

MaxiTRANS Terms & Conditions of Sale and Supply

1. DEFINITIONS

In these Terms and Conditions:

Account Application Form means the Credit Application incorporating these Terms and Conditions.

Breakdown Services means Minor Mechanical Repairs to make a Disabled trailer able to be towed or otherwise moved to a place it can be repaired.

Buyer means the person named as the buyer and includes any Related Entity of the Buyer who accepts an Estimate or Quote, or whose Order is accepted by the Supplier.

Customer Goods means goods belonging to the Buyer and on which the Supplier will carry out Services.

Disabled, in relation to a trailer or vehicle, means that it is unable to be towed or driven safely due to mechanical failure or breakdown, fire, flooding, or a malicious act.

Delivery Date means: (a) for supply of Goods, the date on which the Goods are delivered to the Buyer; and (b) for supply of Services or Services and Goods, the date the Supplier notifies to the Buyer as the date on which the Finished Goods are ready for delivery.

Estimate means a preliminary assessment by the Supplier of the services required based on information provided by the Buyer, which may include a non-binding indication of a Purchase Price.

Finished Goods means Customer Goods that have been serviced in accordance with the Specifications and Services.

Goods means goods which the Supplier supplies to the Buyer in accordance with these Terms and Conditions.

GST means the goods and services tax levied under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended.

MaxiTRANS Entity means MaxiTRANS Operations Pty Ltd ACN 651 774 720.

Minor Mechanical Repairs means minor and, in some cases, temporary repairs to enable a trailer or vehicle to be safely towed or driven to a place where complete and/or permanent repairs can be carried out.

Order means an order for Goods and/or Services given by the Buyer to the Supplier.

PPS Act means the *Personal Property Securities Act 2009* (Cth) and any regulation made at any time under the PPS Act (each as amended and replaced from time to time).

PPS Register means the national online register established under the PPS Act.

Premises means the Buyer's premises as set out in the Account Application Form.

Purchase Price means the tax inclusive amount the Buyer must pay to the Supplier for the Goods and/or the Services, being the Supplier's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Supplier's published price list current at the date of acceptance of the Order.

Quote means a quote for Services given by the Supplier to the Buyer, which may be in response to an Order.

Related Entity, in the case a company, means a related entity as defined in the *Corporations Act 2001* (Cth) and, in the case of an individual, means a company controlled by that individual or of which that individual is a director and each related entity as defined in the *Corporations Act 2001* (Cth) of the companies.

Services means the services that the Supplier supplies to the Buyer in accordance with these Terms and Conditions.

Specifications means the specifications of the Goods or Services as described in the Estimate or Quote (if accepted by the Buyer) or the Order (if accepted by the Supplier).

Supplier means the MaxiTRANS Entity that is supplying the relevant Goods and/or Services to the Buyer.

Terms and Conditions means the terms and conditions of sale and supply set out in this document and includes any additional terms and conditions agreed in writing between the Supplier and the Buyer.

Terms used in these Terms and Conditions which are defined in the PPS Act have the same meaning given to them in the PPS Act.

2. ACCEPTANCE OF TERMS AND CONDITIONS

2.1. A binding contract is formed between the Buyer and the Supplier when the Buyer signs a copy of these Terms and Conditions, and/or when the Buyer places an Order, accepts an Estimate or Quote or otherwise authorises the Supplier to supply Goods or Services. The contract consists of: (a) the Account Application Form; (b) these Terms and Conditions; (c) the Order, Estimate, Quote or Specifications; and (d) any other terms the Buyer and Supplier agree in writing, and in the event of an inconsistency between the terms of the above documents, the order of precedence is as set out above. There is only a contract to supply specified or particular Goods if the Supplier agrees to provide those Goods in accordance with condition 3.1.

2.2. Where the Buyer places an Order for Goods or Services which contains terms and conditions inconsistent with these Terms and Conditions, the Buyer's terms and conditions are excluded, and these Terms and Conditions apply to the Order.

3. ORDERS, ESTIMATES, QUOTES AND SPECIFICATIONS

3.1. Any Order submitted by the Buyer must be accepted in writing

by the Supplier's authorised representative before it will bind the Supplier. Each Order accepted by the Supplier will be deemed to incorporate these Terms and Conditions.

3.2. The Buyer must verify the accuracy of any Order (including any applicable Specification) submitted by the Buyer to the Supplier. The Buyer must confirm any Estimate or Quote provided by the Supplier is acceptable to the Buyer prior to accepting the Estimate or Quote.

