

# TERMS, CONDITIONS AND WARRANTY

Asia Pacific Aerospace Pty Ltd

ACN 057 052 025

## 1. INTRODUCTION

- 1.1 **Definitions.** These terms of trade apply to all goods or services which we provide you with. **Our product** is the applicable goods or service that we provide you with. You cannot vary these terms of trade without our written approval.
- 1.2 **Us.** All references to **us, we, our** etc, refer to Asia Pacific Aerospace Pty Ltd ACN 057 052 025, its officers, employees and agents.
- 1.3 **You.** All references to **you, your**, etc refer to the customer placing the order and its representatives and if more than one, each of them jointly and severally.
- 1.4 **Supersede.** These terms of trade supersede any earlier negotiations and representations whether verbal or written, agreement for the same goods and/or services, and terms of trade.
- 1.5 **Changing these terms.** We may change these terms of trade at any time and you will be bound by any change on the date that we give you notice of such change. You are deemed to have received notice (whether or not you actually receive it) when we:
- (a) send you the changed terms of trade to any address you have advised us of (including an email address);
  - (b) place the changed terms of trade on our website: [www.apaero.com.au](http://www.apaero.com.au); or
  - (c) display the changed terms of trade at our premises.
- 1.6 **PPSA.** For the purposes of the *Personal Property Securities Act 2009 (PPSA)*:
- (a) goods and/or services supplied by instalment made under these terms of trade are not a separate security agreement but form part of these terms of trade together with any rental agreement, guarantee or indemnity or other contractual documents;
  - (b) an instalment contract is and is deemed to be a single security agreement for the purposes of the PPSA; and
  - (c) notwithstanding clauses 1.4 and 1.5, these terms of trade form a continuous security agreement with any prior terms and do not constitute a separate security agreement.
- 1.7 **Application of clause 1.6.** Clause 1.6(c) applies regardless of any term to the contrary in these terms of trade, any invoice or any other document.

## 2. OUR INFORMATION

- 2.1 **Contact details.** Our contact details are as follows unless we notify you in writing of any changes:

Name: Asia Pacific Aerospace Pty Ltd ACN 057 052 025;  
Business address: ,750 Macarthur Avenue Central, Pinkenba, Qld, 4008;  
Telephone number: 07 3632 7600;  
Facsimile: 07 3632 7661;  
Email address: [info@apaero.com.au](mailto:info@apaero.com.au) and  
Postal address: P.O Box 1355 Eagle Farm, QLD, 4009.

## 3. QUOTES AND ORDERS

- 3.1 **Quotes.** Any quote we give you will be valid for 30 days (or such other time stated at the time we give the quote) from the date of that quote and we can withdraw, modify or vary that quote up until any time we deliver our product to, or provide the service for, you. Any quote accepted by you will be an order for the purpose of these terms of trade.
- 3.2 **Prevailing terms.** We will not be bound by your order until we accept it, which we may do by delivering our product to, or providing the service for, you (as the case may be). If the terms of your order differ from these terms of trade, these terms of trade will prevail.
- 3.3 **Order form.** You are responsible for checking the prices of our product in any quote or your order and that the quote or your order sets out the goods or service you require. We take no responsibility for any omissions or errors in the description of the goods or service or the prices set out in the quote or order.
- 3.4 **Method of ordering.** You may only make an order by contacting us in writing at our designated postal address, facsimile number or email address contained in clause 2.1.

3.5 **No cancellation.** You cannot cancel any order you place with us without our written consent.

#### 4. PRICE

4.1 **Variation.** Prices listed in our quote or our product catalogue or website for the relevant goods or service are fixed until we issue a revised price list or otherwise notify you that the prices have been revised (which may be noted in the quote, catalogue or website). We can vary prices at any time prior to accepting your order.

4.2 **Amount.** You will pay us according to the applicable prices at the date of delivery of the goods or the provision of our service (as the case may be) without deductions or setoff unless quoted by us or we otherwise advise.

4.3 **Statutory charges excluded.** All prices are exclusive of sales tax, goods and services tax and other statutory duties and are net cash at our warehouse unless otherwise stated. You must pay any sales tax, goods and services tax or other statutory charges in addition to the base amount when requested by us. Where goods and services tax is payable we will provide you with an invoice identifying the goods and services component in Australian dollars calculated in accordance with the trade-weighted index for the Australian dollar as calculated by the Reserve Bank of Australia at 4:00pm on either the earlier of:

- (a) the date of dispatch; or
- (b) upon receipt of a deposit or advance payment.

