope of clean fill as per Environment Protection (Industrial Waste Resource) Regulations 2009 (the Regulations). Publication IWRG621 — June 2009 or such other information bulletins issued by the EPA in place of

Environment Protection (Industrial Waste Resource) Regulations 2009 (the Regulations). Publication IWRG621 — June 2009 from time to time and as varied from time to time.

29. The customer acknowledges that prices may vary and are subject to change due to weather conditions, tipping conditions, changed load rates, weight of fill material and any other conditions outside of the Supplier's immediate control.
30. The customer shall supply the source or origin of all clean fill material brought into a clean fill site and acknowledges that the Supplier will record this information including the use of any material tracking of the said material and this information will be utilised by the Supplier at a later date.
31. The customer agrees to remove any loads suspected of not being clean fill as per EPA bulletin 448.1 at its own cost or to compensate the Supplier for any costs incurred by the Supplier for the removal and disposal of fill material not deemed to be or proven not to be clean fill.
32. The customer will make available to the Supplier all reports on fill material brought into a clean fill site upon request.
33. Unless otherwise specified all prices are based on 10m<sup>3</sup> of material being able to be legally carried on each Tandem Tipper load, or 22m<sup>3</sup> for a Truck and 3 Axle Trailer, 24m<sup>3</sup> of a PBS Truck & Super Dog Trailer and 25m<sup>3</sup> for Quad dogs.
34. The Customer acknowledges that although the Supplier requests suppliers of fill to only provide "fill material" within the meaning of the EPA publication IWRG600.2 December 2010, The Supplier does not verify whether the fill meets these requirements. It offers no representation nor commitment that fill material supplied will correspond with the type indicated upon a quotation.
35. To the extent permitted by law, all warranties and representations in relation to the provision of fill by the Supplier and its representatives, including any warranties or representations or guarantees as to the type or character of the fill, or the use to which it should be put, are excluded. The liability of the Supplier and its principals for breach of warranties or conditions implied by any applicable legislation is limited to supplying the fill again or at the Supplier's option paying the cost of having the fill supplied again

#### **Payment And Other Obligations**

36. The Customer must pay the Supplier for the Goods and/or Services provided to the Customer. Invoices submitted by the Supplier to the Customer must be paid within the time period stipulated in the invoice and if no time period is stipulated, within thirty (30) days after the date of the invoice issued by the Supplier on the Terms as contained herein and varied from time to time.
37. If the Customer fails to pay any amount due to the Supplier by the due date or if in the Supplier's opinion there is any matter likely to prejudice the trading ability or asset position of the Customer, then in addition to any other rights it may have, the Supplier can:
  - (a) cancel the Customer's credit account; and/or;
  - (b) at its absolute discretion, refuse to continue with the engagement or provision of the service(s) until payment of all invoices is made in full (including if such invoice has remained unpaid for less than 30 days) and/or;
  - (c) the Customer shall pay to the Supplier such other sum or sums by way of interest or otherwise as may be set out in the invoice and in default thereof the Customer shall pay to the supplier interest on any moneys outstanding on and from the due date until the actual date of payment at the rate of 14% per annum.

38. Prices for supplies and or Services made by the Supplier will be exclusive of GST where applicable and the GST incurred in the price will be separately identified on the relevant invoice. In the event that GST is payable upon a supply and the price did not include that GST amount, the Customer must indemnify the Supplier for any loss that may result.
39. A statement in writing setting out the amount due or owing by the Customer to the Supplier as at the date mentioned in the statement will be conclusive evidence that such amount is due or owing by the Customer and of all other matters set forth in the statement.
40. The Customer hereby charges to the Supplier all its estate and interest in any land and in any other asset (including personal property) in which the Customer now has any legal or beneficial interest, or in which the Customer may later acquire any such interest by way of security with payment of all monies owing by the Customer to the Supplier. The Customer further agrees that immediately upon demand being made upon the Customer by the Supplier, the Customer shall deliver to the Supplier such a bill or instrument of encumbrance, in registrable form as the Supplier may require to be executed by the Customer. The Customer also consents to the Supplier lodging a caveat or caveats in respect of any land in which the Customer has an interest, including executing a mortgage. In the event that the Customer should neglect or fail to deliver the required instruments or securities, the Customer hereby, appoints the Supplier to be the Customer's lawful attorney for the purpose of executing and registering such instruments.
41. In order to further secure payment of all monies which the Customer may become liable to pay the Supplier, the Customer charges all of the Customer's personal property both presently owned by the Customer and that which the Customer may hereafter acquire. The Customer further agrees that immediately upon demand being made upon the Customer by the Supplier, the Customer shall deliver to the Supplier such a bill or instrument of encumbrance in registrable form as the Supplier may require to be executed by the Customer. In the event that the Customer should neglect or fail to deliver the requested instrument or security, the Customer hereby appoints the Supplier to be the Customer's lawful attorney for the purpose of executing and registering such instruments. The charge referred to herein constitutes a security interest (as defined in section 12 of the Personal Property Securities Act 2009 ("the Act")) insofar as it relates to the Customer's personal property, which may be registered by the Supplier on the register as defined in section 10 of the Act. Pursuant to section 275(6) of the Act, the Customer agrees it will not disclose to an interested person any of the matters described in section 275 (1) of the Act without prior approval of the Supplier. To the extent permitted by law, the Customer waives its rights to receive any notification under section 115(1)(a)-(r) inclusive of the Act.
42. The Customer agrees and acknowledges that:
- (a) These Terms constitute a security agreement for the purposes of the Act and that a security interest exists in all Goods previously supplied by the Supplier to the Customer and their proceeds (if any); in all future Goods that may be supplied by the Supplier (and their proceeds) and in all products into which the Goods are incorporated, processed or commingled (and their proceeds);
  - (b) Where the Customer is paid in respect of the Goods so delivered, the Customer must, as the Supplier's fiduciary, keep any such proceeds in a separate account and account to the Supplier in respect of those proceeds;
  - (c) The Customer contracts out of and waives its rights under the following provisions of the Act:
    - (i) to receive a notice of intention of removal of accession (section 95);
    - (ii) to receive a notice that the Supplier decides to enforce its security interest in accordance with land law (section 118);
    - (iii) to receive notice on enforcement of security interests in liquid assets (section 120);

