

Terms and Conditions of Sale

1. Definitions and Interpretation

1.1. Definitions

In this Agreement, unless the context otherwise requires:

- (a) Words defined in Part 1 of the Schedule (namely, "Credit Limit", "Payment Period") will have the meaning set out therein;
- (b) "Account" means the commercial credit account applied for by the Client with the Supplier by virtue of completing the Application which, if approved, will be governed by this Agreement;
- (c) "Application" means the above application for an Account;
- (d) "Body" means a body, authority, agency, association or the like;
- (e) "Business Day" means a day which is not a Saturday, Sunday or public holiday in Sydney, New South Wales, Australia;
- (f) "Claim" includes a claim, demand, notice, investigation, action, proceeding, suit, judgment, damage, loss, cost (including legal expenses on a full indemnity basis), charge, fine, penalty, expense or liability of any description, however based (including whether based in contract, tort or statute) and however arising (including whether present, future, unascertained, or contingent);
- (g) "Equipment" means any equipment, product or property (real or personal);
- (h) "Force Majeure Event" means any event or circumstance or combination of events and circumstances which is beyond the reasonable control of the party affected and causes or results in delay in, or prevention of, the performance by the party affected of any of its obligations under a Contract;
- (i) "Goods" means and includes those goods, products, parts, consumables and/or further items (as the case may be) requested by the Client to be supplied by the Supplier pursuant to a contract formed between the Supplier and Client in accordance with this Agreement;
- (j) "G/S" means the Goods and/or Services (as the case requires);
- (k) "Law" includes statute, regulation, by-law, proclamation, ordinance, code and rule;
- (l) "Loss" means any loss (including loss of rent and/ or profit), cost, damage, expense, liability, diminution in value or deficiency of any kind, or character or description, however based (including whether based in contract, tort or statute) and however arising (including whether present, future, unascertained, or contingent);
- (m) "Install" means install, incorporate or affix;
- (n) "Insolvency Event" means the occurrence of any one or more of the following events in relation to any party:
 - (i) A liquidator, provisional liquidator, administrator or official manager is appointed to the party;
 - (ii) A receiver or manager or both is appointed to, or a mortgagee takes possession of, all or any part of the business or the assets of the party;
 - (iii) A resolution is passed for the winding up of the party;
 - (iv) An application or an order is made for the winding up or bankruptcy of the party, and in the case of an application it is not stayed, dismissed, struck out or withdrawn within fourteen (14) days of it being made;
 - (v) A compromise or arrangement has been proposed between the party and its members or creditors, or agreed to by the members or creditors or sanctioned by a court;
 - (vi) The party proposes a winding-up or dissolution, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
 - (vii) The party is deemed or presumed to be insolvent under an applicable Law;
 - (viii) The party is or states that it is insolvent;
 - (ix) The party ceases to carry on business;
- (o) "Intellectual Property" means all intellectual or industrial property (whether registered or not) wherever subsisting in the world, including patents and patent applications, designs and design rights, trade marks, logos, emblems, brand names, business names, copyright, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, databases, know-how, and any licence or other right to use any intellectual property or to be the registered proprietor or user of any intellectual property;
- (p) "Obligation" includes any covenant, promise, warranty, indemnity or condition of this Agreement whether expressed

or implied;

- (q) "PPSA" means the Personal Property Securities Act 2009 (Cth) and its regulations, as amended and in force from time to time;
- (r) "PPSR" means the Personal Property Securities Register as established under the PPSA;
- (s) "PMSI" means a 'Purchase Money Security Interest' as that term is defined in the PPSA;
- (t) "Price" means the price for the G/S as quoted by the Supplier from time to time;
- (u) "Related Documents" means any documents related to or contemplated by this Agreement;
- (v) "Quote" means the quotation provided by the Supplier to the Client for G/S, which will incorporate the Supplier's terms & conditions;
- (w) "Request" means a request (verbally and/or in writing) by or for the Client of G/S to be performed/supplied by the Supplier and charged to your Account;
- (x) "Security Interest" means a security interest as defined in the PPSA;
- (y) "Services" means the performance of the Work;
- (z) "Specifications" means any specifications, designs, drawings or other material (in physical or electronic form or otherwise) with respect to or in connection with the goods and/or services to be provided by the Supplier under this Agreement;
- (aa) "Work" means the services which were the subject of the Request or Quote, reasonably incidental work thereto and any other services or work agreed between the parties.
- (bb) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (cc) A monetary amount is to an amount in Australian currency.

