

The Supplier's Terms and Conditions are provided by, National Commercial Automotive Pty Ltd ACN 697 909 096 (ABN 56 697 909 096) trading as Ballarat Commercial Service Centre. Please read the Supplier's Terms and Conditions in full. This brief informational summary of features does not form part of, or replace, the Supplier's Terms and Conditions.

To extent permitted by law:

- we limit our liability, including in relation to the provision of goods and services to you, loss or damage to goods or property resulting from the delivery of the goods, and in relation to information you provide to us, which may potentially reduce compensation amounts or exclude some avenues of compensation;
- if you have a concern about the goods or services provided to you, you agree to return the goods or vehicle to us for assessment and remedy.

If you fail to collect your vehicle 2 business days after being informed that the vehicle is ready for collection, we may commence charging you storage fees of \$25 per day.

If you cancel an appointment for services without providing us with 24 hours notice, or cancel an order for goods, then you may be in breach of the contract and we may claim compensation from you, which may include payment for all or part of the cancelled service and payment for goods ordered from a third party for you.

SUPPLIERS TERMS AND CONDITIONS

1. DEFINITIONS

In this document, the following terms have the following meanings:

Application has the meaning given in the Application being that the Application consists of Part 1 'Customer Information', Part 2 'Application Terms and Conditions', Part 3 'Credit Information Policy' and Part 4 'Deed of Guarantee and Indemnity', and attaches these Terms.

Claim means any claims including actions, complaints, debts, demands, dues, proceedings, suits or other legal recourse (whether in contract or tort (including negligence), at law or in equity) and including any causes of action or rights to bring or make any such claim.

Consequential Loss includes i) any loss of income, revenue, profit or business, or loss of business opportunity; ii) any loss of good will or reputation; iii) any loss of value of intellectual property; iv) lost opportunity costs; v) special or indirect loss or damage; vi) legal costs and expenses.

Contract means the contract between the parties for the sale and purchase of the Goods and/or Services which consists of each Order placed by the Customer, these Terms, any Specified Terms and, if applicable, any Warranty and/or the Application.

Customer means the person or entity identified as the Customer in the Application and, if no Application is applicable, then the person or entity placing the Order or any person or entity who purchases the Goods or Services from the Supplier.

Customer's Terms means any terms and conditions provided by the Customer to the Supplier at any time or in any manner, including any printed terms and conditions on the Customer's Order, or terms and conditions other than this Contract purported by the Customer to apply to the Order.

Goods means the vehicle products and/or components and/or accessories, and/or vehicle safety equipment, safety labels, inspection/report books and/or daily check and defect books supplied or to be supplied by the Supplier.

Guarantor means a Guarantor as defined in the Trading Account Guarantee.

Invoice means any invoice for or relating to the Goods and/or Services.

Loss means any loss, damage, debt, deficiency, diminution in value, charge, cost, expense, fine, outgoing, penalty or other liability of any kind or character (including legal fees, other professional fees, debt recovery fees and expenses on a full indemnity basis) that a party pays, suffers or incurs or is liable for, including all amounts paid in settlement for any Claim, complaint, demand, proceeding, litigation, action, or other legal recourse whether under statute, contract, tort or otherwise, but does not include Consequential Loss unless otherwise specified in these Terms.

Order means any offer by the Customer to purchase Goods and/or Services from the Supplier whether written or verbal.

Purchase Price means the total amount listed on the Invoice for

Goods or Services and, for the purpose of a security interest or purchase money security interest, includes any credit charges and/or interest payable.

Services means the services relating to vehicles supplied or to be supplied by the Supplier.

Special Buy-In Orders means Goods which are not stocked by the Supplier and require the Supplier to purchase these Goods.

Specified Terms means a variation agreed in writing between the Customer and the Supplier to these Terms, the Application (except for Part 4 'Deed of Guarantee and Indemnity'), or in respect of any single Order, group of Orders or all Orders placed under this Contract and signed by the Supplier and excludes Customer's Terms.

Supplier means National Commercial Automotive Pty Ltd ACN 697 909 096 (ABN 56 697 909 096), trading as Ballarat Commercial Service Centre.

Terms means these terms and conditions.

Trading Account means the trading credit account granted to the Customer by the Supplier pursuant to the Application and the Terms.

Trading Account Guarantee means the deed of guarantee and indemnity set out in Part 4 'Deed of Guarantee and Indemnity' of the Application.

Warranty means the Supplier's warranty in relation to the Goods and/or Services (if any).