- (iv) to receive a notice on enforcement action against liquid assets (section 121(4));
  - (v) to receive a notice to seize collateral (section 123);
  - (vi) to receive notice on enforcement of security interests in liquid assets (section 125);
  - (vii) to receive a notice of disposal of Goods by the Supplier purchasing the Goods (section 129);
  - (viii) to receive a notice to dispose of Goods (section 130);
  - (ix) to receive a statement of account following disposal of Goods (section 132(2));
  - (x) to receive a statement of account if no disposal of Goods for each 6 month period (section 132(3) and (4));
  - (xi) to receive notice for the Supplier to retain Goods (section 134(2));
  - (xii) to receive notice of any proposal of the Supplier to retain Goods (section 135(2));
  - (xiii) to object to any proposal of the Supplier to either retain or dispose of Goods (section 137(2));
  - (xiv) to redeem the Goods (section 142);
  - (xv) to reinstate the security agreement (section 143); and
  - (xvi) to receive a notice of any verification statement (see section 157(1) and section 157(3).
- (d) Where the Supplier has rights in addition to those under the Act, those rights will continue to apply.
- (e) Until ownership of the Goods passes, the Customer must not give the Supplier a written demand or allow any other person to give the Supplier a written demand requiring the Supplier to register a financing change statement under the Act or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the Act.
- (f) It has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest (as defined in the Act) granted to the Supplier under these Terms.
- (g) The Customer irrevocably grants to the Supplier its subcontractors, servants, helpers and agents the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if the Supplier its subcontractors, servants, helpers and agents has cause to exercise any of the Supplier's rights under sections 123 and/or 128 of the Act, and the Customer agrees to indemnify the Supplier from any claims made by any third party as a result of the Supplier exercising such right.
- (h) Pursuant to section 275(6) of the Act, the Customer agrees it will not disclose to an interested person any of the matters described in section 275(1) of the Act without prior approval of the Supplier.
- (i) If the Customer defaults in the performance of any obligation owed to the Supplier, the Supplier may enforce its security interest in any Goods by exercising all or any of its rights under these Terms, or the Act

43. A Contract will terminate on the date stated in a written notice by the Supplier to the Customer. Even when the Customer and/or the Guarantor do not owe any money to the Supplier, the Supplier is not obliged to discharge or remove any Guarantor; charge or other security if in its opinion that within a reasonable time:

- (a) The Customer might become indebted to the Supplier; (b) The Guarantor might become indebted to the Supplier;
  - (c) A payment made to the Supplier might be void or voidable for any reason (including the Bankruptcy Act 1966 or Corporations Act 2001).
44. These Terms and any further terms will be construed and have effect in accordance with the laws of Victoria and the Customer agrees to submit to the jurisdiction of the courts of Victoria.
  45. The Customer will pay to the Supplier all costs, expenses and disbursements incurred by the Supplier including, without limiting the generality of the foregoing, debt collection costs, agency fees and commissions, legal costs on an indemnity basis relating to the enforcement of these Terms and such costs, expenses and disbursements shall be paid by the Customer upon the written demand by the Supplier to the Customer.
  46. All payments made by credit card will incur a surcharge of an additional 1.5%.
  47. If any part of the terms and conditions are is invalid, unenforceable, illegal, void or voidable for any reason, the terms and conditions will be construed and be binding on the parties as if the invalid, unenforceable, illegal, void or voidable part had been deleted from the terms and conditions or read down to the extent necessary to overcome the difficulty.
  48. A Contract constitutes the entire agreement and understanding of the parties in relation to the subject matter of a Contract.
  49. The Supplier may assign the benefits or obligations of these terms and conditions of Booking without your consent.
  50. The Supplier reserves the right to vary the terms and conditions from time to time.
  51. You grant the Supplier and/or Operator an irrevocable licence to enter the site at any time and remove the plant.
  52. It is your responsibility to contact the appropriate authorities and verify the existence and location of any underground cables, pipes or other services. You hereby indemnify the Supplier, its subcontractors, servants, helpers and agents against any claim for loss or damage (consequential or otherwise) to any person or property arising out of or connected with damage to or interference with underground cables, pipes or other services



