

1 DURATION

- 1.1 This Agreement:
 - (a) commences on the Commencement Date; and
 - (b) applies to all Orders given by Customer to Supplier while this Agreement is in force.

2 ORDERS AND PAYMENT

- 2.1 Customer must serve all Orders on Supplier at such address and in such manner and form as Supplier directs from time to time.
- 2.2 Customer must ensure that each Order contains all such information as Supplier requires from time to time.
- 2.3 Each Order by Customer is an offer to purchase Product from Supplier on the terms and conditions of this Agreement.
- 2.4 No Order is binding until Supplier agrees in writing to supply the Order.
- 2.5 Supplier may reject an Order in its absolute discretion.
- 2.6 Supplier does not represent or warrant that it is able to supply any particular quantity of any Product at any time.
- 2.7 A quotation given by Supplier to Customer does not constitute a binding agreement to supply.
- 2.8 Customer may not cancel or modify an Order once it is received by Supplier except with Supplier’s consent.
- 2.9 Unless otherwise agreed in writing, Customer must pay the Purchase Price:
 - (a) into such account and in such manner as directed by Supplier from time to time; and
 - (b) on or before the Payment Due Date.
- 2.10 If the Customer uses a Credit Card to pay an amount due under this agreement, the Customer is obliged to pay any applicable Credit Card Surcharge.

3 DELIVERY

- 3.1 Subject to Clauses 2.4, 2.5 and 2.6, Supplier must use reasonable endeavours to deliver all Orders to the Delivery Address on the Estimated Delivery Date.
- 3.2 If Supplier makes any representation in relation to time of delivery of Products, including an Estimated Delivery Date, such representation is an estimate only and Supplier is not:
 - (a) in breach of this Agreement; or
 - (b) liable to Customer for any loss or damage occasioned by delay in delivery of Product,
 - (c) if Customer does not receive the Ordered Product

by such date.

- 3.3 Either party may cancel an Order by notice in writing to the other party if such Order is not delivered within 100 days of the Estimated Delivery Date.
- 3.4 Customer’s obligation to accept or pay for Delivered Product, is not affected by any delay in delivery of such Product.
- 3.5 If Customer is unable to accept delivery of Ordered Product at the Delivery Address on the Prospective Delivery Date, provided that Supplier has given Customer 2 business days’ notice of the date and time (which must be during ordinary business hours):
 - (a) Supplier may immediately remove the Ordered Product; and
 - (b) Customer is liable for Delivery Costs for the attempted delivery of that Ordered Product.
- 3.6 If clause 3.6 applies and Customer is unable to accept delivery of Ordered Product within a further 5 business days, then:
 - (a) Supplier may resell the Ordered Product;
 - (b) Customer is liable for any loss incurred by Supplier on such resale; and
 - (c) Customer is liable for all reasonable storage costs for the Ordered Product until its resale.
- 3.7 Subject to clause 3.8, unless otherwise stated in the Order, the Purchase Price includes Delivery Costs.
- 3.8 If the Order is less than the Minimum Order Amount the Customer is obliged to pay, in addition to other amounts payable under this agreement, the Delivery Cost unless otherwise notified by Supplier.

4 RISK AND RETENTION OF TITLE

- 4.1 Risk in Ordered Product passes to Customer when such Product is delivered to the Delivery Address.
- 4.2 Title to Ordered Product passes to Customer when Customer pays to Supplier the whole of the relevant Purchase Price.
- 4.3 Customer acknowledges that until Customer pays to Supplier the whole of the relevant Purchase Price Customer:
 - (a) may only sell Delivered Product in the ordinary course of business;
 - (b) holds the Delivered Product as Supplier’s bailee;
 - (c) has a fiduciary relationship with Supplier and in

- respect of the Delivered Product;
- (d) must keep the Delivered Product insured and identified as Supplier’s property; and
- (e) not pledge or in any way charge the Delivered Product by way of security for the indebtedness of any person.

- 4.4 Until title in the Delivered Product passes to Customer, Supplier is entitled at any time to:
 - (a) require Customer to deliver up the Delivered Product that has not been resold;
 - (b) enter on any premises occupied or controlled by Customer where the Delivered Product is stored; and
 - (c) and repossess the Delivered Product, if Customer suffers an Insolvency Event or this Agreement is terminated.