2. Application

- 2.1. The Client acknowledges that the information provided in the Application is the basis for evaluation by the Supplier of the financial standing and credit worthiness of the Client.
- 2.2. The Client acknowledges that the Supplier's Credit Information Management Policy is available from the Supplier at any time upon request by the Client. The Client agrees to be bound by same and consents to the Supplier collecting, using, storing and disclosing the Client's credit related personal information in accordance with that policy.
- 2.3. In addition to anything in that policy, for clarity, the Client:
 - (a) authorises the Supplier to make such enquiries and receive such information from the business referees in the Application and otherwise from anyone that the Supplier may reasonably consider necessary; and
 - (b) agrees that the Supplier may seek from and give to any credit providers reports and information that has any bearing to the Client's credit worthiness, credit standing, credit history or credit capacity including: to assess the Application; to notify other credit providers of a default by the Client; to exchange information with other credit providers as to the status of the Account where the Client is in default with the Supplier or with another creditor provider; to assess the Client's credit worthiness or commercial credit worthiness at any time; to assess whether to accept the Client or to continue supplying credit to the Client.

- 2.4. The Client acknowledges that the Supplier's Privacy Policy is available from the Supplier at any time upon request by the Client, and consents and agrees to its provisions.

3. Account and Credit Limit

- 3.1. The Client may request that the Supplier advise the Client of the current balance of the Account and/or the current Credit Limit, and the Supplier will advise the Client of same.
- 3.2. The Client must not make any Request which would see the balance of the Account exceed the Credit Limit.
- 3.3. The Supplier is not obliged to supply G/S to the Client if the Price exceeds the Credit Limit, together with any unpaid amount already on credit on the Client's Account. However, the Supplier may do so and does not have to advise the Client at the time of forming the Contract that the Client have exceeded the Credit Limit.
- 3.4. The Supplier is not responsible for any loss or damage arising from the refusal by the Supplier to supply the Client with any G/S on credit because the Credit Limit has been exceeded.
- 3.5. On written request by the Client, the Supplier may agree (at its discretion and in writing) to increase or decrease the Credit Limit.
- 3.6. The Credit Limit is subject to review at any time by the Supplier and if the Supplier has a reasonable reason, then the Supplier can reduce the Credit Limit to the amount currently outstanding on it.
- 3.7. The Client agrees that the Supplier may cancel the Account by giving one (1) months' prior written notice.

4. Formation of Contract

- 4.1. If the Client holds an approved Account, the Client may make a Request. In making the Request, the Client must clearly identify the G/S required. Each Request is made on the terms and conditions of this Agreement, including with respect to charges.
- 4.2. The Supplier may provide a Quote for the G/S required by the Client. Unless the Quote is on a fixed-price basis, any estimate of the Price is a non-binding approximation only.
- 4.3. The Supplier reserves the right to adjust the Quote due to any changes in federal or state government legislation during the Contract Period. The Supplier may adjust the Quote at any time without first needing to obtain the Client's prior consent. The Supplier shall endeavour to provide written notice to the Client of any changes to the Quote within a reasonable time.
- 4.4. The Client may accept the Quote by any form of acceptance (verbal and/or written) ("Acceptance"). On acceptance, a contract is formed between the Supplier and the Client on the terms of the Quote and these T&C ("Contract").
- 4.5. The Request or the Acceptance must not contain any terms or conditions that are contrary to this Agreement. Any terms or conditions that are contrary or supplementary to this Agreement are not accepted by the Supplier unless the Supplier specifically acknowledges and agrees to such terms in writing.
- 4.6. The Client must notify the Supplier of the details of any of the Client's staff that do not have authority to provide Acceptance, or only have some limited authority. If the Supplier does not hear from the Client, the Supplier is entitled to assume that all of the Client's staff have full authority to provide Acceptance.
- 4.7. The Supplier may increase the Quote due to any price increase in materials from any manufacturer or supplier that was made between the date of the Quote to the time of delivery to the Client or to the Suppliers prices previously prior to shipment of the Goods. The Supplier may adjust the Quote at any time without first needing to obtain the Client's prior consent. The Supplier shall endeavour to provide written notice to the Client of any changes to the Quote within a reasonable time.

