

SECTION F – TERMS AND CONDITIONS

Any goods supplied to the Customer (as defined in Section A of the Commercial Credit Application) (“Customer”) by the Supplier are supplied on the following terms and conditions:

1. 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.
2. Delivery dates or 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. If there is a delay in delivery, the Supplier has the right to extend the time for delivery accordingly. If expedited or postponed delivery is requested by the Customer, then the Customer must pay any additional costs incurred by the Supplier as a result including, but not limited to, storage and insurance costs. Where goods are delivered to the Customer in instalments, the Customer must pay the invoice price for each instalment within the Suppliers’ credit terms, even if non-delivery or delay in delivery of any other instalment has occurred.
3. 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.
4. If delivery of goods is refused by the Customer or anyone on its behalf, the Customer must pay to the Supplier:
 - a. the invoice price of the goods together with interest on that amount at the overdraft rate on business accounts charged by Supplier’s bank on similar amounts from the date of refusal until payment of the invoice price; and
 - b. any additional costs incurred by the Supplier including, but not limited to, carriage, storage and insurance costs incurred by the Supplier in relation to those goods.
5. If the Customer or anyone on its behalf cancels an order for goods prior to delivery, the Customer must pay to the Supplier as a liquidated and ascertained debt the cost (if any) to the Supplier, including but not limited to overheads and administrative costs, of producing the goods or partly producing the goods up to that time.
6. Title in the goods supplied by the Supplier to the Customer does not pass to the Customer until the goods and all other goods supplied by the Supplier to the Customer have been paid for in full. Until title in the goods passes to the Customer:
 - a. the Customer must at its expense store the goods in such a manner as to clearly show that they are the property of the Supplier;
 - b. the Customer irrevocably grants to the Supplier, its agents and servants, an unrestricted right and licence, without notice, to enter the premises occupied by the Customer to identify and remove any of the goods which are the property of the Supplier at its option without in anyway being liable to the Customer or any persons claiming through him. The Supplier has the right to sell or dispose of any goods so removed or otherwise in its sole discretion and will not be responsible for any loss caused by it; and
 - c. Where the Supplier’s goods are held by the Customer, the Customer agrees with the Supplier to keep the goods:
 - i) as fiduciary for the Supplier; and
 - ii) stored in a manner which clearly identifies the goods and shows the Supplier’s ownership.
7. Notwithstanding clauses 6 (a) to (c), the Customer may, as the Supplier’s fiduciary:
 - a. sell and deliver the goods to a third party in the ordinary course of the Customer’s business PROVIDED THAT:
 - i) 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; and
 - ii) where the Customer has not been paid in respect of the goods by the third party, the Customer acknowledges that the debt due by the third party is held by the Customer on behalf of the Supplier and must, be assigned in writing to the Supplier upon demand; or
 - b. incorporate the goods into another product of the Customer before payment in full has been made for the goods PROVIDED THAT the title and property in the resulting product becomes and remains the property of the Supplier until payment in full of all accounts by the Customer to the Supplier.
8. The goods are at the Customer’s risk immediately on delivery to, or receipt by the Customer or into the Customer’s custody, including but not limited to loading the goods onto the Customers nominated carrier (whichever is the earlier). The Customer must insure the goods at its cost from delivery or receipt of the goods until they are paid for in full against all usual risk. The policy of insurance must note the interest of the Supplier on the policy and produce a certificate to this effect to the Supplier upon written request.
9. The Customer acknowledges that goods supplied by the Supplier are resold by the Customer in the same order as the goods are supplied by the Supplier.
10. If the Customer fails to pay any amount due to the Supplier 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. withhold delivery on any further goods ordered by the Customer but not yet delivered;
 - b. cancel the Customer’s credit account; and/or
 - c. claim interest on all amounts then due to the Supplier at the business overdraft rate then charged by the Supplier’s bank on similar amounts from date each amount was payable to the date of payment.
11. If a cheque tendered by or on behalf of the Customer in payment of any invoice is not honoured upon presentation, the Customer will pay to the Supplier the sum of \$25.00 in respect of each presentation, which the Supplier can debit to the Customer’s account.
12. These terms and conditions do not exclude or limit the application of any laws, (including the *Competition and Consumer Act 2010*) where to do so would contravene those laws or cause any part of these terms and conditions to be void. To the extent permitted by law, these terms and conditions exclude all implied conditions and warranties except any implied condition or warranty, the exclusion of which would contravene any laws or cause this condition to be void (“non-excludable condition”). If the Supplier is providing a service, the Suppliers liability for a breach of a non- excludable condition is limited at the Suppliers option to supplying the service again or the cost of supplying the service again. If the Supplier is supplying goods, the Suppliers breach for a non-excludable condition is limited, at the Suppliers option, to the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired. To the extent permitted by law, the Supplier excludes any liability to the Customer or any other person for any loss or damage consequential or otherwise and not limited to any loss of profits arising out of or in connection with the provision of the goods or services provided.
13. Prices for supplies made by the Supplier will include 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.