3.3. The Supplier may make any changes to a Specification which are required to conform with any applicable safety, legal or other statutory requirements. The Supplier may make any changes to a Specification which do not materially adversely affect the quality or performance of the relevant Goods or Services, by giving reasonable prior notice to the Buyer. If the Buyer does not agree to the change, it may cancel the Order, Estimate or Quote. Condition 7 below relating to cancellations will apply to any costs, losses, charges and expenses incurred by the Supplier up to the date of cancellation.

3.4. If any process is to be applied to the Goods or Customer Goods by the Supplier in accordance with the Specifications provided by the Buyer, the Buyer indemnifies and must pay to the Supplier on demand the amount of all losses, damages, costs and expenses incurred by the Supplier in connection with any claim for infringement of any intellectual property rights of any other person which arises from the Supplier's use of the Specifications provided by the Buyer in connection with the Goods or Customer Goods.

4. BREAKDOWN SERVICES

4.1. The Supplier may require a pre-payment for Breakdown Services before attending.

4.2. The Price payable for Breakdown Services will be an hourly rate plus the cost of parts used.

4.3. Breakdown Services may not be available in all areas. Breakdown Service will be provided as soon as practicable and within a reasonable period of time, but the specific response time will vary depending on the location of the trailer, demand for services and other factors beyond our control.

4.4. The owner of the trailer or vehicle, or an authorised representative must remain with the trailer or vehicle when the Supplier Representative attends to provide Breakdown Services and must have authority to authorise the Minor Mechanical Repairs conducted.

4.5. Where a trailer or vehicle is leaking gas or fuel, or other circumstances at the site render the site unsafe, the Supplier may refuse to provide the Breakdown Services until emergency services have attended and deemed the trailer or vehicle, and the surrounding environment, safe.

4.6. Breakdown Services will end when the trailer or vehicle is towed or otherwise transported from the site of the Breakdown Services, or the Supplier representative in attendance has determined that Minor Mechanical Repairs cannot be performed on the trailer or vehicle in order to enable the trailer or vehicle to be safely towed or driven to a place where complete and/or permanent repairs can be carried out.

5. CREDIT

5.1. The Supplier may, but is not obliged to, supply the Buyer with the Goods or provide Services on terms that do not require payment in full at the time of delivery. If it does so, this condition applies.

5.2. The Supplier will require the Buyer to complete an Account Application Form.

5.3. The Supplier may withdraw, suspend or vary the conditions of credit at any time.

5.4. The Supplier may set and vary credit limits for the Buyer from time to time (**Approved Credit Limit**).

5.5. The Supplier may: (a) vary the Buyer's Approved Credit Limit at any time; and/or (b) require the Buyer to make a payment on or prior to the Delivery Date at any time.

5.6. The Buyer warrants and acknowledges that: (a) the Buyer has read and understood the Account Application Form and these Terms; and (b) all of the information provided by the Buyer to the Supplier is true and correct in every particular; and (c) the Buyer can pay its debts as and when they fall due; (d) each person who submits an Account Application Form and makes Orders on behalf of the Buyer is (or at the time of making each Order will be) authorised to do each of those things on behalf of the Buyer, and the Buyer promises not to make any claim or seek to withhold any payment or avoid its obligations, in respect of any of the above matters.

5.7. The Supplier may require one or more persons to provide a guarantee as security for obligations and payments due by the Buyer to the Supplier under these Terms and Conditions, as a condition of extending credit and/or making supplies to the Buyer.

5.8. If required, the Buyer must immediately procure and deliver executed guarantee/s to the Supplier.

5.9. The Buyer authorises and consents to the release to the Supplier of any information sought by the Supplier from any bank, financial institution, credit provider, credit reporting agency or register. If requested by the Supplier, the Buyer must sign any document