5 WARRANTIES, RETURNS AND REPAIRS

- 5.1 Supplier gives no warranties in respect of Product except those implied and which cannot be excluded by Law including with respect to suitability for purpose.
- 5.2 Subject to the Law, Supplier’s liability for defective Product is limited to, in Supplier’s discretion:
 - (a) the repair of the Product;
 - (b) replacement of the Product;
 - (c) supply of equivalent Product; or
 - (d) payment of the cost of repairing the Product,
- 5.3 Customer must pay all delivery charges on any Product returned to Supplier.
- 5.4 Customer is liable for all damage to Product that occurs during return delivery.
- 5.5 Customer must ensure that all returned Product is in the original, undamaged and unaltered packaging.
- 5.6 Supplier is not liable for any claim in relation to lost, incomplete or erroneous Orders as delivered unless Customer gives notice to Supplier within 7 days after the Actual Delivery Date of such Order.
- 5.7 Unless Customer gives the notice in clause 5.6:
 - (a) Customer is deemed to have accepted the Delivered Product; and
 - (b) the Delivered Product is deemed to comply with the relevant Order except for defect.

6 CONFIDENTIALITY

- 6.1 Customer must:

- (a) ensure that the Confidential Information is not disclosed to any third party;
- (b) use best endeavours to keep the Confidential Information secure; and
- (c) return to Supplier all Confidential Information in Customer’s possession or control as soon as practicable after the end of this Agreement.

7 BREACH AND TERMINATION

- 7.1 If there is:
 - (a) an Insolvency Event of Customer;
 - (b) a Change of Control of Customer without Supplier’s prior written consent;
 - (c) a breach of this Agreement that cannot be remedied; or
 - (d) a breach of this Agreement that can be remedied but is not remedied within 5 business days of Customer receiving a written notice to do so from Supplier,
- 7.2 Supplier may, in its discretion:
 - (a) cancel an undelivered Order; and/or
 - (b) terminate this Agreement,
 - (c) immediately by notice to the Customer.
- 7.3 If Supplier terminates this Agreement, all monies owing and/or outstanding by Customer to Supplier become immediately due and payable without notice.
- 7.4 Subject to its obligations under any other agreement, either party may terminate this Agreement with 90 days’ notice to the other party.

8 INDEMNITY AND INTEREST

- 8.1 Subject to clause 8.3, each party (“Indemnifying Party”) indemnifies and keeps indemnified each other party against any and all Claims arising from a breach of any of this Agreement by such Indemnifying Party.
- 8.2 If Customer fails to comply with clause 2.9, Customer must pay to Supplier interest at a rate of 2% per annum in excess of the rate of interest for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983 (Vic)* on the amount outstanding.
- 8.3 A party is not liable to another party under this Agreement in respect of Claims for loss of profit, loss of business opportunity or goodwill, economic loss, third party claims or any indirect or consequential loss in connection with or arising out of this Agreement.

9 FORCE MAJEURE

- 9.1 Supplier is not liable for failure to perform, or delay in performing if such non-performance or delay was caused by a Force Majeure Event.

10 CREDIT AND WARRANTIES

- 10.1 Customer warrants that:
 - (a) neither Customer nor Customer’s ultimate holding company has suffered an Insolvency Event in the last 36 months; and
 - (b) Customer has a continuing capacity to pay each Order.
- 10.2 The person signing this Agreement on behalf of Customer warrants that they are duly authorised to sign this Agreement on behalf of Customer.
- 10.3 If any of the warranties in clause 10.1 become untrue, Customer must notify Supplier as soon as practicable.
- 10.4 Customer must immediately notify Supplier of any Change of Control of Customer or a change of its company name.

11 CREDIT CHECKS

- 11.1 Customer and the Guarantors give Supplier unconditional consent and authorisation to:
 - (a) obtain Credit Information from a credit reporting agency;
 - (b) disclose to and exchange Credit Information with a credit reporting agency; and
 - (c) obtain a consumer credit report about me from a credit-reporting agency,
 for the purpose of:
 - (d) deciding whether to provide or continue to provide credit to Customer; and/or
 - (e) attempting to recover any monies owing by Customer to Supplier.

12 GUARANTEE AND INDEMNITY

- 12.1 In consideration of Supplier entering into this Agreement at the request of Customer and the Guarantors, the Guarantors jointly and severally:
 - (a) guarantee to Supplier the prompt performance and observance by Customer of all its obligations under this Agreement;
 - (b) indemnify and continue to indemnify Supplier against any Claims arising from a breach of this Agreement by Customer.