4.4 If you supply spare parts, you must pay a handling fee of 20% of the original equipment manufacturer's parts retail price to us.

4.5 **Other costs.** Any additions or increases in the cost of the supply of goods and/or services as a result of any additions or increases in charges, taxes (including the rate of GST) or costs associated with manufacture or supply of goods and/or services by us, including without limitation increases due to variations in exchange rates, the cost of materials, labour or production, freight, insurance, process costs, rental or licence fees, delivery and/or the cost of conforming with any relevant legislation, court orders, regulations or bylaws, between the date of our relevant quotation or tender or, where there is no such quotation or tender, from the date of our acceptance of your order, as the case may be, and the date of supply of the relevant goods and/or services shall be borne by you.

4.6 **Currency.** Unless otherwise stipulated all references to dollars are references to the lawful currency of Australia unless otherwise stated and agreed upon.

4.7 **Payment for goods.** For goods purchased we will invoice you on delivery and you must then pay us in Australian dollars in accordance with the terms of payment set out in the invoice and/or rental agreement.

4.8 **Payment for services.** Unless otherwise agreed by us in writing, for services we will invoice you once that service has been provided and you must pay us in Australian dollars within 30 days from end of month of the despatch of goods.

4.9 **Letter of credit.** At our sole discretion we may require you to provide an irrevocable letter of credit or bankers draft in favour of us on such terms and in such form as is acceptable to us.

4.10 **Reduction of credit.** We may reduce or stop any credit extended to you in the event that we, in our reasonable discretion, determine that your financial situation or ability to pay is impaired.

4.11 **Unpaid invoices.** Unless otherwise agreed by us in writing, we reserve our right to charge you interest at 3% per month on any amount unpaid which will be calculated from the due date and capitalised monthly.

4.12 **Stop credit.** Unless otherwise agreed by us in writing, we will stop the supplying of credit to you if payment has not been received from you 14 days after the due date.

4.13 **Closure of account.** If full payment has not been received from you within 90 days of the due date we may close any account including the credit account you may have with us.

4.14 **Methods of payment.** We accept payment by electronic funds transfer or cheque. There is a \$40 returned payment fee for any declined cheques/automatic withdrawals.

4.15 **Special order products.** Special order products are subject to a 50% deposit before being ordered or manufactured. A list of special order products is available upon request. The final balance of the invoice is to be paid in accordance with the terms of payment set out in the credit application.

#### 5. CORE ASSETS.

5.1 **Exchange and or turn in of core assets.**

a) exchange prices are based on you returning a repairable core of the same part number and modification status (within reason);

- b) the returned core must be complete with logs and documentation to include total life detail, reported defect (if any) and reason for removal;
- c) we reserve the right to reject any returned unit that has been damaged because of abnormal operation or such other causes as we reasonably determine, including without limitation fire, crash, submersion, cannibalisation, unauthorised repair or excessive wear; and
- d) units found to be economically non-repairable (in our discretion) will be returned.

**6. Additional core asset charges.** We may apply additional charges in certain circumstances including, but without limitation, the following:

- a) if (in our discretion) the returned core requires modification/commercial engine bulletin compliance, suffers damage other than fair wear and tear or is incomplete; and
- b) if you do not return an acceptable core within 15 business days of date of invoice, we may charge an applicable core fee equivalent to 20% of new list price. You must return the core with freight pre-paid to us.

## **7. DELIVERY OF GOODS AND PROVISION OF SERVICES**

- 7.1 **Instructions.** You must give delivery instructions in your goods order (including the nominated transport account number), and if possible, we will arrange for delivery in accordance with those instructions. You must ensure that someone is present to accept delivery of the goods and the accompanying invoice on your behalf. As well as paying for the goods, you will pay the carrier's costs of transporting the goods from our warehouse according to your delivery instructions unless prior arrangements are made at the time you make your order. We reserve the right to select the carrier in all cases.
- 7.2 **Timing estimates only.** Any quote we provide for the supply or delivery of goods, or providing the service, is an estimate only. Delay in supply or delivery of goods and/or providing services will not affect your obligation to accept or pay for the relevant goods or service.
- 7.3 **Instalments.** We reserve the right to supply or deliver goods and/or services by instalments. Each instalment will be deemed to be sold under a separate contract. You cannot repudiate the order if we fail to supply or deliver the goods and/or provide the services in an instalment.