2. ORDER

2.1. Any Order (which can be made can be made verbally or in writing) by the Customer constitutes acceptance of the Contract and the Customer agrees that the Contract prevails over the Customer's Terms.

2.2. The Supplier may in its absolute discretion accept or reject any Order made by the Customer and, if the Order is rejected by the Supplier (**Rejected Order**), then the Rejected Order will form part of the Contract only to the extent that the Supplier may reject the Order in its absolute discretion.

2.3. An Order is accepted on the earlier of the Customer receiving written or verbal acceptance from the Supplier or on delivery of the Goods and/or Services.

3. PAYMENT

3.1. The Customer must pay to the Supplier the Purchase Price listed on the Invoice on delivery of the Goods and/or Services, or if the Customer has a Trading Account, payment terms are strictly thirty (30) days from the date of Invoice and payment is due and payable on that date.

3.2. Despite clause 3.1, the Customer must pay to the Supplier all or part of the Purchase Price for a Special Buy-in Order in advance of the Supplier placing an order for the Special Buy-in Order, or before the Special Buy-in Order is delivered to the Customer or used in Services for the Customer, if and as requested by the Supplier. To avoid doubt, the Supplier may request payment in instalments.

3.3. The Supplier does not accept payment by cheque.

3.4. All representations made in the Invoice are made on the basis that errors and omissions are excepted.

3.5. The Supplier reserves the right to vary the Purchase Price in

the event of a variation to the Order and/or any Special Buy-In Order, and notice will be provided in writing by the Supplier within a reasonable time.

- 3.6. Any written estimate, or verbal estimate, given by the Supplier will expire after ten (10) days (**Estimate**), to accept the Estimate the Customer must place an Order within ten (10) days of receiving the Estimate.
- 3.7. Unless the Supplier otherwise notifies the Customer in writing, the price charged for the Goods and/or Services is exclusive of any goods and services tax, sales tax, excise, duty and/or any identified or new taxes that come into existence after the effective date of the Contract.
- 3.8. Where any goods and services tax, sales tax, excise, duty and/or any identified or new taxes apply to any supply made under the Contract, the Supplier may recover from the Customer an additional amount on account of those taxes and the Supplier will deliver to the Customer a compliant Invoice.
- 3.9. Unless agreed in writing by the Supplier, the Customer must not withhold payment of the Purchase Price due to a dispute or any other query arising in respect of the Order, the Purchase Price or any other matter connected with the Contract.
- 3.10. The Supplier may, in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- 3.11. All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees, interest, storage charges (refer to clause 6.8) and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under the Contract.

4. CREDIT

- 4.1. The Supplier may grant the Customer credit under a Trading Account in its sole discretion upon the terms of the Contract and on the terms and basis of the Application and such other documents and information as may be required by the Supplier.
- 4.2. The Customer acknowledges and agrees that the Contract applies to the Trading Account.
- 4.3. Until the Supplier grants the Customer credit under a Trading Account by notice in writing and, if applicable, the Supplier receives a Trading Account Guarantee, the Supplier will only supply Goods and/or Services on the basis of cash in advance or on delivery of the Goods and/or Services.
- 4.4. The Customer acknowledges and agrees that the credit to be provided by the Supplier is to be applied wholly and predominantly for business purposes, or investment purposes other than investment in residential property (**Credit Purpose**) and the Customer agrees not to use the credit for a purpose other than the Credit Purpose.
- 4.5. The granting of credit does not oblige the Supplier to extend any particular amount of credit to the Customer.
- 4.6. Any credit granted may be revised by the Supplier if it is in the Supplier's legitimate business interests to revise the credit granted on providing seven (7) days written notice to the Customer of the change in credit limit taking effect.
- 4.7. The Supplier reserves the right to terminate the Trading Account in writing upon any breach by the Customer of the Contract or upon the Customer ceasing to trade, being subject to any legal proceedings and/or the Customer committing an act of insolvency as determined by the Supplier in its sole discretion.
- 4.8. If one or more Guarantor is deceased, becomes bankrupt or otherwise withdraws from being a Guarantor in accordance with the Trading Account Guarantee, then the Customer must promptly notify the Supplier and the Supplier in its absolute discretion may suspend or terminate the Trading Account in writing.
- 4.9. The Customer agrees that upon the termination of the Trading Account under either clause 4.7, 4.8 or pursuant to any other right of the Supplier to terminate the Trading Account, any

and all monies owing on the Trading Account shall become immediately due and payable.