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- needed to enable the Supplier to obtain such information.
- 5.10. The Supplier may obtain, and the Buyer must provide, further information from time to time.
- 5.11. The Supplier's rights under conditions 5.9 and 5.10 above extend to any person who has or is required to give a guarantee under this clause.
- 5.12. The Supplier may, at any time and in its absolute discretion (subject to the Australian Consumer Law) do any one or more of the following: (a) reduce the time for payment; and (b) terminate any credit accommodation granted to the Buyer; and (c) demand immediate repayment from the Buyer of all amounts owing (whether or not a due date for payment has arrived or passed); (d) impose interest and other charges in accordance with condition 15; and/or (e) continue to supply the Buyer on a cash on delivery basis.
- 5.13. The Supplier may appoint an agent in respect of invoice and debtor management, in its absolute discretion.
- 6. PRICE AND PAYMENT**
- 6.1. The Supplier may require the Buyer to pay a deposit of not more than 10% of the Purchase Price before commencing the Services or supplying the Goods. A deposit is non-refundable, except where the Buyer is entitled to a refund under the Australian Consumer Law, or where the Buyer terminates the agreement as a result of a breach by the Supplier. The Supplier's express or implied approval for extending credit to the Buyer may be withdrawn at any time.
- 6.2. Subject to condition 6.3 and 6.4, the Buyer agrees to pay the Supplier the Purchase Price, as invoiced by the Supplier to the Buyer, either: (a) on or before the Delivery Date; or (b) within 30 days of the end of the month in which the Goods or Services are delivered or provided, as described in the Order, Estimate or Quote.
- 6.3. Any agreement by the Supplier to supply Goods or Services on credit terms may be cancelled or withdrawn without notice if any account is overdue at the absolute discretion of the Supplier.
- 6.4. If the Supplier has agreed to payment terms set out in condition 6.2, or otherwise to supply Goods or Services on credit terms, and the Supplier: (a) has reasonable grounds to believe that the Buyer may fail to pay an invoice within the period provided; or (b) has not otherwise been provided with adequate assurance of payment within 14 days of written request, then the Supplier may require the Buyer to pay the Purchase Price before the Delivery Date and the Supplier is not required to deliver the Goods until such time as the Purchase Price is received or adequate assurance of payment is provided to the Supplier's reasonable satisfaction.
- 6.5. The Supplier reserves the right to reasonably increase the Purchase Price to reflect any increase in the cost to the Supplier of supplying the Goods and/or Services due to: (a) any factor beyond the Supplier's reasonable control; or (b) any change in delivery dates, quantities or specifications for Goods and/or Services which the Buyer requests by notice in writing; or (c) any delay caused by the Buyer's instructions or failure to give the Supplier adequate information or instructions. Where the Supplier proposes to increase the Purchase Price, the Supplier will provide reasonable prior notice to the Buyer. If the Buyer does not agree to the change in the Purchase Price, it may cancel the Order, Estimate or Quote. Condition 7 below relating to cancellations will apply to any costs, losses, charges and expenses incurred by the Supplier up to the date of cancellation.
- 6.6. The Supplier has absolute discretion as to the manner in which it applies money it receives from the Buyer (including any Amount Overdue under condition 15).
- 7. CANCELLATIONS AND DEFERRALS**
- 7.1. When an Order is accepted by the Supplier, or an Estimate or Quote is accepted by the Buyer, the Buyer is bound by the Order, Estimate or Quote. If the Buyer cancels or defers the Order, Estimate or Quote, the Buyer will, at the Supplier's discretion, pay all reasonable costs, losses, charges and expenses incurred by the Supplier associated with any cancellation or deferral of the Order, Estimate or Quote by the Buyer. Following cancellation or deferral, the Supplier will take reasonable steps to cease incurring or otherwise minimise further costs, losses, charges or expenses associated with the cancellation or deferral.
- 7.2. The Supplier will provide the Buyer with an invoice setting out the costs incurred by the Supplier associated with the cancellation or deferral of the Order, Estimate or Quote by the Buyer and the Buyer will pay the amount set out in the invoice within 7 days of the date of an invoice from the Supplier.
- 8. DELIVERY**
- 8.1. Goods will be delivered free of charge to the Buyer's Premises, unless otherwise specified in an Order.
- 8.2. The Supplier will deliver the Finished Goods to the Buyer by the Buyer collecting the Finished Goods at the Supplier's premises on the Delivery Date or, if another place for delivery is agreed by the Supplier, by the Supplier's delivery to that place.
