

Terms and Conditions of Trade

1 Interpretation

1.1 Definitions

- (a) **Agreement** means these terms and conditions of trade and any other deed or arrangement by which the Creditor provides Goods and/or Services to the Customer.
- (b) **Authorised Persons** means any person (or persons), who requests Goods and/or Services from the Creditor on behalf of the Customer.
- (c) **Creditor** means AllPrep Flooring Specialists Pty Ltd (ABN 32 168 404 153), its successors and assigns or any person acting on behalf of and with the authority of that organisation.
- (d) **Customer** means the Customer, its successors and assigns or any person acting on behalf of and with the authority of the Customer, as so described on any application, quotation, work authorisation or other form provided by the Creditor to the Customer.
- (e) **Goods** means all Goods supplied by the Creditor to the Customer (and where the context so permits shall include the supply of Services as hereinafter defined) and are as described on the invoices, quotation or any other forms as provided by the Creditor to the Customer.
- (f) **Guarantor** means that person (or persons), or entity, who agrees to be jointly and severally liable for the debts of the Customer on a principal debtor basis.
- (g) **Insolvency** includes winding up, dissolution, administration, receivership, provisional liquidation, bankruptcy, and any arrangement (including a scheme of arrangement), composition and compromise with, or assignment for the benefit of creditors.
- (h) **Order** means the stated intention by the Customer, either verbally or in writing, to engage in a transaction with the Creditor for specific products and/or services.
- (i) **PPSA** means the Personal Property and Securities Act 2009 (Cth) as amended from time to time.
- (j) **Price** means the price payable for the Goods and/or Services as agreed between the Creditor and the Customer in accordance with clause 3 of this contract.
- (k) **Services** means all Services supplied by the Creditor to the Customer and includes any advice or recommendation (and where context so permits shall include any supply of Goods as defined above).

1.2 Interpretation

In this agreement unless the context indicates a contrary intention:

- (a) person includes an individual, a body politic, a corporation and a statutory or other authority or association (incorporated or unincorporated);
- (b) references to a party include that party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
- (c) references to any legislation or to any section or provision thereof includes any statutory modification or re-enactment or any statutory provision substituted therefor and all ordinances, by-laws, regulations and other statutory instruments issued thereunder;
- (d) corporation means any body corporate wherever formed or incorporated, including any Government Agency;
- (e) words importing the singular shall include the plural (and vice versa) and words denoting a given gender shall include all other genders;
- (f) headings are for convenience only and shall not affect the interpretation of this agreement;
- (g) references to a clause or a schedule are to a clause or schedule of this agreement;
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (i) where the day on or by which any sum is payable under this agreement or any act, matter or thing is to be done is not a Business Day such sum shall be paid and such act, matter or thing shall be done on the next succeeding Business Day;
- (j) a reference to any document, or agreement is to such document as amended, varied, supplemented or novated from time to time;

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- (k) when introducing an example, the use of specific words does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (l) the following words have the same meaning as the definitions in PPSA: collateral, secured party, security interest, account, accession, personal property, possession, and proceeds;
- (m) the singular includes the plural and vice versa; and
- (n) a reference to:
 - a document or agreement includes any variation or replacement of it;
 - law means common law, principles of equity, and laws made by parliament (and includes regulations and other instruments under laws made by parliament, and consolidations, amendments, re-enactments or replacements of any of them);
 - any thing includes the whole and each part of it.