- 4.10. The Customer must notify the Supplier in writing if there is any change in the shareholding or ownership of the Customer (in accordance with clause 10.1), any material change in the Customer's financial position and/or if the Customer is subject to any legal proceeding.

5. SUPPLY AND DELIVERY OF GOODS

- 5.1. The Supplier may in its absolute discretion cancel or postpone the delivery of Goods.
 - 5.2. Unless otherwise agreed in writing between the parties as a Specified Term:
 - (a) the Supplier may determine the manner of delivery of the Goods; and
 - (b) the Customer is liable for delivery and related insurance costs, including delivery by transport, courier, carrier or postage as applicable (**Delivery Costs**) and if the Delivery Costs are included in the Purchase Price, the Delivery Costs are not refundable if the Goods are later returned.
 - 5.3. Delivery of the Goods will be deemed to be complete when the Goods are collected by the Customer or a person authorised by the Customer, are collected or delivered to a courier or a carrier nominated by the Supplier or Customer, or are otherwise delivered to the Customer.
 - 5.4. The Supplier will make all reasonable efforts to have the Goods delivered in accordance with clause 5.2, but, to the extent permitted by law, the Supplier will not be liable for:
 - (a) any failure to deliver or delay in delivery for any reason;
 - (b) any damage or Loss during transport or due to unloading; or
 - (c) damage to property caused upon entering a premises to deliver the Goods.
 - 5.5. If the Customer fails to collect or take delivery of the Goods the Customer may, at the discretion of the Supplier, be liable for costs incurred by the Supplier, including reasonable administrative costs and the Supplier will be entitled, also at its discretion, to organise for the redelivery and/or storage of the Goods at the Customer's cost and risk. The Supplier will provide to the Customer a compliant Invoice itemising the reasonable administrative cost, redelivery charges and/or storage charges as applicable.
 - 5.6. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Goods at specific times requested by the Customer.
 - 5.7. If applicable the Customer must sign a proof of delivery, however, the Customer agrees that the failure of the Supplier to obtain a proof of delivery is not evidence of non-delivery.
 - 5.8. On a written or verbal request from the Customer, the Supplier may agree in writing or verbally to provide additional Goods not included or specifically excluded in an Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Goods includes, but is not limited to, alterations and amendments to an Order for Goods.
- #### **6. PROVISION OF SERVICES**
- 6.1. The Supplier may in its absolute discretion cancel or postpone appointments in relation to Services if it is reasonable for the Supplier to do so or it is in the Supplier's legitimate business interests to cancel or postpone the appointment.
 - 6.2. The parties rights and obligations relating to the cancellation of Services is provided in clause 15 and these Terms.
 - 6.3. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Customer during the term of the Contract.
 - 6.4. Subject to otherwise complying with its obligations under the Contract, the Supplier will exercise its independent discretion as to the most appropriate and effective manner of providing the Services and of satisfying the Customer's expectations of those Services.
 - 6.5. The Supplier may refuse to fit vehicle parts and accessories

supplied by the Customer in its absolute discretion.

- 6.6. The Supplier may agree to provide additional Services not included or specifically excluded in the Order on request from the Customer, whether such Services are suggested or recommended by the Supplier or not. In this event, the Supplier shall be entitled to make an additional charge. Additional Services includes, but is not limited to, alterations or amendments to Services authorised by the Customer and visits by the Supplier to locations external to the Supplier's place of business.
- 6.7. If the Supplier supplies Goods and/or Services to the Customer, the Customer agrees that in addition to an artificer's lien and any other rights the Supplier may have under statute or common law:
- (a) the Supplier has a lien over the vehicle or good, (including any Goods), in respect of which Services or Goods are provided and may exercise the lien against the vehicle or good (including any Goods), as security for payment in full of the Purchase Price for the Services and/or Goods supplied by the Supplier;
 - (b) the Supplier may exercise a lien against a vehicle and/or good in respect of any payment of the Purchase Price for Goods and Services supplied by the Supplier; and
 - (c) the Supplier's lien in clauses 6.7(a) and 6.7(b) extends and remains in force until payment is received in full for the Purchase Price, and, if additional to the Purchase Price, the payment of storage fees and third party costs, for example towing costs paid for by the Supplier.
- 6.8. If the Customer is provided with an Invoice and advised that the vehicle is ready for delivery either verbally or in writing (**Collection Notice**), then if the Customer does not collect the vehicle or good within two (2) business days of the Collection Notice the Supplier may in its absolute discretion charge a reasonable storage fee of \$25.00 per day.
- 6.9. To the extent permitted by law, unless otherwise agreed in writing by the Supplier, if the Customer believes there is an issue with the vehicle due to Services provided by the Supplier, or Goods fitted in connection with the Services provided Supplier (**Issue**), the Customer must return the vehicle to the Supplier to enable the Supplier to assess if the Supplier is liable for the Issue and, if the Supplier is liable, to provide a remedy.
- 6.10. The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation or right of the Supplier arising out of or pursuant to the Contract or Order.