5. Use of Account

- 5.1. The Supplier takes no responsibility for any incorrect Requests. Any Request which becomes a Contract will be charged to the Account.
- 5.2. The Client is responsible for all use of the Account.
- 5.3. The Client must notify the Supplier of the details of any of the Client's staff that do not have authority to use the Account, or only have some limited authority of use. If the Supplier does not hear from the Client, the Supplier is entitled to assume that all of the Client's staff have full authority to use the Account.

- 5.4. If any staff member of the Customers that the Supplier has dealt with in relation to the account leaves, the Client must notify the Supplier.
- 5.5. If the Client's business has a change in control (including any change in directors or shareholders), the Client must notify the Supplier and provide reasonable details of this.
- 5.6. The Client is responsible for any unauthorised use of the Account. The Client must notify the Supplier in writing of any unauthorised transactions on the Account immediately once the Client become aware of them.
- 5.7. The Client must not use the Account if any Insolvency Event occurs to the Client. Further, the Client must notify the Supplier within one (1) Business Day of any such Insolvency Event.

6. Payment

- 6.1. The Supplier may send the Client accounts for specific contracts and/or for the payment of all outstanding amounts charged to the Account.
- 6.2. In consideration of the G/S that the Supplier is to provide to or perform for the Client under this Agreement, the Client must pay the Price, in cleared funds within the Payment Period after receipt of a tax invoice from the Supplier.
- 6.3. The Client agrees to pay all outstanding amounts charged to the Account in cleared funds within the Payment Period (30 days from end of month) after receipt of a tax invoice from the Supplier.
- 6.4. Tax invoices will be posted or emailed to the address detailed in this Application (or to any address otherwise notified to the Supplier). This is sufficient notice of the amount due under the tax invoice.
- 6.5. A statement setting out details of the amount owing and any other matters relating to the Account signed by the Supplier is sufficient evidence (in the absence of any manifest error) of the supply of G/S by the Supplier to the Client. This statement may be used in court proceedings.
- 6.6. The Client must not deduct from any payment any amount the Client claims the Supplier owes, or could in the future owe, the Client and cannot set off (or otherwise withhold or deduct) any such amount against any payment the Client must make under any Contract.

7. GST

- 7.1. The parties agree that unless otherwise specified, the consideration for the supply of goods and services under this Agreement is exclusive of GST (goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or replaced).
- 7.2. The party making the supply shall provide to the recipient of that supply a valid tax invoice at or prior to the time for payment of the GST amount.

8. Goods and Services

8.1. Information

- (a) The Client must promptly provide the Supplier with all necessary documents and information to enable the Supplier to quote on and provide the G/S, including to accurately state specifications and requirements. This is the Client's responsibility.
- (b) The Supplier may rely on and treat the documentation and other information provided by the Client as accurate and correct.
- (c) If the Supplier considers any documents or information provided by the Client is insufficient for the Supplier's purposes, then the Supplier may notify the Client and the Client shall use its best endeavours to provide sufficient information.
- (d) If the Client supplies any Specifications, it warrants to the Supplier that:
- (i) These and the use of them by the Client and Supplier will not infringe the Intellectual Property of any person; and
 - (ii) These are true and correct in every manner and have been carefully considered and checked.
- (e) If the Supplier supplies any Specifications, the Client must not use these for any purpose other than they have been provided for and no Intellectual Property ownership will pass to the Client.
- (f) If the Client becomes aware of any matter that will change the scope, character, quality, sequence or timing of the G/S (including their provision), then the Client shall promptly notify the Supplier of the matter. Any changes are at the discretion of the Supplier and the Client will be liable for any

further costs that are incurred by the Supplier in providing the G/S due to the change.

- (g) The Client agrees that it does not rely on the skill or judgement of the Supplier in relation to the suitability of the Goods for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever.