- 8.3. The Supplier will deliver Breakdown Services (and any Goods required to deliver the Breakdown Services) at the place requested by the Buyer (subject to condition 4).
- 8.4. If the Buyer does not collect the Finished Goods on the Delivery Date the Supplier may impose a reasonable charge for storage of the Finished Goods. Storage charges must be paid by the Buyer within 7 days of the date of an invoice from the Supplier.
- 8.5. Where the Supplier agrees to deliver Finished Goods other than at the Supplier's premises, the Buyer must pay the Supplier's reasonable charges for transport, packaging and insurance.
- 8.6. The Buyer is responsible for the delivery of Customer Goods to the Supplier's premises, including the cost of transport, packaging and insurance.
- 8.7. If the Supplier delivers Breakdown Services or Finished Goods to a place other than the Buyer's Premises then: (a) the Buyer shall ensure reasonable and proper access at the location specified for delivery where possible; and (b) if access difficulties or other delays cause the time spent at the site by the Supplier, the price of the Breakdown Services or Finished Goods may be increased by any additional cost or charge incurred by the Supplier; and (c) where any damage is caused to any roads, footpaths or other property in effecting delivery the Buyer shall indemnify and keep indemnified the Supplier for any costs, loss, damage, expense or other claim made against the Supplier arising directly or indirectly from the Supplier's attempting to effect or actually effect delivery.
- 9. TITLE**
- 9.1. The Buyer agrees that title to Goods will not pass to the Buyer until the Purchase Price and all other amounts payable to the Supplier have been paid in full.
- 9.2. Until title to Goods has passed to the Buyer in accordance with this condition, if the Buyer has taken delivery of the Goods, the Buyer holds the Goods as fiduciary bailee of the Supplier and the Buyer agrees to store the Goods separately so that the Goods are identifiable as the Supplier's property. The Buyer has the right to sell the Goods in the ordinary course of trade if the Buyer accounts to the Supplier for all payments, including payments by third parties, in accordance with the Buyer's fiduciary relationship.
- 9.3. The risk of loss or damage to the Goods passes to the Buyer on the Delivery Date.
- 9.4. If the Buyer does not pay for the Goods in accordance with condition 6.2, the Supplier is irrevocably authorised by the Buyer to enter the Buyer's Premises (or any premises under the control of the Buyer or as agent of the Buyer if the Goods are stored at such premises) and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Buyer or anyone claiming through the Buyer whatsoever.
- 9.5. Subject to conditions 15.1 and 18.2, property in Customer Goods and Finished Goods will remain the Buyer's at all times during this agreement.
- 10. ACCEPTANCE**
- 10.1. This condition 10 does not apply where the Buyer is acquiring goods or services as a Consumer. Nothing in this condition 10 limits any rights or remedies the Buyer may have under the Australian Consumer Law in circumstances where the Buyer acquires goods or services from the Supplier as a Consumer.
- 10.2. Subject to condition 10.1, the Buyer must examine the Goods and the Finished Goods and unless the Buyer gives written notice to the Supplier of any defects in the Goods or the Finished Goods or their failure to correspond with the Specifications within 7 days of the Delivery Date, the Buyer is deemed to have accepted the Goods or the Finished Goods as being of merchantable quality, corresponding with the Specifications and free of defects.
- 10.3. The Supplier makes no warranty of quality or fitness in respect of Goods and Finished Goods.
- 11. EXCUSABLE DELAYS**
- 11.1. The Buyer releases the Supplier from any claim, liability or responsibility concerning late delivery or failure to deliver the Goods or Services if this is due to strike, lockout, riot, industrial action, fire, storm, tempest, act of God, epidemic or pandemic (including the occurrence or subsistence of Covid-19 or related strain of that virus) of material shortage, government law or regulation or requirement or any other cause beyond the control of the Supplier and no such failure shall entitle the Buyer to cancel an order or withhold payment.
- 12. EXCLUSIONS AND LIMITATIONS**
- 12.1. To the extent that the Buyer acquires goods or services from the Supplier as a Consumer, the Buyer may have certain rights and remedies (including, without limitation, consumer guarantee rights) under the Australian Consumer Law that cannot be excluded, restricted or modified by agreement. Nothing in these Terms and Conditions operates to exclude, restrict or modify the application of any provision, condition or warranty, the exercise of any right or