2 Acceptance

- 2.1 The Customer is taken to have accepted and is immediately bound by this Agreement if the Customer executes the Credit Account Application and/or provides the Creditor with any instructions for the supply of Goods and/or Services and/or the Customer's acceptance of Goods and/or Services supplied by the Creditor shall constitute acceptance of the Agreement and the terms and conditions herein.
- 2.2 Where more than one Customer has entered into this Agreement, the Customers shall jointly and severally be liable for all payments of the Price.
- 2.3 Upon acceptance of this Agreement by the Customer the terms and conditions are binding and can only be amended with the written consent of the Creditor.
- 2.4 The Customer shall give the Creditor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details, including but not limited to changes in the Customers address, facsimile number, email address and business practice.
- 2.5 This Agreement binds both the Customer personally and as a trustee of any trust of which the Customer is a trustee.
- 2.6 Goods and/or Services are supplied by the Creditor only on the terms and conditions of trade outlined in this Agreement, to the exclusion of anything to the contrary in the terms of the Customer's order, notwithstanding that any such order is placed on terms that purport to override this Agreement.
- 2.7 The Customer agrees that upon acceptance of the Agreement, that the Agreement and the constructions and interpretation of it shall be governed by the laws of the state of New South Wales in force for the time being and from time to time, and the Customer irrevocably submits generally and unconditionally to the jurisdiction of the Courts of New South Wales in respect of the Claims, proceedings and matters arising out of the said agreement.
- 2.8 The Customer warrants that all Authorised Persons are over the age of eighteen (18) years, and that they have the authority of the Customer to make requests on behalf of the Customer for the provision of Goods and/or Services by the Creditor and to bind the Customer to the Agreement with the Creditor.
- 2.9 The Customer is solely responsible for informing the Creditor of any changes in its roster of Authorised Persons that have authority to request Goods and/or Services from the Creditor.
- 2.10 The Customer solely warrants that should the Customer revoke its authority from any Authorised Person but have failed to advise the Creditor in writing of this fact, the Customer will be responsible for any costs incurred in supplying Goods and/or Services requested by the formerly Authorised Person.
- 2.11 The Customer may at any time close its account with the Creditor by providing thirty (30) days written notice to the Creditor.
- 2.12 If the Customer's account is closed for any reason, or on termination of this Agreement, the Customer must immediately pay to the Creditor all moneys owing.
- 2.13 Termination of this Agreement for any reason will not extinguish or otherwise affect:
 - (a) any rights of either party against the other which:
 - (i) accrued prior to the termination; or
 - (ii) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement which arose prior to the time of termination; or

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- (b) any other provisions of this Agreement which by express statement in this Agreement or by their nature survive termination or expiration.

3 Price and Payment

3.1 At the Creditor's sole discretion the Price shall be either.

- (a) as indicated on invoices provided by the Creditor to the Customer in respect of Goods and/or Services supplied; or
- (b) the Creditor's quoted Price (subject to clause 3.2) provided that the Customer accepts the Creditor's quotation in writing within thirty (30) days of the date of the quotation.

3.2 The Creditor reserves the right to change the Price in the event of a variation to the Creditor's quotation or in the event of the Customer changing the scope of works.

3.3 If the Customer requires work to be performed outside of the Creditor's normal trading hours then the Price shall be increased to include the Creditor's usual overtime rate.

3.4 At its sole discretion, the Creditor may charge for the cost of delivery any Goods and/or Services to the Customer. The Customer acknowledges that should the Creditor choose not to require a delivery fee in any one instance, this does not prevent the Creditor from requiring a delivery fee at a future time.

3.5 At its sole discretion, the Creditor may require that the Customer pay a deposit before the supply of any Goods and/or Services. The Customer acknowledges that should the Creditor choose not to require a deposit in any one instance, this does not embargo the Creditor from requiring a Deposit at a future time.

3.6 At the Creditor's sole discretion:

- (a) payment shall be due on delivery of the Goods and/or Services; or
- (b) if the Creditor's authorised personnel agrees in writing, payment may be made by instalments in accordance with a payment schedule specified by the Creditor.

3.7 Time for payment of the Goods and/or Services shall be stated on the invoice supplied to the Customer or any other form supplied requesting payment. If no time for payment is stated then payment shall be due seven (7) days following the date of the invoice.