7. RETURNS

- 7.1. The Customer must notify the Supplier within fourteen (14) days of delivery if there is any alleged defect, shortage in quantity, damage, or failure to comply with the description or Order (**Alleged Order Issue**). The Customer must afford the Supplier an opportunity to inspect the Goods within seven (7) days after notifying the Supplier in accordance with this clause. To the extent permitted by law, if the Customer fails to notify the Supplier within fourteen (14) days of delivery of any Alleged Order Issue, the Goods will be deemed to be accepted by the Customer and in accordance with the Contract relating to the Goods and, without limiting any right available under the Australian Consumer Law, free from defect or damage.
- 7.2. Notwithstanding anything in clause 7.1, except as required by law, the Supplier will be under no obligation to accept Goods returned for any reason.
- 7.3. If the Supplier does not have an obligation under the Australian Consumer Law or a Warranty in respect of the returned Goods, the Supplier is under no obligation to accept Goods returned and may in its absolute discretion accept or reject the return of Goods and in deciding whether to accept the return of the Goods, the Supplier may consider (amongst other things) whether the returned Goods are in the original packaging, accompanied by the original Invoice and in a

condition suitable for the Supplier to re-stock and re-sell;

- 7.4. If the Supplier accepts the return of the Goods pursuant to clause 7.3, then the Supplier in its absolute discretion may allow for an exchange for Goods of equivalent price or to provide a credit to the value of the Goods and the Customer will be liable for transport or postage charges (including any applicable insurance).
- 7.5. If the Supplier does have an obligation under the Australian Consumer Law in respect of the returned Goods, and the failure is not a major failure, then, without limiting the rights of the Customer under the Australian Consumer Law (except as provided in clause 11.8), the Supplier may in its discretion replace the Goods, repair the Goods or provide a refund for the Goods.
- 7.6. Acknowledgement of receipt of the Customer's vehicle or the returned Goods by the Supplier does not amount to acceptance of those returned Goods nor of any liability to provide to the Customer an exchange or credit, repair, replacement, refund or other remedy.
- 7.7. The Customer acknowledges that any Special Buy-In Orders are non-returnable except as provided under any applicable Warranty or the Australian Consumer Law.
- 7.8. Without limiting any rights that may be available under the Australian Consumer Law (except as set out in clause 11.8), if the Customer is seeking to make a Claim pursuant to a third party manufacturer warranty, the Good may be sent back to the manufacturer for inspection and the remedy will depend on the decision of the third party manufacturer.

8. DEFAULT

- 8.1. The Customer will be in default if:
- (a) the Customer breaches the Contract;
 - (b) payment for the Goods and/or Services has not been received by the Supplier in full by the due date for payment;
 - (c) the Customer becomes insolvent or unable to pay the Customer's debts as and when they are due and payable;
 - (d) the Customer, being an individual, commits an act of bankruptcy or becomes an insolvent under administration;
 - (e) the Customer, being a body corporate, becomes an externally-administered body corporate or any proceedings are filed or steps taken that may result in the Customer becoming an externally-administered body corporate;
 - (f) the Supplier forms the reasonable opinion that the Customer's credit worthiness or credit standing alters from that indicated in its Application.
- 8.2. Without prejudice to any other rights of the Supplier under this Contract or under statute or common law, if the Customer defaults, the Supplier may do one or more of the following:
- (a) without notice to the Customer, make all money owing by the Customer to the Supplier, on the Trading Account or on any account whatsoever, immediately due and payable (including any costs incurred as a result of trying to recover the outstanding amount);
 - (b) treat the whole of the Contract, any part of the Contract and/or any other contract with the Customer as repudiated and sue for breach of contract;
 - (c) make a Claim for Loss, including Consequential Loss, in connection with the Customer's default;
 - (d) refuse to supply or deliver any Goods and/or Services to the Customer;
 - (e) repossess or claim repossession of any Goods in the Customer's possession where title has not passed to the Customer so that title to the Goods remains with the Supplier, and, for the purpose of locating and repossessing those Goods, the Customer irrevocably gives the Supplier, or an agent of the Supplier or person authorised by the Supplier, authority to enter any premises occupied by the Customer, or any premises where the Goods are situated as invitee of the Customer, without liability for trespass or any resulting damage in retaking possession of the Goods, to resell those Goods and to