14. The Customer must inspect all goods upon delivery and within 72 hours of delivery notify the Supplier in writing of any matters which the Customer alleges that the goods are not in accordance with the Customer's order. Failing such notice and, to the extent permitted by law, the goods will be deemed to have been accepted by the Customer.
15. Where the Supplier receives written notice pursuant to clause 14 and the Supplier is satisfied that the goods are not in accordance with the Customer's order, subject to the application of any Act or law, the Customer will receive a credit for the goods provided they are returned to the Supplier in a saleable condition, in addition to any other rights or remedies available to the Customer.
16. 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.
17. The Customer agrees and undertakes to do anything the Supplier requires (such as obtaining consents and signing and producing documents) in connection with the registration of this document or any other document on any register established pursuant to the *Personal Property Securities Act 2009* (Cth) ("the Act"), including but not limited to registering a financing statement or financing change statement. In the event the Customer neglects or fails to deliver such document(s), the Customer hereby appoints the Supplier to be the Customer's lawful attorney for the purpose of executing and registering such document(s). The Customer will not create or permit to be created any security interest in the collateral referred to in clause 18(a) (other than that created under these terms and conditions). The Customer will ensure the Supplier has a perfected security interest in the collateral granted under these terms and conditions.
18. The Customer agrees and acknowledges that:
 - a. These terms and conditions 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 comingled (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. To the extent permitted by law 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 a notice of disposal of goods by the Supplier purchasing the goods (section 129);
 - vii) to receive a notice to dispose of goods (section 130);
 - viii) to receive a statement of account following disposal of goods (section 132(2));
 - ix) to receive a statement of account if no disposal of goods for each 6 month period (section 132(4));
 - x) to receive notice for the Supplier to retain goods (section 134(2));
 - xi) to receive notice of any proposal of the Supplier to retain goods (section 135(2));
 - xii) to object to any proposal of the Supplier to either retain or dispose of goods (section 137(2));
 - xiii) to redeem the goods (section 142);
 - xiv) to reinstate the security agreement (section 143); and
 - xv) 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. To the extent permitted by law 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 and conditions.
 - g. To the extent permitted by law the Customer irrevocably grants to the Supplier 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 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. To the extent permitted by law 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 right under these Terms and Conditions, or the Act.
19. In consideration of the Supplier having agreed to sell goods and extend credit, the Customer hereby charges in favour of the Supplier all its interest in any land and in any other property which the Customer may have or may later acquire with payment of all monies owing by the Customer to the Supplier and the Customer agrees upon request to execute a registrable instrument transferring to the Supplier the Customer's estate or interest by way of security.
20. These terms and conditions and any further terms 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 that State.
21. The Customer will pay and indemnify the Supplier as against any stamp duty. In addition, the Customer will pay to the Supplier all costs and expenses incurred by the Supplier including, without limiting the generality of the foregoing, legal costs on an indemnity basis relating to the enforcement of these terms and conditions and such costs and expenses shall be paid by the Customer upon the written demand by the Supplier to the Customer.
22. These terms bind the Customer both personally and as trustee of any trusts of which the Customer is a trustee.