3.8 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by credit card (plus a surcharge of up to three percent (3%) of the Price, or four and one half percent (4.5%) of the price if payment is made by American Express card), or by any other method as agreed to between the Customer and the Creditor in writing.

3.9 Should the Customer fail to make payment of the invoiced amount in the appropriate time frame as outlined by the invoice supplied by the Creditor to the Customer, then the Customer shall be liable for all costs incurred by the Creditor for the recovery of the outstanding amounts, as outlined in clause 10.

3.10 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4 Delivery of Goods and/or Services

4.1 At the Creditor's sole discretion delivery of the Goods and/or Services shall take place when the Customer takes possession of the Goods and/or Services at the Customer's nominated address (in the event that the Goods and/or Services are delivered by the Creditor or the Creditor's nominated carrier).

4.2 At the Creditor's sole discretion the costs of delivery are included in the Price, subject to clause 3.4.

4.3 The Customer shall make all arrangements necessary to take delivery of the Goods and/or Services whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods and/or Services as arranged then the Creditor shall be entitled to charge a reasonable fee for redelivery.

4.4 Delivery of the Goods and/or Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this Agreement.

4.5 The Creditor may deliver the Goods and/or Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

4.6 The failure of the Creditor to deliver shall not entitle either party to treat this contract as repudiated.

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4.7 The Creditor shall not be liable for any loss or damage whatever due to failure by the Creditor to deliver the Services (or any of them) promptly or at all where such failure is due to circumstances beyond the control of the Creditor.

5 Risk, use and security

5.1 If the Creditor retains ownership of the Goods and/or Services nonetheless, all risk for the Goods and/or Services passes to the Customer on delivery.

5.2 Where a third party has supplied materials for the Creditor to complete the Goods and/or Services, the Customer acknowledges that the Creditor accepts no liability for the suitability of purpose, quality and any faults inherent in the materials. The Creditor shall not be responsible for any defects in the works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of the materials supplied.

5.3 If any of the Goods and/or Services are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Creditor is entitled to receive all insurance proceeds payable for the Goods and/or Services. The production of this Agreement by the Creditor is sufficient evidence of the Creditor's rights to receive the insurance proceeds without the need for any person dealing with the Creditor to make further enquiries.

5.4 Where the Customer expressly requests the Creditor to leave Goods and/or Services at an unattended location, or to deliver the Goods and/or Services to an unattended location then such Goods and/or Services shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods and/or Services are insured adequately or at all.

5.5 The Customer shall indemnify the Creditor from and against all costs incurred and damages caused as a result of the Creditor following the Customer's instructions.

6 Customer's Responsibilities

6.1 It is the intention of the Creditor and agreed by the Customer that:

- (a) the Customer shall obtain and pay for all approvals, consents or permits required for the Goods and /or Services prior to commencement of supply of the Goods and/or Services by the Creditor; and
- (b) the Customer shall provide the Creditor with clear and free access to the worksite, including electricity and water services, to enable the Creditor to complete the delivery of the Goods and/or Services, and any Services required at the worksite. The Creditor shall not be liable for any loss or damage to the worksite whatsoever unless due to the negligence of the Creditor; and
- (c) Instructions on the placement, installation and /or supervision for the Goods and/or Services shall be the sole responsibility of the Customer; the Creditor shall not be liable for errors or omissions arising from the Customer failing to comply with this clause.

7 Title

7.1 The Creditor and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid the Creditor all amounts owing for the particular Goods and/or Services; and
- (b) the Customer has met all other obligations due by the Customer to the Creditor in respect of all contracts between the Creditor and the Customer.

7.2 Receipt by the Creditor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised by the Creditor's bank and until then the Creditor's ownership or rights in respect of the Goods and/or Services shall continue.