- apply the proceeds of that sale to payment of the Purchase Price or any other money owing under the Contract;
- (f) exercise any rights the Supplier has pursuant to clause 6.7;
 - (g) without notice to Customer, commence taking steps to collect the overdue amount, including, without limitation, debt collection action and any associated legal proceedings;
 - (h) without notice to the Customer, vary any credit the Supplier has provided to the Customer under the Trading Account;
 - (i) suspend or terminate the Trading Account by providing notice in writing;
 - (j) if the Customer is in default for the failure to pay debts as and when they are due and payable, charge interest on any money owing until payment at the rate of 2.5% per month.
- 9. SURVIVAL**
- 9.1. If the Contract is terminated for whatever reason any rights or liabilities of the parties that accrued prior to the termination are not affected or prejudiced, the obligations of Customer survive and clauses 3, 4, 8, 10.3, 11, 13, 14, 15 of the Terms together with any other clauses that by their nature survive termination, survive termination. To avoid doubt, the Part 4 'Deed of Guarantee and Indemnity' is not terminated and is only terminated according to its terms.
- 10. CHANGE OF OWNERSHIP**
- 10.1. The Customer will, no later than 14 days prior to any change of ownership, change in registered particulars or alteration or addition to the shareholding or directorship (to avoid doubt, an alteration includes the resignation of a director), notify the Supplier in writing of the proposed change, alteration or addition and provide full details of the proposed change, alteration or addition (**Change Notice**).
- 10.2. On receiving the Change Notice the Supplier may do any one or more of the following:
- (a) accept in writing the change, alteration or addition set out in the Change Notice, which may include conditions the Supplier reasonably considers to be in its legitimate business interests;
 - (b) temporarily suspend the Trading Account to afford the Supplier an opportunity to consider if it is in its legitimate business interests to continue to provide the Trading Account in light of the change, alteration or addition set out in the Change Notice;
 - (c) if the Supplier considers in its reasonable opinion that it is not in its legitimate business interests to continue to provide the credit under the Trading Account, and/or to provide Goods and/or Services under the Contract, the Supplier may terminate the Trading Account and/or the Contract in writing signed by the Supplier.
- 10.3. The Customer and the Guarantors are liable for any Goods and/or Services supplied by the Supplier after such change, alteration or addition, regardless of whether a Change Notice has been provided to the Supplier, unless the Supplier has acknowledged by writing acceptance of the intended change, alteration or addition and any conditions placed on the Customer in respect of the change, alteration or addition by the Supplier have been complied with.
- 11. RISK AND LIABILITY**
- 11.1. Risk in the Goods passes to the Customer upon the Customer collecting the Goods, on the Goods otherwise leaving the premises with the authority of the Customer (including all risks associated with transport and unloading, including if a vehicle is being towed) or upon title in the Goods passing to the Customer, whichever is the earlier.
- 11.2. The Customer will ensure when placing Orders that there is sufficient information to enable the Supplier to execute the Order and provide the Services. To be clear, the Customer must advise the Supplier of issues with the vehicle of which the Customer is aware.
- 11.3. The Supplier may in its absolute discretion, refuse to fit any parts or products sourced and/or supplied by the Customer and used by the Supplier in providing Services and, if the Supplier does agree to fit a part supplied by the Customer, then the Customer acknowledges and agrees that, for the purpose of the Australian Consumer Law the Supplier is not the Supplier of the part supplied by the Customer.
- 11.4. The Customer agrees that if it is aware (or should be aware) that the Goods, the subject of an Order, are for a particular purpose or are required to possess special characteristics, the Customer will clearly specify that purpose or those characteristics in any such Order.
- 11.5. Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled to cancel your service contract with us, and to a refund for the unused portion, or to compensation for its reduced value.
- 11.6. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.
- 11.7. To the extent permitted by law and except as otherwise expressly provided in the Contract, all express and implied warranties, guarantees and conditions under statute or common law as to merchantable quality, description, quality, suitability or fitness of the Goods and/or Services for any purpose or as to design, assembly, installation, materials or workmanship or otherwise is expressly excluded.
- 11.8. In addition to, and without limiting the exclusions permitted by law in clause 11.7, to the extent permitted by law, including, where the Supplier has an obligation under the Australian Consumer Law, for Goods and Services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability is limited in relation to the sale of Goods and/or Services to the Customer as follows:
- (a) the Suppliers liability for any Claim is limited at the Supplier's option to replacing the Goods with equivalent goods, repairing the Goods (or payment for the repair of goods) or providing a refund for the Goods. and for the Services providing a remedy to the Customer, which may include, re-supplying the Services or providing a refund for the Services;
 - (b) the Supplier is not liable for any Loss to person or property arising from or caused in any way by the Goods and/or Services; and
 - (c) the Supplier will not be liable for any Consequential Loss.
- 11.9. Any limitation of liability in clause 11.8 and/or in this Contract does not apply if it would restrict, modify or exclude the Customer's rights in a way that is not permitted under Australian Consumer Law or any other applicable law.
- 11.10. To the extent permitted by law, the Customer indemnifies the Supplier against any damages arising out of fitment of the Goods and/or Services which occurs due to the Customer's failure to undertake proper due diligence with respect to the suitability of the Goods for the intended purpose or arising out of the use of vehicle parts or accessories supplied by the Customer to the Supplier.
- 11.11. Where more than one Customer completes the Contract each will be liable jointly and severally.
- 11.12. The Contract is binding on the Customer, their heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 11.13. To the extent permitted by law, the Customer acknowledges that in the event of any breach of the Contract by the Supplier the remedies of the Customer, including Consequential Loss (if not otherwise excluded by this Contract), will be limited to Loss which under no circumstances shall exceed the Purchase Price of the Invoice issued in respect of the Service and/or Goods directly related to the breach.