## **8. RISK AND INSURANCE**

- 8.1 **Risk.** Unless we otherwise agree in writing, where we:
- (a) provide goods to you, then you bear the risk of any deterioration, loss or damage to those goods from the time they are available for collection by the carrier; and/or
  - (b) provide a service, then you bear the risk of any deterioration, loss or damage to your property at all times, including any period we use your property, store and/or deliver that property.
- 8.2 **Insurance.** Unless we otherwise agree in writing, you are responsible for all insurance of the goods in transit from the time the goods are available for collection by the carrier.

## **9. PRODUCT WARRANTY**

- 9.1 **Warranty.** Each engine, component or accessory reworked or supplied is free of defects in material and workmanship under normal use and service, for a period of 6 months or 500 running hours, whichever occurs first.
- 9.2 **Warranty exclusion.** This Warranty will not apply to:
- a) any engine, component or accessory which has been subjected to misuse, negligence, accidental damage, or improper or inadequate maintenance; or
  - b) deterioration of any item due to normal use and exposure, unless due to a defect in workmanship or material.
- 9.3 **Product care.** You must comply, at your cost, with any recommendations we make for the packaging, transport and storage of the goods. You are solely responsible for any defect in or damage to goods caused or contributed to by your failure to fully comply with all of those product care recommendations.
- 9.4 **Inspection on Delivery.** You must inspect the goods as soon as they are delivered and if you do not, you will be deemed to accept those goods or the service (as the case may be) provided complies with the order.
- 9.5 **Claim.** If you believe that goods do not comply with our warranty, you must make a claim to us either by post or email to the addresses in clause 2 within:
- (a) 48 hours after receipt of the goods, if for shortages; or
  - (b) 21 days after receipt of the goods, if for defects.

- 9.6 **Our action.** Subject to clauses 9.7 and 9.8 , we will, in our sole discretion:
- (a) replace the goods or part of them; or
  - (b) wholly or partly recompense you by providing credit or reimbursing you.
- 9.7 **Conditions precedent.** Clause 9.6 is conditional on you having:
- (a) inspected the goods on delivery and did not sign for them as damaged stock;
  - (b) notified us of your claim under clause 9.5;
  - (c) allowed us access to inspect the goods and investigate your claim; and
  - (d) having not used the goods and you have not further damaged those goods.
- 9.8 **Deemed compliance.** Where you did not comply with any of the conditions in clause 9.7, our product will be deemed to comply with your order and you will be bound to pay for our product in accordance with these terms of trade.
- 9.9 **Approval and Procedure.** Only after obtaining our approval, you may return the goods to us and must comply with all directions which we give you, including which carrier you must use.
- 9.10 **CC Act Consumer.** If you are a consumer under the *Competition and Consumer Act 2010 (CC Act)* then:
- (a) the benefits to you given by the warranty in clause 9.1 are in addition to other rights and remedies of yours under a law in relation to the goods or services to which the warranty relates;
  - (b) our goods come with guarantees that cannot be excluded under the Australian Consumer Law;
  - (c) you are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage;
  - (d) you are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure; and
  - (e) expenses incurred in making, and verifying, the claim will be borne by:
    - (i) us, up to a maximum of \$100.00, in the event we decide (acting reasonably) that the claim was validly made; or
    - (ii) you in all other circumstances.
- 9.11 **Third Party Manufactured Goods.** We will not warrant goods that are supplied by us but are not manufactured by us or a related entity of ours, and anything deemed by us not to be manufactured by us ("Third Party Manufactured Goods"). In the event Third Party Manufactured Goods are defective or damaged goods, the claim will be passed onto the original equipment manufacturer or supplier and will be subject to their warranty terms and conditions.
- 9.12 **Transportation costs.** Subject to clause 9.10(e), you must pay all transportation costs to and from our nominated service facility unless the goods are being returned due to our distribution error and you notified us of that error within 5 business days of delivery.