8.2. Warranty

- a) The Supplier guarantees that any Goods it has manufactured and supplied shall be free from defects in material and workmanship for a period of three (3) months ("the Warranty Period") unless otherwise agreed between the parties.
- b) Any Goods found to be defective in material or workmanship within a Warranty Period will be repaired/replaced by the Supplier as follows:
- Goods manufactured, supplied, installed & commissioned by the Supplier will be inspected by the Supplier on site. In the instance that the Goods are found to be defective, then the Supplier will, at its option, either repair or replace the defective Goods and/or correct any defect in workmanship at its sole expense.
 - In the instance that the Goods are found not to be defective or such repair or replacement are not covered by the Supplier's Warranty, then the Client agrees to reimburse the Supplier for its costs (including fuel, travel, accommodation, call out fee, meals and any other incidentals) for attending the inspection on site.
- e) The same warranty period as under paragraph (b) shall apply to those parts repaired/replaced (only) from the date that the Goods or part/s of the Goods are repaired or replaced, or defect in workmanship is remedied. The guarantee for design and suitability for purpose is limited to the Goods or part of Goods the Supplier has been contracted to design and the guarantee shall not apply to the extent that the Supplier has relied upon the information supplied by the Client with respect to the Goods.
- f) For Goods supplied by the Supplier but manufactured by a third party, the Supplier is not providing any warranty and the warranty conditions of the manufacturer (if any) shall apply.
- g) The Supplier's liability under this warranty is limited to the Price of the Goods (product value) and the Supplier shall not be responsible for the cost of removal or re-installation of the Goods.
- h) For the avoidance of doubt, the Client agrees that the Supplier shall not be held responsible for any consequential damage, and/or any damage incurred to the Goods or to the Client's property or person/s whilst dismantling and/or assembling the Goods on site.
- i) The Client agrees that any damage caused to the Goods that is incurred whilst in transit to or from the Supplier's Workshop where the transport is the Client's responsibility and shall be at the Client's sole risk.

9. Goods

9.1. Title

- (a) The Supplier remains the owner of and retains full title to the Goods until such time as all amounts payable under this Agreement with respect to the Goods (and any transportation of the Goods) has been received in full and as clear funds by the Supplier. During such time, the Goods remain the full and absolute property of the Supplier:
- Notwithstanding the delivery of the Goods to the Client and the possession and use of the Goods by the Client; and
 - Even if the Goods are Installed into any Equipment.
- (b) Until the Goods all amounts payable under this Agreement with respect to the Goods (and any transportation of the Goods) has been received in full and as clear funds by the Client must:
- Keep an accurate record of the location of the Goods and provide the Supplier with the location and such records upon request;
 - Not without the prior written consent of the Supplier:
 - Allow the Goods to pass out of the Client's possession;
 - Install the Goods into any Equipment; or
 - Obliterate, remove or deface any labels, barcodes or notices on the Goods.

If the Supplier consents to the Goods being Installed into any Equipment that is not owned by the Client, then the Client must provide the Supplier with the unconditional written

agreement of the owner of the Equipment that confirming that the Goods will at all times remain the property of the Supplier, irrespective of how they may be installed, and that they may be possessed by the Supplier in accordance with this Agreement.

9.2. Lien

- (a) The Supplier shall have a lien on the Goods (and any documents relating to them) for all amounts payable to the Supplier pursuant to this Agreement.

9.3. Delivery – General

- (a) The Client shall be responsible for delivery of the Goods. Risk of the Goods shall pass from the Supplier to the Client upon collection of the Goods.
- (b) The parties may mutually agree for the Supplier arrange delivery. If agreed for the Supplier to be responsible for delivery, risk of the Goods shall pass from the Supplier to the Client from delivery. Where the Client assists or is responsible for the unloading, the risk passes to the Client during the unloading.

9.4. Delivery by Supplier

If the Supplier is responsible for delivery, the following applies:

- The Client requests and authorises the Goods to be delivered to the agreed delivery address.
- The Supplier must deliver the Goods to the delivery address. Any delivery date is only an estimate and the Supplier does not guarantee delivery by that date. Notwithstanding any delay, the Client must accept the Goods.
- Prior to delivery, the Client must have paid in cleared funds all amounts under this Agreement that are said to be due to the Supplier on or before the delivery date. If not, then the Supplier may refuse to deliver the Goods until full payment is made.
- Any receipt or signed delivery docket obtained by the Supplier for the Goods from any person at the delivery address shall be conclusive evidence of delivery of the Goods to the delivery address and their acceptance of the Goods.
- If the delivery address is unattended, then the Supplier will be unable to effect delivery and must return the Goods to its warehouse and store the Goods, in which case, the Client agrees that:
 - The Client shall pay the Supplier on demand within two (2) Business Days for all costs and expenses incurred in or arising from such waiting, including the standard hourly rate (plus GST) that the delivery driver/team is charged out at; and
 - The Client shall pay the Supplier on demand within two (2) Business Days for all costs and expenses incurred in or arising from such storage, and the Supplier may (at the Client's expense) re-deliver the Goods to the Client from the warehouse or require the Client to collect the Goods from that place.

9.5. Collection by Client

If the Client is responsible for delivery, the following applies:

- The Supplier must take reasonable efforts to have the Goods available for collection from the Workshop approximately by any agreed completion date. However, the completion date is only an estimate and the Supplier does not guarantee that the Goods will be ready for collection by that date.
- When the Goods are ready for collection, the Supplier must promptly notify the Client (verbally and/or in writing). The "Collection Date" shall mean two (2) Business Days after the date that the Client is so notified.
- Prior to collection, the Client must have paid in cleared funds all amounts under this Agreement that are said to be due to the Supplier on or before the Collection Date. If not, then the Supplier may refuse to release the Goods until full payment is made.
- The Client must, by the Collection Date, collect the Goods from the warehouse during the business hours of the Supplier (from time to time), or as otherwise agreed.
- The Client must collect the Goods (including to load the Goods) in a safe and proper manner, supplying suitable people, equipment and vehicles necessary for such collection. If the Supplier assists the Client, then to the maximum extent permitted by law the Client releases the Supplier from any Claim or Loss resulting from the Supplier's assistance, apart from any gross negligence by the Supplier.
- At the Client's earliest opportunity but in any event prior to finalising collection, the Client agrees to carefully inspect the Goods and advise the Supplier of any issues that the Client notices with it.
- Risk to the Goods shall pass from the Supplier to the Client on and for collection. Collection (including the preparing,

packing and loading of the Goods) is at the sole risk and cost of the Client, as is the subsequent transportation and unloading of the Goods (even if the Supplier assists with organising for delivery with a third party). For clarity, the Client is responsible for any packaging and pallets required. For clarity, the Client is also responsible for such subsequent transportation (at its sole risk and cost), including to obtain any necessary permits, authorities and clearances (including with respect to transportation and customs) as well as to pay any charges and duties (like customs duties, if applicable).

10. Service Location

The Client:

- 10.1. Warrants to the Supplier that the relevant location is accessible, safe and appropriate for performance of Services;
- 10.2. Must reimburse on demand the cost of any necessary mine site inductions for the Supplier and its staff, if requested and unless otherwise agreed;
- 10.3. Must give and ensure that the Supplier has all reasonable access to such location, as reasonably required by the Supplier for the performance of the Services; and
- 10.4. Must promptly obtain (at its cost), unless otherwise agreed, all access, approvals, authorities, licences and permits necessary to enable the Supplier to perform the Services at that location.

11. Nature of Relationship

- 11.1. Nothing contained in this Agreement is to be construed as constituting a joint venture, agency or partnership between the Supplier and the Client.
- 11.2. Without limiting the generality of the above, the Supplier and the Client each acknowledge that they have no authority to bind the other.
- 11.3. The Supplier shall be entitled to use its competent employees, agents and subcontractors to in providing any G/S under this Agreement.

12. Personal Covenants and Security Interests

- 12.1. The Client may not assign this Agreement or any of its rights or interests in or under this Agreement.
- 12.2. The Client must not permit any Security Interest, lien, charge, mortgage, burden/ liability attached to property, pledge or other encumbrance of any kind or nature whatsoever, to form over any of its rights or interests in or under this Agreement.