12. WARRANTY

12.1. The Customer acknowledges and accepts the terms and conditions of any applicable Warranty.

13. RETENTION OF TITLE

13.1. The legal and equitable title to the Goods will remain with the Supplier and will not pass to the Customer until such time as full payment (in cleared funds) of an Invoice in respect of the Goods is received by the Supplier from the Customer for all Goods supplied by the Supplier to the Customer and for all other moneys owed by the Customer to the Supplier in respect of the Goods.

13.2. Until title to such Goods passes to the Customer, the Customer acknowledges and agrees that:

- (a) the Customer holds the Goods as bailee for the Supplier and that a fiduciary relationship exists between the Customer and the Supplier;
- (b) the Customer is liable to compensate the Supplier for all Loss, including Consequential Loss, sustained to, and in connection with, the Goods whilst they are in the Customer's possession; and
- (c) the Customer must keep the Goods separate and in good condition as a fiduciary of the Supplier, clearly showing the Supplier's ownership of the Goods and, must keep books recording the Supplier's ownership of the Goods and the Customer's sale or other use of them in accordance with clauses 13.3. The Customer if required, must deliver the Goods up to the Supplier.

13.3. Despite clause 13.1 if the Customer sells the Goods to a third party in the normal course of the Customer's business, the Customer does so as fiduciary agent for the Supplier and the Customer holds the proceeds of sale, to the extent of the money owing by the Customer to the Supplier, on any account whatsoever, at the time of receipt of such proceeds, on trust for the Supplier. The Customer must keep those proceeds separate on trust for the Supplier and not mix those proceeds with any other money.

13.4. The provisions of this title clause apply notwithstanding that the Supplier may have provided credit to the Customer.

14. PERSONAL PROPERTY SECURITIES

14.1. Terms defined in the *Personal Property Securities Act 2009 (Cth)* (PPSA) have the same meaning when used in this clause.

14.2. The Customer acknowledges and agrees that under the PPSA:

- (a) the Contract constitutes a security agreement and each Order is incorporated into the Contract, which includes these Terms;
- (b) as security for payment of the Purchase Price of the Goods, the Customer grants the Supplier a security interest being a purchase money security interest in favour of the Supplier:
 - (i) in all Goods supplied or to be supplied as specified in an Order or any Order; and
 - (ii) in any present or after acquired property representing the proceeds of sale of the Goods, including where the Customer uses the Goods, or allows the Goods to be used to manufacture or produce another product or in accession to other goods;
- (c) as security for the performance by the Customer of the obligations set out in the Contract the Customer grants the Supplier a security interest:
 - (i) in all Goods supplied by the Supplier to the Customer from time to time as specified in an Order or any Order; and
 - (ii) in any present or after acquired property representing the proceeds of sale of the Goods, including where the Customer uses the Goods, or allows the Goods to be used to manufacture or produce another product or in accession to other goods;
- (d) the Supplier may register a financing statement on the Personal Property Securities Register, including, a financing statement that describes the Goods as 'other goods' (or a description the Supplier otherwise considers appropriate for the Goods), specifies the security interest as a purchase money

security interest and specifies that the security interest is taken in all Goods and in any present or after acquired property representing the proceeds of sale of the Goods.