7.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 7.1 then the Customer is only a bailee of the Goods and must return the Goods to the Creditor on request; and
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Creditor and must pay to the Creditor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; and
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods and/or Services other than in the ordinary course of business and for market value. If the Customer sells, disposes or otherwise parts with possession of the Goods and/or Services then the Customer must hold the proceeds of any such act on trust for the Creditor and must pay or deliver the proceeds to the Creditor on demand; and

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- (d) the Customer should not convert or process the Goods and/or Services or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Creditor and must sell, dispose of or return the resulting product to the Creditor as it so directs; and
- (e) the Customer shall not charge or grant an encumbrance over the Goods and/or Services nor grant nor otherwise give away any interest in the Goods and/or Services while they remain the property of the Creditor; and
- (f) instructions on the placement, installation and /or supervision for the Goods and/or Services shall be the sole responsibility of the Customer; and
- (g) the Creditor may recover possession of any Goods and/or Services in transit whether or not delivery has occurred; and
- (h) until such time as ownership of the Goods has passed from the Creditor to the Customer the Creditor may give notice in writing to the Customer to return the Goods and/or Services or any of them to the Creditor. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (i) if the Customer fails to return the Goods and/or Services to the Creditor then the Customer irrevocably authorises the Creditor or the Creditor's agent to enter upon and into land and premises owned, occupied and/or used by the Customer, or any premises as the invitee of the Customer, where the Goods and/or Services are situated and take possession of the Goods and/or Services; and
- (j) the Creditor may commence proceedings to recover the Price of the Goods and/or Services sold notwithstanding that ownership of the Goods has not passed to the Customer.

8 Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")

- 8.1 The Customer shall inspect the Goods and/or Services on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Creditor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Creditor an opportunity to inspect the Goods and/or Services within a reasonable time following delivery if the Customer believes the Goods and/or Services are defective in any way. If the Customer fails to comply with these provisions the Goods and/or Services shall be presumed to be free from any defect or damage. For defective Goods and/or Services, which the Creditor has agreed in writing that the Customer is entitled to reject, the Creditor's liability is limited to either (at the Creditor's discretion) replacing the Goods and/or Services or repairing the Goods and/or Services except where the Customer has acquired Goods and/or Services as a consumer within the meaning of the CCA or the FTA of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods and/or Services, or repair of the Goods and/or Services, or replacement of the Goods and/or Services
- 8.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into this Agreement (Non-Excluded Guarantees).
- 8.3 The Creditor acknowledges that nothing in this Agreement purports to modify or exclude the Non-Excluded Guarantees.
- 8.4 Except as expressly set out in this Agreement or in respect of the Non-Excluded Guarantees, the Creditor makes no warranties or other representations under this Agreement including but not limited to the quality or suitability of the Goods and/or Services. The Creditor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 8.5 If the Customer is a consumer within the meaning of the CCA, the Creditor's liability is limited to the extent permitted by section 64A.
- 8.6 If the Creditor is required to replace the Goods and/or Services under this clause or the CCA, but is unable to do so, the Creditor may refund any money the Customer has paid for the Goods and/or Services.
- 8.7 If the Customer is not a consumer within the meaning of the CCA, subject to the conditions of warranty set out in clause 8.8, the Creditor warrants that if any defect in any Goods and/or Services supplied by the Creditor become apparent and are reported to the Creditor within twelve (12) months of the date of delivery (time being of the essence) then the Creditor will either (at the Creditor's sole discretion) replace or remedy the Goods and/or Services.
- 8.8 The conditions applicable to the warranty given by clause 8.7:

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- (a) are limited to the value of any express warranty or warranty card provided to the Customer by the Creditor at the Creditor's sole discretion; and
 - (b) shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Goods and/or Services; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Creditor; or
 - (iii) any use of any Goods and/or Services otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods and/or Services after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (c) shall cease and the Creditor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Creditor's consent; and
 - (d) are limited to any warranty to which the Creditor is entitled, if the Creditor did not manufacture the Goods and/or Services. The Creditor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods and/or Services; and
 - (e) are otherwise negated absolutely.
- 8.9 In respect of all claims the Creditor shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 8.10 Subject to clause 8.1, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 8.1; and
 - (b) the Creditor has agreed that the Goods and/or Services are defective; and
 - (c) the Goods and/or Services are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods and/or Services are returned in as close a condition to that in which they were delivered as is possible.
- 8.11 Notwithstanding clauses 8.1 – 8.7 but subject to the CCA, the Creditor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods and/or Services;
 - (b) the Customer using the Goods and/or Services for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods and/or Services after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by the Creditor;
 - (e) fair wear and tear, any accident, or act of God.
- 8.12 In the case of second hand Goods and/or Services, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods and/or Services prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Creditor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that the Creditor has agreed to provide the Customer with the second hand Goods and/or Services and calculated the Price of the second hand Goods and/or Services in reliance of this clause 8.12.
- 8.13 The Creditor may in its absolute discretion accept non-defective Goods and/or Services for return in which case the Creditor may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods and/or Services plus any freight costs.
- 8.14 This clause 8 is subject to clauses 5 and 6.
- 8.15 Notwithstanding anything contained in this clause if the Creditor is required by a law to accept a return then the Creditor will only accept a return on the conditions imposed by that law.

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9 The Competition and Consumer Act 2010 (“CCA”) and Fair Trading Act (“FTA”)

9.1 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

10 Default and Consequences of Default

10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

10.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Creditor from and against all costs and disbursements incurred by the Creditor in pursuing the debt including legal costs on a solicitor and own client basis and the Creditor's debt collection costs.

10.3 Without prejudice to any other remedies the Creditor may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Creditor may suspend or terminate the supply of Goods and/or Services to the Customer and any of its other obligations under the terms and conditions. The Customer acknowledges and agrees that the Creditor will not be liable to the Customer for any loss or damage the Customer suffers because the Creditor has exercised its rights under this clause.

10.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

10.5 Without prejudice to the Creditor's other remedies at law the Creditor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Creditor shall, whether or not due for payment, become immediately payable in the event that;

- (a) any money payable to the Creditor becomes overdue, or in the Creditor's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

11 Security and Charge

11.1 Despite anything to the contrary contained herein or any other rights which the Creditor may have howsoever:

- (a) where the Customer and/or the Guarantor (if any) is now or in the future the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Creditor or the Creditor's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Creditor (or the Creditor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Creditor elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Creditor from and against all of the Creditor's costs and disbursements including legal costs on a solicitor and own Customer basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Creditor or the Creditor's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.

12 Personal Property Securities Act 2009 (“PPSA”)

Subject to any express provisions to the contrary nothing in this Agreement is intended to have the effect of contracting out of any of the provisions the PPSA.

12.1 Upon assenting to this Agreement pursuant to clause 2 the Customer acknowledges and agrees that this Agreement constitutes a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Creditor to the Customer.

12.2 The Customer undertakes to:

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- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Creditor may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 12.2(a)(i) or 12.2(a)(ii); and
 - (b) indemnify, and upon demand reimburse, the Creditor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods and/or Services charged thereby; and
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Creditor; and
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or Services in favour of a third party without the prior written consent of the Creditor; and
 - (e) immediately advise the Creditor of any material change in its business practices of selling the Goods and/or Services which would result in a change in the nature of proceeds derived from such sales.
- 12.3 The Creditor and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by this Agreement.
- 12.4 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3) (d) and 132(4) of the PPSA.
- 12.5 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.6 Unless otherwise agreed to in writing by the Creditor, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.7 If it is held that section 125 of the PPSA must apply, the Customer agrees that at any time after any security interest provided for by this Agreement or terms and conditions has become enforceable, the Creditor may delay taking action to remain the whole or part of the Collateral to the extent permitted by law.
- 12.8 The Customer's right to possession of Goods still owned by the Creditor shall cease if:
- (a) the Customer being an individual, commits an act of bankruptcy; or
 - (b) the Customer being an organisation, circumstances arise where a receiver, manager, administrator, liquidator or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for winding up, or the Customer entering into a Deed of Creditor Arrangement; or
 - (c) the Customer ceases or threatens to cease conducting business in the normal manner or applying for deregistration or receives a deregistration notice; or
 - (d) any payment the Customer provides the Creditor is dishonoured; or
 - (e) the Customer fails to comply with any demand for payment issued by the Creditor; or
 - (f) the Customer breaches any of the terms and conditions contained herein.
- 12.9 The Customer must unconditionally ratify any actions taken by the Creditor pursuant to this clause.
- 13 **Privacy Act 1988**
- 13.1 The Customer consents to the Creditor obtaining from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, date of birth, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by the Creditor.
- 13.2 The Customer agrees that the Creditor may exchange information about the Customer with other credit providers and with related bodies corporate for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or