13. Default and Termination

13.1. Events of Default

Each of the following events is an "Event of Default", namely:

- (a) If the Client fails to pay any money payable under this Agreement on the due date for payment and such failure continues for more than five (5) Business Days;
- (b) If the Client fails to perform or observe any of the covenants or provisions of this Agreement on the part of the Client to be performed or observed and (if capable of remedy) such default continues for more than ten (10) Business Days (or such longer period as the Supplier in its absolute discretion permits) after notice from the Supplier requiring the Client to remedy the same;
- (c) If the Supplier ascertains that the Client has made any false, inaccurate or misleading statement having a material effect in relation to the making of this Agreement or any related or collateral document;
- (d) If the Client is subject to an Insolvency Event;
- (e) If any execution or other process of any court or authority is issued against or levied upon the Goods (other than as a result of any act or omission on the part of the Supplier);
- (f) If the Client suspends payment of its debts generally; or
- (g) If the Goods are abandoned or condemned or is seized or appropriated by any lawful authority and not released within twenty-one (21) days or is attached, sequestered, impounded or restrained upon and not released within twenty-one (21) days unless such an event results in termination of this Agreement.

13.2. Consequences of Default

- (a) If an Event of Default occurs and the Client fails to remedy it (if capable of remedy) within a reasonable time after the date on which the Supplier gives the notice to the Client to remedy same (or any earlier time for remedy stated in such notice), then the Supplier may at its option:

- (i) By proceeding by appropriate court action, either at law or in equity, enforce performance by the Client of the applicable terms and provisions of this Agreement or recover damages for the breach concerned; or
- (ii) Terminate this Agreement by notice in writing to the Client and by proceeding by appropriate court action, either at law or in equity, recover damages for the breach concerned.

- (b) These rights are in addition to any that the Supplier has at law.

13.3. Interest

If the Client fails to make any payment under this Agreement when due then the Supplier is entitled to claim interest at the rate that is 2% above the current local court judgement rate in New South Wales per annum on the amount outstanding from time to time with interest calculated on daily balances outstanding and with any interest not paid at the end of each month added to the amount outstanding and attracting interest accordingly.

13.4. Breach by Supplier

- (a) If the Client considers or has reason to believe that the G/S are defective, incorrect or do not comply with the Contract, then the Client must give immediate written notice of this to the Supplier, with full particulars and details of same. The Client agrees to give the Supplier the first right to inspect the issue(s) in question and then, if the Supplier chooses, to attend to addressing such issue(s) (e.g. by repair, rectification or replacement).
- (b) If the Supplier is in default of an essential term of this Agreement or is subject to an Insolvency Event and shall fail to remedy it (if capable of remedy) within a reasonable time after the date on which the Client gives the notice of this to the Supplier, then the Client may at its option and by written notice to the Supplier: affirm this Agreement; or terminate this Agreement. These rights are in addition to any that the Client has at law.

14. Enforcement Costs and Expenses

The Client must on demand reimburse the Supplier for all costs, charges, Expenses, fees, disbursements (including all reasonable legal costs on a solicitor and own client basis) paid or incurred by the Supplier of or incidental to:

- 14.1. Any breach, default or repudiation of this Agreement by the Client (including the fees of all professional consultants properly incurred by the Supplier in consequence of, or in connection with, any such breach, default or repudiation);
- 14.2. The exercise or attempted exercise of any right, power, privilege, authority or remedy of the Supplier under or by virtue of this Agreement, including all amounts incurred in repossessing any Goods from the Client under the terms of this Agreement and in enforcing this Agreement generally;
- 14.3. To pay the fees of a debt collector or solicitor in association with any debt collection services provided to the Supplier in association with the Client breaching this Agreement.

15. Representations and Warranties

- 15.1. The Supplier represents and warrants to the Client that:
 - (a) It is validly existing and registered;
 - (b) It was duly incorporated as a company in Australia; and
 - (c) It is not subject to any Insolvency Event.
- 15.2. The Client represents and warrants to the Supplier that:
 - (a) It is validly existing and, if a company, is registered and was duly incorporated;
 - (b) It has full capacity, power and lawful authority to enter into this Agreement;
 - (c) It has taken all action that is necessary or desirable to authorise the execution and performance of this Agreement;
 - (d) This Agreement and the matters which this Agreement concerns and contemplates is in its commercial interests and for its benefit;
 - (e) This Agreement constitutes the legal, valid, binding and enforceable obligations of the Client in accordance with the respective terms;
 - (f) It is not subject to any Insolvency Event; and
 - (g) There are no reasonable grounds to suspect that it will not be able to pay its debts, as and when they fall due.
- 15.3. The Client acknowledges that the Supplier has entered into this Agreement on the basis that the representations and warranties contained in clause 15.2 are true and not misleading.
- 15.4. The Client indemnifies the Supplier against any Loss and/ or Claim arising from or in connection with any breach of the

- representations and warranties contained in this clause 15.2.
- 15.5. Each party also warrants that they have relied upon their own enquiries and have not entered into this Agreement in reliance upon, or as a result of, any representation, promise, statement, conduct or inducement by, or on behalf of, the other party/ parties, except as otherwise set out in this Agreement.