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remedy, or the imposition of any liability, implied or conferred under the Australian Consumer Law or any other statute, where to do so would contravene that statute, or cause any part of these Terms and Conditions to be void (**Non-excludable Consumer Obligations**).

- 12.2. Except in relation to Non-excludable Consumer Obligations, and otherwise to the extent permitted by law, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by statute, custom or the common law that impose any liability or obligation on the Supplier are excluded from these Terms and Conditions.
- 12.3. Except in relation to Non-excludable Consumer Obligations, and subject to condition 1.1, to the extent permitted by law, the Supplier will have no liability to the Buyer for any: (a) loss, harm, damage, cost or expense (including legal fees), except to the extent that any loss, harm, damage, cost or expense was caused or contributed to by the Supplier; or (b) any special, indirect or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data), arising directly or indirectly under or in connection with the supply of the Goods or Finished Goods, whether by way of indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity.
- 12.4. In relation to Non-excludable Consumer Obligations, except where the Supplier is supplying Goods or Services of a kind ordinarily acquired for personal, domestic or household use or consumption to the Buyer (in respect of which the Supplier's liability is not so limited under these Terms and Conditions), the Supplier's liability to the Buyer for a failure to comply with any Non-excludable Consumer Obligation (other than a guarantee as to title, encumbrances or quiet possession) is limited to: (a) in the case of Services, the cost of supplying the Services again or payment of the cost of having the Services supplied again; and (b) in the case of Goods, the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired, or payment of the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired, as permitted under the Australian Consumer Law.
13. **RETURNS**
 - 13.1. Except as required under the Australian Consumer Law, the Supplier is not obliged to accept return of any Goods.
 - 13.2. If the Supplier accepts a defect notice, the Supplier may in its absolute discretion: (a) accept the Goods for return and either:
 - (i) credit the Buyer's account for the price of the Goods less any cartage and handling costs in returning the Goods (provided that the Supplier may not deduct the cartage and handling costs where the Supplier admits that through the Supplier's act or omission that incorrect or defective Goods were delivered); or (ii) replace the Goods or supply equivalent Goods; or (b) refund any part of the price paid for the Goods.
 - 13.3. If the Supplier does not accept a defect notice, it shall not be obliged to accept return of the Goods.
14. **TERMINATION**
 - 14.1. If: (a) the Buyer materially breaches any of these Terms and Conditions and the breach cannot be remedied within a reasonable amount of time; or (b) the Buyer ceases to carry on a business; or (c) the Buyer is unable to pay its debts as they become due, is presented with a winding-up petition or if any step is taken to appoint a receiver, receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, or an administrator to the Buyer, its assets, operations or business; or (d) the Supplier believes that one of the events stated in condition 14.1(c) has occurred or there is a material risk that one of those events will occur, then subject to Part 5 of the *Corporations Act 2001* (Cth), all amounts owed by the Buyer to the Supplier will become immediately due and payable and the Supplier may: (i) terminate this agreement and any agreement to supply under these Terms and Conditions (which if as a result of an event in condition 14.1(a), may be terminated by at least 7 days written notice, or in any other event, immediately by written notice); (ii) suspend any further supply of Goods (including any Customer Goods and Finished Goods) or Services; (iii) cancel any discounts provided to the Buyer for early payment; (iv) recover and resell any Goods in which title remains with the Supplier; and/or (v) set-off any amount owed to the Buyer against any amount owing to the Supplier.
 - 14.2. In the event of termination pursuant to this clause, then subject to Part 5 of the *Corporations Act 2001* (Cth), all amounts owed by the Buyer to the Supplier will become immediately due and payable and the Supplier may recover and resell any Goods in which title remains with the Supplier.
 - 14.3. Termination of this agreement or suspension of the supply of Goods or Services does not affect any accrued rights or remedies

of the Supplier.

15. FAILURE TO PAY

- 15.1. If the Buyer fails to pay any amount under this agreement on the day it is due (including any amounts which become immediately due and payable under condition 14.2) (**Amount Overdue**): (a) the Buyer will pay interest on the Amount Overdue at a rate of 2% per month (30 days) for the period from the day the amount fell due until the date of payment; and (b) the Buyer will pay all of the Supplier's reasonable costs of recovering payment of the Amount Overdue as invoiced by the Supplier to the Buyer; and (c) the Supplier may appropriate any payment made by the Buyer on any other account in payment of the Amount Overdue.
- 15.2. The Buyer agrees that the Supplier has a security interest over all of the Buyer's property in its possession (including any Customer Goods and Finished Goods) until the Amount Overdue and all other amounts due have been paid in full.

16. INTELLECTUAL PROPERTY

- 16.1. All patents, trademarks, copyrights, designs, know-how, trade secrets, improvements and any other intellectual property (**Intellectual Property**) in the Goods and Services remain the sole property of the Supplier at all times and the Buyer agrees that it will not infringe any of the Supplier's Intellectual Property rights.
- 16.2. All drawings, technical specifications and Intellectual Property supplied or made available to the Buyer by the Supplier are subject to copyright and are strictly confidential. The Buyer must not: (a) communicate any details of any drawings or technical specifications to any third party without the Supplier's prior written consent; or (b) make any copies of or use the drawings or technical specifications for any purpose other than expressly authorised in writing.