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- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 13.3 The Customer consents to the Creditor being given a consumer credit report to collect overdue payment on commercial credit.
- 13.4 The Customer agrees that personal credit information provided may be used and retained by the Creditor for the following purposes (and for other agreed purposes or required by):
- (a) the provision of the Goods and/or Services; and/or
 - (b) the marketing of the Goods and/or Services by the Creditor, its agents or distributors; and/or
 - (c) analysing, verifying and/or reviewing the Customer's credit, payment and/or status in relation to the provision of the Goods and/or Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods and/or Services.
- 13.5 The Creditor may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer or a commercial credit report;
 - (b) to allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 13.6 The information given to the CRB may include:
- (a) personal information as outlined in 13.1 above; and
 - (b) the name of the credit provider and that the Creditor is a current credit provider to the Customer; and
 - (c) whether the credit provider is a licensee; and
 - (d) the type of consumer credit; and
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested); and
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Creditor has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments); and
 - (g) information that, in the opinion of the Creditor, the Customer has committed a serious credit infringement; and
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 13.7 The Customer shall have the right to request (by email) from the Creditor:
- (a) a copy of the information about the Customer retained by the Creditor and the right to request that the Creditor correct any incorrect information; and
 - (b) that the Creditor does not disclose any personal information about the Customer for the purpose of direct marketing.
- 13.8 The Creditor will destroy personal information upon the Customer's request in writing or if it is no longer required, unless it is required in order to fulfil the obligations of this Agreement or is required to be maintained and/or stored in accordance with the law.
- 13.9 The Customer can make a privacy complaint by contacting the Creditor in writing. The Creditor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 14 **Guarantee**
In consideration of the Creditor at the request of the Guarantor supplying and continuing to supply goods and/or services to the Customer, the Guarantor(s) unconditionally and irrevocably:

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- 14.1 Guarantee the due and punctual payment to the Creditor of all moneys which are now owing to the Creditor by the Customer and all further sums of money from time to time owing to the Creditor by the Customer in respect of goods and/or services supplied or to be supplied by the Creditor to the Customer or any other liability of the Customer to the Creditor, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with the Creditor, including but not limited to the Terms & Conditions of Trade agreed by the Customer. If for any reason the Customer does not pay any amount owing to the Creditor the Guarantor will immediately on demand pay the relevant amount to the Creditor. In consideration of the Creditor agreeing to supply the Goods to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to the Creditor registering any interest so charged. The Guarantor irrevocably appoints the Creditor and each director of the Creditor as the Guarantor's true and lawful attorney(s) to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Creditor may reasonably require to:
- (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (b) register any other document required to be registered by the PPSA or any other law; or
 - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
- 14.2 Hold harmless and indemnify the Creditor on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Creditor in connection with:
- (a) the supply of goods and/or services to the Customer; or
 - (b) the recovery of moneys owing to the Creditor by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Creditor's nominees costs of collection and legal costs; or
 - (c) moneys paid by the Creditor with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Creditor, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Creditor to the Customer.
- 14.3 Acknowledge and agree that the Guarantor has received, read and understood the Creditor's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.
- 14.4 Acknowledge and agree that this Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to the Creditor by the Customer and all obligations herein have been fully paid satisfied and performed.
- 14.5 Acknowledge and agree that no granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Creditor's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to the Creditor, each Guarantor shall be a principal debtor and liable to the Creditor accordingly.
- 14.6 Acknowledge and agree that if any payment received or recovered by the Creditor is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Creditor shall each be restored to the position in which they would have been had no such payment been made.
- 14.7 Acknowledge and agree that the term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
- 14.8 Acknowledge and agree that the Guarantor has been advised to obtain independent legal advice before executing this Guarantee and Indemnity. The Guarantor understands that he/she is liable for all amounts owing (both now and in the future) by the Customer to the Creditor.