16. Liability

- 16.1. The Client indemnifies the Supplier from any Loss and/or Claim as a direct or indirect consequence/result of the Client breaching this Agreement.
- 16.2. The Supplier, notwithstanding any right the Client may have at law or in equity or otherwise under this Agreement, shall not be liable for any loss or damages suffered by the Client for any economic loss or consequential loss or damage including loss of profits, loss of opportunity or loss of use of any goods or site (where applicable) or of the benefit of the works or any part thereof.
- 16.3. If the Supplier gives any indemnity to the Client in respect of matters arising out of or related to this Agreement, a Request and/or a Contract, then the Client indemnifies the Supplier from any Claim under such indemnity.
- 16.4. If the Client becomes aware of any fact, matter or circumstance that may give rise to a Claim by the Client under this Agreement, the Client must give notice of the Claim (together with all available details) to the Supplier promptly (and in any event within ten (10) Business Days) of becoming aware of the fact, matter or circumstance.
- 16.5. Any covenant or provision which is deemed by statute to be incorporated into this Agreement but the operation of which may be lawfully excluded, restricted or modified by agreement between the Supplier and the Client or otherwise is hereby, to the maximum extent possible, so excluded, restricted or modified.

17. Charge and Mortgage

- 17.1. In order to secure to the Supplier the performance of any and all of the Client's obligations, the Client hereby charges all legal and equitable interest in real and personal property (wheresoever situated) that the Client owns, holds or may acquire in the future. As further and better security, the Client mortgage and charge to and in favour of the Client all right, title, estate and interest which they own, hold or may acquire in the future in any real and personal property.
- 17.2. The Client consents to the registration of a Security Interest and the Client each expressly waive any entitlement to receive a verification or any other notice that the Client may have been entitled to receive pursuant to the PPSA.
- 17.3. The Client must, at the Supplier's request, sign execute and deliver in favour of the Supplier such mortgage, charge and/or Security Interest over real or personal property in such form as the Supplier may require, such document or documents incorporating such terms as determined by the Supplier solicitor, to protect the Supplier's interests herein, within ten (10) days of the Supplier requesting the same of the Client.
- 17.4. For the avoidance of any doubt, the Client confirms that the Supplier has a caveatable interest in any real property of which the Client is the registered proprietor. The Client consents to the registration of a caveat over any such real property by the Supplier so as to note the Supplier's proprietary interest and grant to the Supplier power of attorney to sign and register on behalf of the Client any consent caveat in respect of such real property.

18. PPSA Definitions

- 18.1. In this Agreement and any other associated or collateral documents (unless a contrary intention is stated):
- (a) "Controller" has the same meaning as in the PPSA;
- (b) "Documentation Costs" means all fees and outlays associated with the registration of any Security Interest on the PPSR;
- (c) "Personal Property" has the same meaning as in the PPSA as it relates to: all personal property of the Client, including without limitation present and after acquired property of the Client; any personal property provided by the Secured Party to the Client on a retention of title basis; any personal property leased or provided on bailment by the Secured Party to the Client; and including without limitation, any Proceeds associated with the above personal property.
- (d) "Proceeds" has the same meaning as in the PPSA;
- (e) "Secured Party" means the Supplier or any lawful assignee,

transferee or successor of the Supplier in relation to the Security Interest, this Agreement and any other related document(s);