17. TAXES

- 17.1. In this condition 17, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that act.
- 17.2. If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this condition 17.2 (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- 17.3. If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with condition 17.2.
- 17.4. Any consideration to be paid or provided for a supply made under or in connection with this agreement, unless specifically described in this agreement as GST inclusive, does not include an amount on account of GST.

18. PPS ACT

- 18.1. These Terms and Conditions constitute a security agreement.
- 18.2. The Buyer grants to the Supplier a security interest in the Goods, the Finished Goods and any proceeds of the Goods or Finished Goods, as security for payment of the Purchase Price and all other amounts payable by the Buyer to the Supplier and for the Buyer's performance of its other obligations to the Supplier.
- 18.3. The Buyer agrees: (a) at the Supplier's request, to promptly do all things (including signing any documents) and provide all assistance and information necessary to ensure that the Supplier has a perfected first ranking security interest in all Goods and Finished Goods (and the proceeds of those Goods or Finished Goods) at the Buyer's cost; and (b) that the Supplier may register a financing statement or financing change statement at the Buyer's cost and do anything else required to perfect its security interest in the security interest granted under these Terms and Conditions.
- 18.4. The Buyer waives its right to receive notice from the Supplier of any verification statement under section 157 of the PPS Act.
- 18.5. The following provisions of the PPS Act do not apply: section 95 (notice of removal of accession); subsection 121(4) (enforcement of liquid assets); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal); paragraph 132(3)(d) (contents of statement of account); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 18.6. To the extent permitted by law, the Buyer will indemnify the Supplier on demand, for all costs and expenses incurred in connection with: (a) registering or maintaining a financing statement or financing change statement relating to any security interest that is created or provided for by these Terms and Conditions; and (b) enforcing these Terms and Conditions, including any security interest that is created or provided for by these Terms and Conditions.
- 18.7. The Supplier reserves all rights and powers it may have in addition to those conferred under the PPS Act.

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- 18.8. The Buyer must not: (a) create, or permit to be created, any security interest over, or in respect of its rights in, the Goods or Finished Goods including any replacement part or other item that is incorporated into or attached to any Goods or Finished Goods (other than that created under these Terms and Conditions and in all its assets in favour of a bank or similar financial institution); or (b) change any of its details as set out in the Account Application Form without notifying the Supplier at least 10 business days prior to doing so.
- 18.9. The Buyer represents and warrants to the Supplier that: (a) all information in the Account Application Form is true, correct and complete; and (b) the Goods are not purchased for personal, domestic or household purposes.
- 18.10. The Buyer repeats each representation and warranty in condition 18.9 each time the Supplier supplies Goods or Finished Goods to the Buyer, with reference to the facts and circumstances at the time such Goods or Finished Goods are supplied.
- 18.11. Despite condition 18.8, if the Buyer permits a security interest to be registered over the Goods or the Finished Goods (other than an all present and after acquired property security interest in favour of a bank or financial institution), the Buyer must do, at its own expense, everything reasonably necessary to remove the security interest from the PPS Register.

19. CHARGE

As security for payment of all monies payable to the Supplier by the Buyer, the Buyer charges in favour of the Supplier the whole of the Buyer's undertaking, property and assets (including, without limitation, all of the Buyer's right, title and interest both legal and beneficial in freehold and leasehold land) both current and later acquired and the Buyer consents to a Caveat or registerable instrument being lodged to register such a charge. The Buyer irrevocably appoints any authorised representative of the Supplier as its attorney to do all things necessary to perfect each such charge.

20. The Supplier is irrevocably authorised to enter any premises where the Goods and Finished Goods are kept, and to use the name of the Buyer and to act on its behalf, if necessary, to recover possession of the Goods and Finished Goods, and seize the Goods and Finished Goods in accordance with the PPSA without liability for trespass or any resulting damage.