14.3. The Customer agrees to provide information and do anything the Supplier reasonably requires to register, maintain and enforce the Supplier's security interest.

14.4. The Customer indemnifies the Supplier and agrees to reimburse the Supplier on demand for costs incurred in respect of registering, maintaining and enforcing the Supplier's security interest.

14.5. The Customer waives the requirement to be provided information under various provisions of the PPSA, in particular, the Customer agrees that as provided for in:

- (a) PPSA section 157 – the Customer waives its right to receive a verification statement from the Supplier; and
- (b) PPSA section 115 – the Customer waives its right to receive information, or has contracted out of receiving information, under the various provisions set out in clause 14.7 of these Terms

14.6. To the extent permitted by PPSA section 275, for the purpose of confidentiality, the Supplier and the Customer agree that the Supplier and the Customer must not disclose the information referred to in section 275(1) unless otherwise agreed in writing between the Supplier and the Customer.

14.7. To the extent permitted under PPSA section 115, the Supplier and the Customer agree the following PPSA sections are contracted out of, sections 95, 96(b), 118 (to the extent of providing notice), 121(4), 125, 129(2), 130 (to the extent that it requires the secured party to give a notice to the grantor), 132(3)(d), 132(4), 135, 142 and 143;

14.8. The Customer irrevocably grants the Supplier, or an agent of the Supplier or person authorised by the Supplier, the right to enter upon the Customer's property or premises, without notice or liability, to enforce its rights under the PPSA.

14.9. The Customer agrees that any rights of the Supplier under the Contract are in addition to the rights of the Supplier under the PPSA.

14.10. The Customer agrees not to allow a third party to obtain a security interest in the Goods or charge the Goods in anyway while title in the Goods remains with the Supplier without the Suppliers prior written consent.

15. TERMINATION AND CANCELLATION

Cancellation by Supplier

15.1. The Supplier may cancel an Order to which this Contract applies or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice, the Supplier will repay to the Customer any sums paid in respect of the Purchase Price. The Supplier will not be liable for any Loss or damage or Consequential Loss arising from such cancellation.

15.2. Without prejudice to the Supplier's other remedies at law, the Supplier will be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled, if the Customer is in default under this Contract, and all amounts owing to the Supplier will, whether or not due for payment, become immediately payable in the event of default as specified in clause 8.

Cancellation by Customer

15.3. Unless expressly agreed to in writing by the Supplier:

- (a) an Order for Goods, including Goods that are Special Buy-In Orders in connection with Services, cannot be cancelled by the Customer; and
- (b) an Order for Services cannot be cancelled by the Customer unless 24 hours notice is provided to the Supplier.

15.4. The failure to comply with the clause 15.3 is a breach of these Terms and, without limiting any other rights of the Supplier in these Terms, and unless otherwise expressly waived in writing by the Supplier, the Customer may be held liable under these Terms for reasonable costs incurred by the Supplier and any Loss and Consequential Loss incurred by the Supplier, which

may include all or part of the amount the Customer would have paid to the Supplier for receiving the Services and any reasonable administrative costs incurred by the Supplier and the Supplier will provide to the Customer a compliant Invoice itemising the reasonable administrative costs.

- 15.5. If the Customer places an Order with the Supplier and the Supplier places an order with a third party supplier to meet the Customer's request, the Customer will be liable for the Purchase Price of the Goods ordered if the Customer cancels the Order and the Supplier is unable to cancel the third party Goods order or the Goods have been dispatched.
- 15.6. If the Customer places an Order with the Supplier that is a Special Buy-In Order and the Supplier places an order with a third party supplier to meet the Customer's request, the Customer shall be liable:
- (a) for the Purchase Price of the Goods ordered if the Customer cancels the Order and the Goods have already been dispatched or the Supplier is unable to cancel the order with the third party supplier; or
 - (b) for any Loss incurred by the Supplier if the Supplier is able to cancel the order with a third party supplier but has incurred costs in canceling the order with the third party supplier.

Termination

- 15.7. The Supplier may terminate the Contract on giving the Customer a minimum of forty (40) days written notice.
- 15.8. The Customer may terminate the Contract on giving the Supplier a minimum of forty (40) days written notice.
- 15.9. The Supplier may, in its absolute discretion, no earlier than forty (40) days before the termination takes effect, suspend the Trading Account by giving the Customer notice in writing. Despite clause 4.9, such suspension will not affect the payment terms of Orders placed by the Customer more than forty (40) days prior to the termination taking effect. To avoid doubt the Customer may continue to purchase Goods and Services within forty (40) days of the termination taking effect by making payment for the Goods or Service in advance or on delivery.