- 18.2. This clause applies to the extent that this Agreement provide for a Security Interest for the purposes of the PPSA.
- 18.3. The rights of the Supplier under this document are in addition to and not in substitution for the Supplier's rights under other law (including the PPSA) and the Supplier may choose whether to exercise rights under this Agreement, and/or under other law, as the Supplier sees fit
- 18.4. The Client acknowledges that if the Supplier's interest under this Agreement, any Contract, and any other related document(s), is a Security Interest for the purposes of the PPSA then that Security Interest relates to the Personal Property and all Proceeds of any kind and this Agreement are a security agreement for the purposes of the PPSA.
- 18.5. The Supplier may register its Security Interest on the PPSR (including, without limitation, as a PMSI). The Client must do anything (such as obtaining consents and signing documents) which the Supplier requires for the purposes of: ensuring that the Security Interest is enforceable, perfected and otherwise effective under the PPSA; enabling the Supplier to gain first priority (or any other priority agreed to by the Supplier in writing) for its security interest; and enabling the Supplier to exercise rights in connection with the Security Interest.
- 18.6. The Client must pay on demand to the Supplier the Documentation Costs.
- 18.7. If Chapter 4 of the PPSA does apply to the enforcement of a Security Interest arising under or in connection with the this Agreement and to the maximum extent permitted by law, the Client agrees that sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1); 135, 142 and 143 and Division 6 of Part 4.3 of the PPSA will not apply to the enforcement of that Security Interest.
- 18.8. Where a person is a Controller in relation to the Personal Property, the parties agree, to the maximum extent permitted by law, that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Personal Property by that Controller.
- 18.9. The Client waives its right (including, without limitation, under s 275) to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 18.10. The Client must not create, purport to create or permit to be created any Security Interest in the Goods or lease, hire, bail, sell or give possession of the Goods to anyone else other than with Our express written consent.

19. Force Majeure

- 19.1. If a Force Majeure Event occurs, the party affected by the Force Majeure Event ("Affected Party") must promptly give the other party a notice of same.
- 19.2. The obligations of the Affected Party are suspended, to the extent that they are affected by the Force Majeure Event, from the date the Affected Party gives the notice until cessation of the Force Majeure Event.
- 19.3. On the cessation of the Force Majeure Event, the Affected Party must give notice to the other party of the cessation and resume performance of the suspended obligations.

20. Acting as Trustee

If Client enters into this Agreement as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Agreement in its own right as trustee of the trust. Nothing releases the Client from any liability in its personal capacity. The Client warrants to the other that at the date of this Agreement:

- 20.1. The trust is valid, subsisting and properly constituted;
- 20.2. All the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the Trust is a valid and subsisting trust;
- 20.3. The Client is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Agreement on behalf of the trust and that this Agreement is entered into as part of the due and proper administration of the trust/for the benefit of the beneficiaries;
- 20.4. No restrictions on the party's right of indemnity out of or lien over the trust's assets exists or be created or permitted to exist and that right will have priority over the right of the

beneficiaries to the trust's assets.

21. General

- 21.1. Should there be any variation to any of the information supplied by the Client to the Supplier or the structure/nature of the Client's business, the Client shall notify the Client within five (5) Business Days in writing.
- 21.2. If credit is refused or withdrawn, then payment shall be in accordance with to the Supplier's standard requirements.
- 21.3. The Client is personally liable to the Supplier for all amounts payable under this Agreement, regardless of any insurance or other contractual arrangement held.
- 21.4. The Supplier reserves the right to sub-contract the supply of the G/S or any part thereof to a third party.
- 21.5. The Client consents to electronic communication, as does the Supplier. The Supplier may send any email to any address listed on the Application (or as updated with the Supplier in writing), or to any other email used by the Client in communicating with the Supplier. The Client must email the Supplier at sales@jenmar.com.au unless the Supplier otherwise agrees.
- 21.6. This Agreement constitutes and embodies the entire understanding and agreement between the parties and supersedes all prior agreements, representations, promises, statements and negotiations in respect of its subject matter.
- 21.7. If any provision of this Agreement is void, unenforceable, or illegal in its terms, but would not be void, unenforceable or illegal if it were read down and, it is capable of being read down, that provision will be read down accordingly. In any other case, the provision is severed and the remainder Agreement will be of full force/effect.
- 21.8. Nothing contained in this Agreement is to be construed as constituting a joint venture or partnership.
- 21.9. This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales and the parties agree to submit to the jurisdiction of the Courts of that State in all matters arising out of this Agreement.