GENERAL

- 20.1. **Time:** Time is of the essence of these Terms and Conditions.
- 20.2. **Sub-contract:** The Supplier may sub-contract the supply or delivery of the Goods, the carrying out of the Services and/or the delivery of the Finished Goods.
- 20.3. **No waiver:** No waiver by the Supplier of any breach of these Terms and Conditions by the Buyer will be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- 20.4. **Severability:** A term or part of a term of this agreement that is illegal or unenforceable may be severed from these Terms and Conditions and the remaining terms or parts of the terms of these Terms and Conditions continue in force.
- 20.5. **Assignment:** Neither party may assign these Terms and Conditions, or any rights under these Terms and Conditions, without the prior written consent of the other party, such consent not to be unreasonably withheld.
- 20.6. **Entire Agreement:** These Terms and Conditions and the other documents referred to in them constitute the entire agreement between the parties as to their subject matter.
- 20.7. **Proper law:** These Terms and Conditions are governed by the law applicable in Victoria and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria.
- 20.8. **Non Merger:** A provision of these Terms and Conditions which can, and is intended to, operate after the effective date remains effective.
- 20.9. **Confidentiality:** The Buyer: (a) acknowledges the confidential nature of its dealings with the Supplier and the Supplier's intellectual and industrial property rights in and to the Goods; and; (b) shall not, without the Supplier's prior consent in writing, copy or disclose or cause to be copied or disclosed any details of its dealings with the Supplier to a third party except with the prior written consent of the Supplier.
- 20.10. **Dispute Resolution:** If a dispute: (a) arises out of, or in any way in connection with, or otherwise relates to the supply of Goods or Services by the Supplier, these Terms and Conditions or the breach, termination, validity or subject matter thereof, or as to any related claim at law, in equity or pursuant to any statute, and (b) cannot be resolved between the parties within a reasonable time, the parties agree to refer their dispute to Arbitration administered by the Australian Commercial Disputes Centre (ACDC). The Arbitration shall be conducted in Ballarat (unless otherwise agreed) in accordance with the ACDC Rules for

Arbitration which are operating at the time the dispute is referred to ACDC and which terms are hereby deemed incorporated into these Terms and Conditions.

- 20.11. **Variation:** The Supplier may vary these Terms and Conditions from time to time, by notice in writing to the Buyer.

Personal/Directors Guarantee and Indemnity

1. Interpretation

1.1 Terms defined in the Terms and Conditions have the same meaning when used in this document unless otherwise defined in this document.

1.2 Defined terms:

Contract means obligations entered into, either direct or implied, between the Buyer and the Supplier at any time, presently or in the future for the supply of Goods and/or Services by the Supplier to the Buyer.

Guarantee and Indemnity means the guarantee and indemnity in this document between the Supplier and the Guarantor.

Loss means any loss claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred.

Money Owing means all money and amounts that the Buyer is or may become liable at any time, presently, prospectively or contingently, to pay to or for the account of the Supplier under or in connection with any Contract. It includes money and amounts:

- (a) in the nature of Purchase Price, interest, fees, costs, charges, expenses, duties, indemnities, guarantee obligations or damages;
- (b) whether arising or contemplated before or after the date of this document or as a result of the assignment (with or without the Buyer's consent) of any debt, liability or Contract; and
- (c) which a person would be liable to pay but for an insolvency in respect of that person.

Terms and Conditions means, as applicable, the document entitled Terms & Conditions of Sale and Supply as signed by the Buyer.

1.3 In this Guarantee and Indemnity:

- (a) the term 'Guarantor' whenever used will, if there is more than one person named as Guarantor, mean and refer to each of them individually and both of them together, unless the context requires otherwise and binds them jointly and severally;
- (b) any undertaking, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally; and
- (c) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings.

2. CONSIDERATION

Each Guarantor acknowledges entering the Guarantee and Indemnity in return for the Supplier agreeing to supply and continuing to supply Goods and/or Services to the Buyer at the Guarantor's request and that the Supplier relies on the Guarantee and Indemnity.

3. GUARANTEE AND INDEMNITY

3.1 Each Guarantor jointly and severally irrevocably and unconditionally guarantees to the Supplier:

- (a) the payment of the Money Owing in accordance with any Contract; and
- (b) the performance by the Buyer of all its other obligations contained or implied in any Contract.

3.2 If the Buyer does not:

- (a) pay any Money Owing (or money which would be Money Owing if its payment was enforceable, valid and not illegal) in accordance with any Contract, each Guarantor must pay that money on demand as if it was the principal debtor; or
- (b) perform any of its other obligations contained in any Contract, each Guarantor must perform, or procure the performance of, those obligations (without the need for demand by the Supplier) in accordance with the Contract.

3.3 Each Guarantor indemnifies the Supplier against, and must pay on demand, amounts equal to any Loss of the Supplier as a result of or in connection with:

- (a) any obligation or liability of, or obligation or liability guaranteed by, a Guarantor under this document (or which would be such an obligation or liability if enforceable, valid and not illegal) being or becoming unenforceable, invalid or illegal;
- (b) the Buyer failing, or being unable, to pay any Money Owing or to perform any of its other obligations in accordance with any Contract;
- (c) any Money Owing (or money which would be Money Owing if it were recoverable) not being recoverable from the Buyer; and
- (d) insolvency in respect of the Buyer (but only to the extent that the Loss relates to the Money Owing),

in each case, for any reason and whether or not the Supplier knew or ought to have known anything about those matters.