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- 14.9 Acknowledge and agree that the Guarantor irrevocably authorises the Creditor to obtain from any person or company any information which the Creditor may require for credit reference purposes. The Guarantor further irrevocably authorises the Creditor to provide to any third party, in response to credit references and enquiries about him/her or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that he/she may have with the Creditor as a result of this Guarantee and Indemnity being actioned by the Creditor.
- 15 **General Terms**
- 15.1 In the event that any provision of the Agreement is prohibited or unenforceable in any jurisdiction such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 15.2 The Customer indemnifies the Creditor against any costs, expenses, loss or liability directly suffered or incurred by the Creditor (including as a claim by a third party) resulting from any breach of this Agreement by the Customer or its Authorised Persons.
- 15.3 The Customer agrees that the Creditor may review this Agreement at any time. If, following any such review, there is to be any change to this Agreement, then the Creditor may amend this Agreement by giving the Customer reasonable notice by mail, email or by notice on the Creditor's website. If the Customer objects to the amended Agreement, the Customer may close its account in accordance with clause 2.11. If the Customer does not close its account, it will be deemed to have agreed to the amended Agreement, which amended Agreement will apply to the Customer from the end of a reasonable notice period, which has been deemed to be fourteen (14) days from the notification of the amended Agreement.
- 15.4 The Creditor may suspend the Customer and its Authorised Persons from requesting Goods and/or Services at its sole discretion, without liability to the Customer, if the Customer or its Authorised Persons breach this Agreement or if the Creditor reasonably suspects that this Agreement has been breached, or if suspension is required for technical reasons.
- 15.5 The Creditor reserves the right to terminate its requirements to supply Goods and/or Services to the Customer at its sole discretion, with no liability to the Customer.
- 15.6 The expiry or termination of this Agreement does not affect the rights which have accrued before that expiry or termination or any rights and obligation of the parties which survive the expiry or termination.
- 15.7 Any reference in this Agreement to any Statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended, extended or re-enacted.
- 15.8 This Agreement and any contract to which they apply shall be governed by the laws of the state of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of the state of New South Wales.
- 15.9 The Creditor shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Creditor of this Agreement.
- 15.10 In the event of any breach of this Agreement by the Creditor the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Services.
- 15.11 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Creditor nor withhold payment of any invoice because part of that invoice is in dispute.
- 15.12 The Creditor may license, sub-contract or assign all or any part of its rights and obligations without the Customer's consent and in so doing the Creditor is fully discharged from its obligations to the Customer.
- 15.13 The Customer may not assign its obligations under this Agreement without the Creditor's written consent.
- 15.14 Neither party shall be liable for any breach of contract or liable for any defaults, delays, or failures to perform any of the party's obligations under the contract due to but not limited to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 15.15 The Customer warrants that it has the power to enter into this Agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this Agreement creates binding and valid legal obligations on it.
- 15.16 This Agreement shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Creditor.

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- 15.17 A provision of this Agreement or a right created under it may not be waived or varied except in writing, signed by the Creditor.
- 15.18 The failure by the Creditor to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect the Creditor's right to subsequently enforce that provision.