## 10. UNWANTED RETURNS

- 10.1 In our sole discretion, we may agree to you returning 'over the counter sales' goods purchased from us subject to the following conditions:
- a) the goods must be in new condition and in unopened original packaging;
  - b) we will not accept goods for return 15 business days after the date of first invoice;
  - c) you must make a claim for credit within 7 business days of receipt of goods and all goods must be returned within 15 business days from the date of first invoice.
  - d) you agree and acknowledge that the credited amount to you for goods returned will be discounted by 15% of the invoice price on account of restocking and handling fees. We do not accept freight or postage charges on goods being returned.
  - e) you must inform us why such goods are being returned and when they were purchased from us, together with a copy of all certificates of release (C of C's) and original invoice.

If you do meet all of the conditions immediately above, you will be deemed to have accepted the goods.

## 11. LIABILITY

- 11.1 **Exclusion of legislation.** The provisions of all legislation, including the *Competition and Consumer Act 2010 (Cth)* and the *Fair Trading Act 1989 (Qld)*, do not apply to these terms of trade except to the extent that they are unable to be excluded by legislation.
- 11.2 **Limitation of liability.** Subject to clause 11.1 and other product warranties set out in these terms of trade:
- (a) we give no guarantee, warranty, undertaking or representation in relation to the goods sold or services provided to you, their quality, fitness for any purpose, their compliance with any description or sample, or otherwise;

- (b) we will not be liable to you for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, spontaneous combustion, fermentation, asbestos claims, flood, drought, storm, pollution, radioactive contamination or other event beyond our reasonable control;
- (c) our liability to you arising in any way in relation to our product (including product contamination) will be limited to the extent of our warranty contained in clause 9;
- (d) in no case will our liability extend to any direct, incidental or consequential damage to property, personal injury or loss of profit;
- (e) all information contained in any of our publications (including our catalogues, brochures, photographs, illustrations, website or any advertising material) represent generally the subject matter and price of our product but will not be taken as necessarily representing our product the subject of any order or the correct price and will not form part of any contract or agreement for supply; and
- (f) except as otherwise expressly provided in these terms of trade, you release us from all actions, claims, demands, losses, liabilities, damages and expenses arising from or in relation to the supply of our product including but not limited to any crop loss or loss of livestock of any kind,

and you acknowledge that we would not have entered into any contract with you if any of the above were not true.

- 11.3 **Reliance.** You acknowledge that you have not relied on and have not been induced to purchase the goods or use any service based on any representation by us other than as expressly recorded in these terms of trade.
- 11.4 **Product recall.** In the event that we instigate a product recall, then you must comply with any reasonable request that we or our insurers have (provided we pay for freight on recalled goods), and our liability will be limited to the amounts referred to in clause 11.2 plus that freight cost (if any).
- 11.5 **Maximum liability.** Notwithstanding clause 11.1, if we are found liable by operation of law, our total liability (including death or personal injury occurring as a consequence of any negligent act, omission or default on our part, under or in connection with this agreement), whether in contract, tort or otherwise must not exceed \$20,000,000.

## 12. PASSING OF TITLE

- 12.1 **Title to goods that we hire or lend to you.** Title remains with us with regard to goods that we hire or lend to you.
- 12.2 **Title to goods sold by us passes on full payment.** Title to goods that we sold you will not pass to you until we receive your full unconditional payment for all goods and services provided by us to you.
- 12.3 **Ordinary Course of Business.** You may sell or otherwise dispose of goods that we sold you in the ordinary course of your business.
- 12.4 **Bailment.** Until title in goods that we sold you passes to you, you are the bailee of the goods and as bailee, assume all of the duties and liabilities of a bailee in respect of the goods.
- 12.5 **Your storage.** After delivery of goods to you, you must:
  - (a) store the goods separately at your premises so they can be easily identified including by labelling the goods if required;
  - (b) not alter, remove or tamper with any marks or numbers on the products or packaging;
  - (c) only dispose of goods that we sold you in the ordinary course of your business;
  - (d) not cause the goods to lose their identifiable character or be intermingled with other goods in any way by any process of its own or by a third party, except with our prior written consent;
  - (e) not claim a right or interest in the goods to secure any liquidated or unliquidated debt or obligation that we owe to you;
  - (f) not claim any lien over the goods;
  - (g) not create any absolute or defeasible interest in the goods in relation to any third party except with our prior written consent; and
  - (h) provide us and our agents access to the premises where the goods are stored to enable us to inspect and/or seize the goods.