4. GUARANTOR INFORMATION

4.1 Each Guarantor authorises and consents to the release to the Supplier of any information sought by the Supplier from any bank, financial institution, credit provider, credit reporting agency or register. If requested by the Supplier, the Guarantor must sign any document needed to enable the Supplier to obtain such information.

4.2 The Supplier may obtain, and the Guarantor must provide, further information from time to time.

5. CAVEAT

5.1 Each Guarantor charges, in favour of the Supplier, all its right, title and interest in and to all land held or subsequently acquired by the Guarantor and consents to a caveat or registrable instrument being lodged to register such a charge.

6.

6.1 Each Guarantor waives any right it may have to require the Supplier to proceed against, or enforce any other rights or claim payment from, any other person before claiming from that Guarantor under the Guarantee and Indemnity.

6.2 The Guarantee and Indemnity:

- (a) extends to the present and future balance of all the Money Owing

(including in respect of any contingent liability of the Buyer in connection with any Contract);

- (b) is not wholly or partially discharged by the payment of any Money Owing, the settlement of any account or anything else; and
- (c) continues until all Money Owing has been paid in full and the Guarantor has received a deed of release from the Supplier.

Each Guarantor's liability under any Contract is not adversely affected by anything which would otherwise reduce or discharge that liability (whether or not any Guarantor or the Buyer is aware of it or consents to it and despite any legal rule to the contrary), including:

- (a) any time, waiver, concession or consent granted to, or composition with, each Guarantor or the Buyer or other person;
- (b) any opening of further accounts in connection with, or any increase in, change or replacement of the type, amount or terms of, Goods and Services provided to any person;
- (c) any transaction or agreement, or variation, novation or assignment of a transaction or agreement (including any Contract), between the Supplier and the Buyer or another person;
- (d) insolvency in respect of a Guarantor or the Buyer or another person;
- (e) any judgment or order being obtained or made against, or the conduct of any proceedings by, a Guarantor or the Buyer or another person;
- (f) a Guarantor or the Buyer's obligation or any Contract (or any provision of a Contract), being void, voidable, unenforceable, defective, released, waived, impaired, novated, enforced or impossible or illegal to perform;
- (g) the whole or partial discharge or release of, or the granting of, the Guarantee and Indemnity;
- (h) the Money Owing not being recoverable or the liability of a Guarantor or the Buyer or any other person to a Contract ceasing or reducing (including due to a release or discharge by the Supplier or by law);
- (i) any Contract not being executed by, or binding against, any Guarantor or the Buyer;
- (j) the exercise or non-exercise of any power (including any right to terminate a contract);
- (k) any set-off or counterclaim;
- (l) any default, misrepresentation, negligence, breach of contract, misconduct, acquiescence, delay, waiver, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to a Guarantor or the Buyer) by the Supplier or any other person; or
- (m) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Guarantor or the Buyer or any other person.

6.3 Each guarantee, indemnity and other obligation of each Guarantor in this Guarantee and Indemnity is:

- (a) a principal and independent obligation and is not ancillary, collateral or limited by reference to any other obligation; and
- (b) is in addition to, and not prejudiced by, any other guarantee held by the Supplier.

6.4 Until all Money Owing has been received and the Supplier is satisfied that all Contracts are satisfied, no Guarantor may (either directly or indirectly) without the Supplier's prior written consent:

- (a) claim, exercise or attempt to exercise a right of set-off, counterclaim or any other right or raise any defence:
 - (i) against the Buyer; or
 - (ii) which another guarantor may have against the Supplier, which might reduce or discharge the Guarantor's liability under the Guarantee and Indemnity; or
- (b) claim or exercise a right of subrogation or contribution or otherwise claim the benefit of the Guarantee and Indemnity relating to the Money Owing.

7. GENERAL

7.1 Each Guarantor must not assign this Guarantee and Indemnity, or any rights under this Guarantee and Indemnity, without the prior written consent of the Supplier.

7.2 This Guarantee and Indemnity is governed by the law applicable in Victoria and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria.

8. EXECUTION

Each Guarantor has been advised to obtain independent legal advice before executing this Guarantee and Indemnity and has done so or has either waived or declined to take independent legal advice.