# CREDIT TERMS

These credit terms apply to the provision of credit by a Supplier in connection with Goods and or Services supplied by the Supplier to the Customer:

## 1. Purpose for which credit is available

Subject to paragraph 2, credit (if approved) will be made available to the Customer for the purpose of the purchase of Goods and or Services by the Customer from the Supplier subject to the Terms.

## 2. Commercial Credit

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

## 3. Credit Limits

Credit limits are as approved by the Supplier at its absolute discretion and notified to the Customer pursuant to the Customer's application provided that the Supplier may vary the credit limits at any time.

## 4. Privacy

The personal information submitted about the Customer will be used for the purposes associated with assessing the Customer's commercial credit application and administering the commercial credit account. The Supplier's External Privacy Policy, available at <http://www.ephgroup.com.au/privacy> ("External Privacy Policy") sets out how the Supplier manages personal information. Under the Privacy Act 1988 (Cth) ("Privacy Act"), the Customer has rights to access to, and correction of, their personal information. In accordance with the Privacy Act, any person may access personal information about them held by the Supplier and advise if they think it is inaccurate, incomplete or out of date. To arrange access to personal information, request a copy of the External Privacy Policy or enquire generally about privacy matters, write to the Privacy Officer in any of the ways set out in the External Privacy Policy.

## 5. Credit Variation

The Supplier may, at its absolute discretion, vary these credit terms (including the withdrawal of credit) at any time without notice to the Customer.

## 6. Credit Reports – Privacy Act Notice and Consent

The Customer (and each of its individual directors, partners or proprietors) and each person signing as Customer of the Customer's obligations under this credit application ("Customer") acknowledges and agrees that the Supplier and any related bodies corporate:

- (a) may give certain information about them to related bodies corporate of the Supplier, the insurer(s) of the Supplier, a credit reporting agency, other credit providers, collecting agencies or legal firms (some being located in foreign countries) in order to obtain a credit report about them or to recover money which is due and payable from them. The information which may be given is covered by s18E(1) of the Privacy Act 1988 (Cth) (the "Act") and may include, as relevant, identity particulars and the fact that the Customer has applied for credit or the Customer has offered to act as Customer; and
- (b) may, in assessing whether to grant the Customer's credit application or whether to accept the Customer as a Customer, seek and obtain information about them from a credit reporting agency or another credit provider and may give information about them to another credit provider. The information may include anything about credit worthiness, history, standing or capacity (including information about commercial credit) which credit providers are permitted by the Act to obtain or receive.

## **7. Acceleration**

If any amount due and payable by the Customer:

- (a) under the Terms or credit terms; or
- (b) to any related body corporate of the Supplier.

is not paid on time, all amounts actually or contingently owing under the Terms and credit terms, whether or not due and payable, become immediately due and payable.

## **8. Breach**

If the Customer:

- (a) breaches the credit terms or Terms of sale:
- (b) makes any false representation (whether by act or omission) in respect of the Customer's application for credit, including any false representation (whether by act or omission) in relation to the Customer's financial position; or
- (c) becomes subject to the provisions of paragraph 8, then, without limiting any other rights of the Supplier, the Supplier may:
  - (i) terminate the credit terms; and/or
  - (ii) refuse to supply any Goods to the Customer

## **9. Other Documentation**

The Customer expressly agrees and acknowledges that it is a condition of the Supplier approving the Customer's application for credit that any supply of Goods by the Supplier is subject only to the Terms. Under no circumstances may the Customer introduce or attempt to introduce contractual terms governing such supply, which are inconsistent with the Terms unless the Supplier expressly agrees to in writing.

## **10. Agreement**

The Customer has read and agrees to the Terms and credit terms and warrants that all information provided by the Customer to the Supplier is true, complete and correct. The Customer requests the Supplier to accept this credit application and upon acceptance by the Supplier the Customer agrees to be bound by these credit terms and the Terms. The Supplier may assign the benefits or obligations of these Terms of Booking without your consent.

## **11. Governing Law**

The Supplier and the Customer agree that this agreement and any further agreement for the supply of Goods by the Supplier to the Customer will be construed and have effect in accordance with the laws of the State of Victoria and the Customer agrees to submit to the jurisdiction of the courts of the State of Victoria, the Federal Court of Australia, and of any courts entitled to hear appeals from those courts.

## **12. Waiver**

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