- (c) irrevocably charge in favour of Supplier all of its rights and interests (both beneficial and equitable) in all its property (both real and personal); and
- (d) appoints Supplier, its legal representatives and/or authorised agents as their power of attorney to execute on its behalf and lodge all documents necessary to give effect to the charge created by operation of this agreement;
- (e) a claim is made that a payment or transfer to Supplier by Guarantor in connection with this Agreement is void or voidable; and
- (f) such claim is upheld, conceded or compromised, then Supplier is immediately entitled to the rights it had against the Guarantor before the payment or transfer was made.

12.2 Supplier may recover from a Guarantor amounts due under this guarantee without:

- (a) having instituted legal proceedings against Customer; and
- (b) without first exhausting Supplier’s remedies against Customer.

12.3 This clause 12 is a continuing guarantee and binds the Guarantors notwithstanding:

- (a) the subsequent death, bankruptcy or liquidation or any one or more of Customer and Guarantors;
- (b) any concession, indulgence, waiver or extension of time granted by Supplier;
- (c) the acceptance of any part payment by Customer or a Guarantor; or
- (d) the end of this Agreement for any reason.

13 PPSA AND SECURITY INTERESTS

- 13.1 In this clause 13:
 - (a) “Collateral” means:
 - (i) Supplied Personal Property; and
 - (ii) Proceeds.
 - (b) the definition of “Insolvency Event” in clause 25 also includes:
 - (i) the actual, imminent or attempt to breach clause 13.4;
 - (ii) any person doing anything which may result in taxes, or an amount owing to an authority, ranking ahead of the security interest in the Collateral under this Agreement;

- (iii) distress being levied over any Collateral; and
 - (iv) judgment, order or security being enforced over any Collateral;
 - (c) "PPSA" means:
 - (i) if this is an Australian Contract, Personal Properties Securities Act 2009 (Cth); or
 - (ii) if this is a NZ Contract, Personal Property Securities Act 1999 (NZ);
 - (d) "Revolving Assets" means, subject to clause 13.6, Collateral that comprises inventory in the Customer's usual course of business;
 - (e) "Supplied Personal Property" means all Personal Property including inventory supplied by the Supplier to the Customer or for the Customer's account pursuant to this Agreement;
 - (f) "Proceeds" means all present and after-acquired proceeds of sale of Supplied Personal Property; and
 - (g) unless otherwise stated, terms have the same meaning as in the PPSA.
- 13.2 By virtue of the retention of title clause in this Agreement, the Customer:
- (a) grants a security interest in the Collateral to the Supplier to secure payment from time to time and at a time, including future advances; and
 - (b) consents to the Supplier doing all things necessary to perfect such security interest in accordance with the Law.
- 13.3 This security interest in clause 13.2 is:
- (a) a floating charge with respect to Revolving Assets;
 - (b) a fixed charge with respect to non-Revolving Asset Collateral; and
 - (c) a purchase money security interest.
- 13.4 The Customer must not actually, attempt or agree to:
- (a) create or allow another interest in; or
 - (b) dispose, or part with possession of, any non-Revolving Asset Collateral.
- 13.5 Unless it is prohibited from doing so by another provision in this Agreement, the Customer may create or allow another interest in, or dispose or part with possession of a Revolving Asset.
- 13.6 If the Customer or the Collateral is subject to an Insolvency Event, then automatically and without notice:
- (a) all Collateral ceases to be a Revolving Asset; and
 - (b) any floating charge over any Collateral becomes a fixed charge.
- 13.7 Any Collateral which is not a Revolving Asset:
- (a) is specifically appropriated to a security interest under this Agreement; and
 - (b) may not be removed or permitted to be removed by the Customer without obtaining the prior written consent of the Supplier.
- 13.8 If this is an Australian Contract, to the extent the law permits and for the purposes of section 115(1) and 115(7) of the PPSA (if applicable):
- (a) the Supplier is not obliged to give and the Customer waives its rights to receive any notice or statement (including a Verification Statement) that is required by:
 - (i) any provision of the PPSA; and
 - (ii) any other law before a Secured Party or Receiver exercises a right, power or remedy;
 - (b) the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132, 132(3)(d), 132(4), 137(3), 142 and 143.
- 13.9 If this is a NZ Contract, to the extent the law permits, the Supplier is not obliged to give, and the Customer waives its rights to receive, any notice (including a Verification Statement) that is required by:
- (a) any provision of the PPSA; and
 - (b) any other law before a Secured Party or Receiver exercises a right, power or remedy.
- 13.10 The Customer waives any time period that must otherwise lapse under any law before a Secured Party or Receiver exercises a right, power or remedy.
- 13.11 If the Supplier exercises a right, power or remedy in connection with this Agreement, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Supplier states otherwise at the time of exercise.
- 13.12 Clause 13.11 does not apply to a right, power or remedy which can only be exercised under the PPSA.
- 13.13 The Customer must:
- (a) sign any further documents and/or provide any further information which the Supplier reasonably required to enable registration of a Financing Statement or Financing Change Statement on the Personal Property Securities Register;
- (b) not register a Financing Change Statement or make a demand to amend a Financing Statement including in respect of the Collateral without the prior written consent of the Supplier; or
 - (c) give the Supplier not less than 14 days written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including by not limited to changes in the Customer's address, facsimile number, email address, trading name or business practice).
- 13.14 Any Security Agreement or Security Interest arising under this Agreement:
- (a) survives the end of this Agreement;
 - (b) does not merge on the completion of any transaction contemplated by this Agreement; and
 - (c) otherwise enures for the benefit of the Supplier as a Secured Party.
- 13.15 Unless and until the end of this Agreement, for the purposes of the PPSA:
- (a) all and any supplies of Personal Property by the Supplier to the Grantor are deemed to be made pursuant to this Agreement;
 - (b) this Agreement is the only Security Agreement relevant to such supply; and
 - (c) an Order does not comprise a separate Security Agreement.
- 14 WAIVER**
- 14.1 Failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of this Agreement does not affect or impair that provision in any way or the rights of such party to avail itself of the remedies it may have in respect of any breach of any such provision.
- 15 GST**
- 15.1 For the purpose of this clause, expressions set out in this clause bear the same meaning as those expressions in the GST Act.
- 15.2 To the extent that a party makes a taxable supply in connection with this Agreement, except where express provision is made to the contrary, and subject to this clause, the consideration payable by a party under this Agreement represents the value of the taxable supply for