## 13. DEFAULT

- 13.1 **Our rights where you are in default.** If you are in default under these terms of trade or commit an act pursuant to which bankruptcy or insolvency proceedings may be commenced against you, then:
  - (a) we may, without notice to you, immediately recover possession of the goods from wherever they are stored and you waive the right to receive any statutory or PPSA notice;
  - (b) we may cancel deliveries to you;
  - (c) we may stop carrying out the service (even if partially processed goods will be spoiled);
  - (d) payment of all monies which you owe to us will immediately become due and payable on demand;
  - (e) we may vary the terms of payment or suspend or terminate any contract for the supply of our product to you;
  - (f) in addition to any other lien to which we may be entitled, we will be entitled to a general lien on all money and property belonging to you in our possession to the extent of the unpaid price of our product;
  - (g) we may sell any property of yours in our possession and use the proceeds to pay towards our costs of your default; and

(h) we may destroy or discard of any part of your property in our possession if the likely proceeds of sale will not exceed the costs of selling those items.

13.2 **No compensation.** You are not entitled to any compensation in relation to any action which we take under clause 13.1.

13.3 **Indemnity.** You will indemnify us against the costs of any action in respect of recovery, handling and sale or re-sale, including without limitation any debt collection agency fees and solicitors' fees (on an solicitor-client basis), and the balance of any amount owing following sale or re-sale will be immediately due to us. A certificate produced by us will be conclusive evidence of the balance of the amount which you owe us.

13.4 **Right to proceeds.** Where you dispose of the goods before payment to us, the sale proceeds of such disposal are our property and you hold the proceeds on trust for us. Further, you, in disposing of the goods before payment to us, do so as our fiduciary agent.

13.5 **Further assurance.** You appoint us and each of our directors as your joint and several attorneys for the purpose of doing all acts, matters or things we think are necessary to give full effect to this clause 13.

## 14. SECURITY

14.1 **Charge.** As security for payment to us of all funds payable by you and for your obligations and liabilities pursuant to these terms of trade, you charge in favour of us for the due and punctual payment and performance of those obligations and liabilities, all of your legal and equitable interest of whatsoever nature held in any and all real property both present and future.

14.2 **Security.** On our request, and without limiting the general nature of the charge in this clause 14.1, you will execute any documents and do all things necessary as required by us to create and register a mortgage security or other instrument of security over any real property on terms satisfactory to us. Where you do not do so within a reasonable time of our request, you irrevocably appoint each officer or solicitor appointed by us to be your true and lawful attorney to execute and register those security instruments.

14.3 **Costs.** You indemnify us on an indemnity basis against all of our costs and expenses incurred in relation to the preparation and registration of any such charge and mortgage documents.

14.4 **Consent.** You consent unconditionally to us lodging a caveat or caveats noting our interest in any of your real property.

## 15. PPSA

15.1 **PPSA defined terms.** Terms referred to in this clause 15 will, unless the context otherwise requires, have the same meaning given to those terms in the PPSA.

15.2 **PPSA Security Interest.** You acknowledge and agree that:

- (a) these terms of trade are a Security Agreement for the purposes of the PPSA;
- (b) we may register our Security Interest in the goods and their Proceeds on the Register via a Financing Statement or Financing Change Statement as a Purchase Monies Security Interest or any other Security Interest we deem appropriate;
- (c) for the purposes of paragraph 15.2(b), goods is described as helicopter engines supplied by us including, without limitation, helicopter accessories, modules and engines and including any property described in an order;
- (d) you will sign any documents and provide all assistance and information required in order for us to attend to the registration and maintenance of any Security Interest;
- (e) you will ensure that our security position, rights and obligations, are not adversely affected by the PPSA;
- (f) unless we have consented in writing or otherwise specifically permitted under these terms of trade:
  - (i) you will not register a Financing Change Statement in respect of a Security Interest relating to these terms of trade; and
  - (ii) you will not allow a third party to register, a Financing Statement or a Financing Change Statement in relation to the goods and their Proceeds;
- (g) in order to satisfy obligations secured by a Security Interest contemplated or constituted by these terms of trade, we may, in our absolute discretion, utilise amounts received in relation to these terms of trade in whatever way we decide; and
- (h) you will give us at least 14 days written notice of any proposed change in any of your details, either in the rental agreement or those registered, or required for registration, on the Register.