Consequence of Termination

- 15.10. The Application and Trading Account will terminate on the same date as the termination date of this Contract, even where the notice of termination it is expressed only in relation to the Terms. However:
- (a) the Trading Account Guarantee survives and can only be terminated according to its terms;
 - (b) the obligations of the Customer under the Application, which survive the termination of the Application; and
- 15.11. To avoid doubt, this clause does not limit clause 9.

16. FORCE MAJEURE

- 16.1. With the exception of the payment of the Purchase Price for Goods dispatched and Services provided to the Customer (as required by the terms of this Contract or as otherwise agreed in writing between the parties), neither party has any liability under this Contract or may be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from circumstances beyond the reasonable control of that party (including without limitation as a result of any strike, war, terrorist attack, trade dispute, fire, flood, tempest, theft, epidemic, pandemic or breakdown in machinery of any kind, disruption to electricity (or any other utility), or breakdown or disruption of any electronic communication support system).
- 16.2. The party affected by these circumstances must promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- 16.3. If the Supplier is unable to fulfil or complete an Order placed by the Customer within the time frame required by the Customer due to a circumstance in clause 16.1 or 16.2, then the Supplier may cancel the Order without the Customer having a Claim against the Supplier for Loss or Consequential

Loss arising from such a cancellation.

17. WAIVER

- 17.1. The Supplier's rights under the Contract, may only be waived by notice in writing. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- 17.2. The failure by the Supplier to enforce any provision of this Contract will not be treated as a waiver of that provision or affect the Supplier's right to subsequently enforce that provision.

18. TRUSTS

- 18.1. If the Customer is a trustee of a trust:
- (a) the Customer warrants that the Customer as trustee has the power under the trust deed to enter into this Contract and to comply with its obligations under this Contract, including using the trust assets to meet the Customer's obligations under this Contract;
 - (b) the Customer agrees that the Contract binds the Customer in their capacity as trustee and in the Customer's own capacity; and
 - (c) the Customer agrees that the Customer is liable for the failure to meet an obligation under this Contract in its capacity as trustee and in the Customer's own capacity.

19. THE SUPPLIER MAY ASSIGN

- 19.1. The Supplier may assign, license or sub-contract all or any part of its rights and obligations under the Contract, to another person without notice to the Customer.
- 19.2. The Customer may not assign or otherwise transfer any or all of its rights and obligations under this Contract without the prior written agreement of the Supplier.

20. VARIATION

- 20.1. The Supplier may vary these Terms at any time by providing notice to the Customer, however, the Customer agrees that notice in writing is not required if clause 21 is applicable.

21. WEBSITE

- 21.1. The Customer acknowledges that the Supplier may use these Terms on its website and that it may provide notice to the Customer of any variation. In this event, the Terms on the Supplier's website will apply to any future dealings as between the parties and the Customer is deemed to have notice of any such Terms and/or variations.

22. JURISDICTION

- 22.1. The Contract is governed by the laws of Victoria. The parties submit to the exclusive jurisdiction of the courts of Victoria.

23. SEVERANCE

- 23.1. If a provision of the Contract would, but for this clause, be unenforceable the provision must be read down to the extent necessary to avoid that result, and if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.

24. COSTS

- 24.1. The Customer must pay all of the Supplier's costs and expenses in connection with the Contract, including legal expenses (on an indemnity basis), stamp duty and costs incurred in the recovery of monies owing by the Customer to Supplier, or in otherwise enforcing the Supplier's rights against the Customer, under the Contract.

25. SET-OFF

- 25.1. The Customer shall have no right of set-off in any suit, Claim or proceeding brought by the Supplier against the Customer for default in payment, or by the Customer against the Supplier.
- 25.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

26. ENTIRE AGREEMENT

- 26.1. The Contract constitutes the entire agreement between the Supplier and the Customer with respect to the Goods and/or Services supplied under the Contract. All prior negotiations, proposals and correspondence are superseded by the

Contract and the Contract will in all circumstances prevail over the Customer's Terms.

- 26.2. No subsequent correspondence or document or discussion will modify or otherwise vary the Contract unless such variation is in writing and signed by the Supplier.
- 26.3. Nothing in this Contract is intended to have the effect of contravening the *Competition and Consumer Act 2010* or any other applicable legislation.