which payment is to be made.

- 15.3 If a party makes a taxable supply in connection with this Agreement for a consideration which, under clause 15.2, represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of GST payable in respect of the taxable supply.
- 15.4 A party's right to payment under clause 15.3 is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.
- 15.5 Each party agrees to do all things that may be necessary to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to GST paid or payable in respect of any supply made under or in connection with this Agreement.

16 ENTIRE AGREEMENT

- 16.1 This Agreement contains everything the parties have agreed in relation to the subject matter it deals with.

17 VARIATION

- 17.1 This Agreement must not be changed in any way except in writing signed by the parties.

18 SEVERANCE

- 18.1 If any provision of this Agreement is invalid, unlawful, void or unenforceable it will be taken to have been severed without affecting any other provision.

19 ASSIGNMENTS AND TRANSFERS

- 19.1 Supplier may assign or transfer any of its rights or obligations under this Agreement in its discretion.
- 19.2 Customer may not assign or transfer any of its rights or obligations under this Agreement.

20 DURATION OF PROVISIONS

- 20.1 The covenants, rights, entitlements, duties and obligations contained in this Agreement do not merge upon termination of this Agreement but to the extent that they are capable of having effect after termination of this Agreement remain in full force and effect.

21 GOVERNING LAW

- 21.1 This Agreement is governed by the laws of the State of Victoria.

22 NOTICES

- 22.1 Any notice given by one party to the other under this Agreement must be in writing and served:
- (a) personally;

- (b) by ordinary mail; or
- (c) email,
- (a) to the other party's usual address as specified in the Schedule or as later notified from time to time.

23 EXCHANGE

- 23.1 Without prejudice to other forms of offer and acceptance, a copy of this Agreement transmitted electronically in any file format including Portable Document Format ("PDF") that bears the signature of a party or parties constitutes and is deemed to be an original, duly-authorized, irrevocable, actual, current delivery of this Agreement (or any amendment thereto) signed by such party or parties.

24 INTERPRETATION

- 24.1 In this Agreement except where the context otherwise requires:
- (a) a reference to \$, dollar is a reference to:
- (i) if an Australian Contract, Australian currency; and
- (ii) if a NZ Contract, New Zealand currency;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (d) the singular includes the plural and vice versa, and a gender includes other genders;
- (e) a reference to time is to time in the Home City;
- (f) if a day on or by which an obligation (except making a payment) must be performed is not a Business Day, the obligation must be performed on or by the next Business Day;
- (g) a reference to anything includes any part of that thing and a reference to a group of things includes each thing in that group;
- (h) a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) any discretion (including where a party "may" do anything) is sole, unfettered and absolute; and

- (k) headings do not affect interpretation.