15.3 **On-Sales.** In all circumstances where you:

- (a) dispose of any goods supplied by us under these terms of trade in the ordinary course of your business to a third party ("Purchaser"); and
- (b) that disposal was on terms other than full payment being received by you on or before the Purchaser obtaining Possession,

then you must before the time the Purchaser obtains Possession of the goods, register a Purchase Monies Security Interest over the goods with the Purchaser as Grantor.

- 15.4 **On-Sale Defaults.** Where a Purchaser defaults on their payment obligations to you, you must immediately take all steps permitted under the PPSA to enforce your Security Interest (including under the Purchase Monies Security Interest) in priority to any other party having a Security Interest in the goods given by the Purchaser as Grantor including, but not limited to, seizing, disposing or retaining the goods.
- 15.5 **Subordination.** You acknowledge and agree that, pursuant to section 61 of the PPSA, your Security Interest in the goods is subordinate to our Security Interest and our Security Interest will at all times take priority over your Security Interest.
- 15.6 **PPSA Exclusions [s115(1)].** To the extent allowable under section 115(1) of the PPSA, sections 95, 96, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142, and 143 of the PPSA are contracted out of and your rights pursuant to them cease.
- 15.7 **PPSA Exclusions [s115(7)].** To the extent allowable under section 115(7) of the PPSA, sections 127, 129(2) and (3), 130(1), 132, 134(2), 135, 136(3), (4) and (5), and 137 of the PPSA are contracted out of and your rights pursuant to them cease.
- 15.8 **Waiver.** You waive your rights pursuant to section 157 of the PPSA to receive notice of Verification Statement.
- 15.9 **Non-Disclosure.** You and we agree not to disclose information in connection with these terms of trade (including the existence of any terms or the exercise of any rights under these terms of trade) that is not publicly available except if the information is:
- (a) disclosed with the prior consent of the other party to these terms of trade (which must not be unreasonably withheld);
  - (b) disclosed to your or our officers, employees, auditors, legal or other advisers; or
  - (c) is information which the disclosing party reasonably believes is required by any law or stock exchange to be disclosed (except that this clause 15.9 does not permit us to disclose any information of the kind referred to in section 275(1) PPSA unless section 275(7) of the PPSA applies).

## 16. INTELLECTUAL PROPERTY

- 16.1 **Intellectual Property.** We or the relevant third-party own and retain all intellectual property rights in and connected to the product and any related materials.
- 16.2 **Act Consistently.** You will not at any time do any act inconsistent with our or the relevant third-party's intellectual property rights.

## 17. GUARANTEE

- 17.1 **Guarantors.** In consideration of us selling, supplying and/or delivering our product to you at the request of the guarantors specified in the rental agreement or any other agreement we nominate as a customer agreement (**Guarantors**), the Guarantors hereby guarantee and indemnify us in respect of all monies which you owe us.
- 17.2 **Principal Obligation.** The Guarantors' guarantee is a principal obligation and a continuing guarantee and will not be affected by any act or omission by either of us and will be binding on the Guarantors despite any irregularity in this guarantee or its execution.
- 17.3 **Payment of Monies.** The Guarantors will pay us on demand all monies which you owe to us.
- 17.4 **Security.** As a further security, you and the Guarantors hereby charge all present and future interest in any real or personal property (that is not personal property for the purposes of the PPSA) which you or they may own for the payment of monies which you owe us.
- 17.5 **Security.** Clauses 14 and 15 of these terms of trade apply to the guarantors to the same extent that they apply to you.
- 17.6 **Attorney.** You and the Guarantors hereby appoint us as your joint and several attorneys to do anything necessary to give effect to this clause and acknowledge that we may sell the property charged on default under these terms of trade.

## 18. RENTAL AGREEMENT AND CREDIT APPLICATION DETAILS

- 18.1 **True and Correct.** You certify that all information provided to us in accordance with any rental agreement and/or credit application or to induce us to supply our product is true and correct.
- 18.2 **Information and Credit Reports.** We may:

- (a) refuse your application for credit facilities;
- (b) withdraw, vary or otherwise deal with credit facilities at our absolute discretion without prior notice;
- (c) withhold supply or take any other action irrespective of whether an order has been accepted or not if for any reason we determine in our absolute discretion that no further credit is to be extended to you.