25 DEFINED TERMS

- 25.1 In this Agreement including except where the context otherwise requires:

Actual Delivery Date the date Ordered Product is delivered to Customer.

Agreement means this Supply Agreement including;

- (a) the Schedule; and
- (b) the "Supply Agreement – Terms", as amended from time to time in accordance with Clause 17.

Australian Contract means this Agreement if Supplier is an Australian-registered entity.

Claim means any loss, damage, expense, claim, demand, proceeding or cause of action of any nature (including for damages), whether for money or otherwise.

Commencement Date means the date this Agreement has been signed by all named parties to this Agreement.

Confidential Information means Information, in any form, which is confidential to a party including, but not limited to, information:

- (a) that has been specifically designated as confidential by the other party;
- (b) that relates to the commercial and financial activities of the other party or its customers; and
- (c) the unauthorised disclosure of which could embarrass, harm or prejudice the other party, but does not include information which is in the public domain.

Change of Control means In respect of a body corporate means a change as to the person that:

- (a) controls or is able to control 50% or more of the directors of the body corporate;
- (b) controls 50% or more of the voting rights attaching to shares in the body corporate; or
- (c) collectively holds or has a beneficial interest in 50% or more of issues shares,

whether directly or indirectly or through one or more intervening persons, companies or trusts.

Credit Card means any form of debit, credit or pre-paid charge card including Visa, Mastercard and American Express.

Credit Card Surcharge means the lesser of:

- (a) the maximum amount that Supplier can charge under the Law; and
- (b) the amount notified by the Supplier from time to time (if any).

Credit Information means information and that has or may have any bearing on Customer’s credit history, credit capacity and related information.

Customer means the party specified as “Customer” in the Schedule.

Delivered Product the Product supplied by Supplier pursuant to a specific relevant Order.

Delivery Address means the address specified as “delivery address” in the Schedule.

Delivery Costs means all reasonable costs associated with the supplying and delivery of an Order to the Delivery Address including, but not limited to, freight, storage, permits, taxes and duties and insurance.

Estimated Delivery Date means the date specified in an Order for delivery of the Product.

Force Majeure Event means any event beyond the reasonable control of the non-performing party including:

- (a) external telecommunications failures;
- (b) fire, flood, earthquake any other natural disaster;
- (c) riot, act of terrorism, war, civil disorder, rebellion or revolution;
- (d) strikes, lockouts and labour disputes;
- (e) manufacture, delivery, stock shortage or other delay not caused by Supplier; and
- (f) epidemics, quarantine restrictions, outbreak of disease or travel restrictions or bans.

GST Act means, if this is:

- (a) an Australian Contract, A New Tax System (Product and Services Tax) Act 1999 (Australia); and
- (b) a NZ Contract, the Goods and Services Tax Act 1985 (NZ),

both as amended.

Guarantor means each party specified as a “guarantor” in the Schedule.

Home City means, if this is:

- (a) an Australian Contract: Melbourne; or
- (b) a NZ Contract: Auckland.

Insolvency Event means any of the following under the

Law: insolvency or presumed insolvency; liquidation; administration; winding-up; failure to comply with a statutory demand; inability to pay debts; and an analogous or equivalent event to the above.

Law means all applicable laws from time to time including common law, statutes, ordinances, codes, regulations and other instruments under any of them.

Minimum Order Amount means the minimum order amount as notified to the Customer by the Supplier from time to time in the Supplier's discretion with no less than 30 days' notice.

NZ Contract means if Supplier is a New Zealand-registered entity.

Order means an order for the purchase of Product by Customer from Supplier whether oral or written as modified by Supplier (if applicable) before acceptance in writing.

Ordered Product means Product the subject of a specific relevant Order.

Payment Due Date means the date specified as the “payment due date” in the Schedule.

Product means a product that Supplier has the right to sell from time to time.

Prospective Delivery Date the date Supplier is ready, willing and able to deliver Ordered Product.

Purchase Price the total of:

- (a) the price specified in an Order;
- (b) any applicable Credit Card Surcharge; and
- (c) the Delivery Costs of such Order.

Schedule means the table on page 1 of this document entitled “Credit Application and Supply Agreement”.

Supplier means the party specified as “supplier” in the Schedule.