18.3 **Warrant, authorise and consent.** You, your business partners, directors and Guarantors all:

- (a) warrant that none of your members and/or directors are undischarged bankrupts, have ever been bankrupt, convicted of any criminal offence or have any pending criminal offence court proceedings;
- (b) authorise us to collect, update and use information (whether personal or otherwise) about you or that is collected from third parties permitted under the *Privacy Act 1988(Cth)* (including disclosing that information to persons in the manner permitted by the *Privacy Act 1988 (Cth)* including without limitation our related entities and any business units) ("Credit Information");
- (c) consent to us obtaining from any of your credit providers information which they are allowed to give us under the *Privacy Act 1988 (Cth)* about the creditworthiness of either or all of you;
- (d) consent to us providing information to credit reporting agencies in connection with us providing credit or recovering from you amounts owing from time to time including without limitation disclosing the following types of Credit Information:
  - (i) the fact that you have applied for credit and the amount;
  - (ii) the fact that We are a credit provider to you;
  - (iii) payments which are more than 60 days overdue;
  - (iv) payments that are no longer overdue;
  - (v) the fact that a cheque drawn by you for more than \$100.00 has been dishonoured more than once;
  - (vi) whether any credit provided by us to you has been discharged;
- (e) consent to us providing information to other credit providers, mortgage insurers and debt collectors including without limitation disclosing the Credit Information for the following purposes:
  - (i) assessing any application by you for credit;
  - (ii) assisting you to avoid defaulting on your credit obligations;
  - (iii) notifying other credit providers of a default by you;
  - (iv) assessing your credit worthiness, credit standing, credit history or credit capacity;
  - (v) where we suspect that an unlawful activity has been or may be engaged in and the Credit Information is a necessary part of the Company investigating or reporting on the matter;
  - (vi) where we are required to disclose the information about you to comply with our legal obligations; and
- (f) acknowledge and agree that the information set out in any rental agreement or provided to us to induce us to supply our product or provide our services may be disclosed to a credit reporting agency or to another credit provider; and
- (g) this clause 18.3 will continue to remain in full force and effect until all credit facilities cease to be made available to you.

## 19. WARRANTY AND FURTHER ASSURANCES

19.1 **Warranties.** You warrant that:

- (a) you have provided us with all information required under these terms of trade including but not limited to clauses 15 and 18;
- (b) you have disclosed to us in writing all of your details including any trusts and related trust ABNs; and
- (c) nothing of relevance that should have been disclosed has been omitted.

19.2 **Further information.** You must provide us with any further information that we require immediately upon our request.



**20. GENERAL**

- 20.1 **Force Majeure.** We will not be liable for any delays or loss or damage you suffer arising from any cause beyond our control including but not limited to delays in transportation, handling or supply, accidents, fire, strikes and other labour disputes, terrorist acts, acts of God, the requirements of any law or Government agency or other circumstance whether or not of a similar nature beyond our control, until that cause has ceased to have effect.
- 20.2 **Time.** With the exception of the time for delivery, time shall be of the essence.
- 20.3 **Relevant Law.** These terms of trade will be construed in accordance with the laws of Queensland and the parties submit to the jurisdiction of the Queensland courts.
- 20.4 **Waiver.** The failure of either of party to exercise any rights under these terms of trade will not waive that right, nor will any practice developed between us waive or lessen our respective rights under these terms of trade.
- 20.5 **Severance.** Any provision of these terms of trade which is found by a court of competent jurisdiction or any competent government authority to be invalid, illegal or unenforceable, will be severed from these terms of trade and will be deemed never to have been part of them.
- 20.6 **No Restraint.** No provision expressed or implied in these terms of trade restricts our right to sell, hire or lease the goods or provide services to third parties, whether or not you have sold, hired or leased the goods or provided the services (as the case may be) to those third parties at any time.
- 20.7 **Confidentiality.** You must treat all information which we give you as private and confidential, and must not disclose that information to any person nor use it in any way which may cause us injury or loss unless that information is public knowledge or was known by you before we gave it to you.
- 20.8 **Clerical Errors.** We reserve the right to correct clerical errors without notification.