

STANDARD TERMS AND CONDITIONS

1 Dictionary

In these Terms and Conditions, the words below have the following meanings:

Agreement means each Offer which is accepted by the Company under clause 3.2.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Business Day means any day except a Saturday, Sunday or public holiday in Victoria.

Change in Control means, in relation to a party:

- (a) the person who Controls the party at the date that party first became bound by these Terms subsequently ceases to have Control of the party;
- (b) a person who does not Control the party at the date that the party first became bound by these Terms subsequently obtains Control of the party; or
- (c) if the party is Controlled by a group or consortium of persons, or if the group or consortium could Control the party were they to act collectively, any material change in the composition of that group or consortium.

Company means the company in the Group set out in a Quote.

Confidential Information means all information disclosed by the Company to the Customer and includes these Terms and the prices of the Goods or Services but excludes information that:

- (a) is public knowledge or becomes available to the Customer from a source other than the Company (otherwise than as a result of a breach of confidentiality by the Customer or any person to whom it has disclosed the information); or
- (b) is rightfully known to, or in the possession or control of the Customer and not subject to an obligation of confidentiality in accordance with the terms of an Agreement.

Consequential Loss means loss beyond the normal measure of damages and includes indirect loss, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunities.

Consignment Agreement means an agreement between the Company and the Customer setting out the terms on which the Company has agreed to consign the Goods to the Customer.

Consumer has the meaning provided to it in section 3 of the Australian Consumer Law.

Consumer Guarantee means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

Control has the meaning given in section 50AA of the *Corporations Act 2001* (Cth).

Credit Application means the form completed by the Customer for an account approved by the Group for the provision of Goods or Services.

Customer means the entity or person requesting that Goods or Services be supplied to it by the Company.

Customer Background Materials means all material in whatever form (including documents, specifications, designs, plans, processes, information and data) owned or licensed by the Customer and provided by, or on behalf of, the Customer to the Company for the purposes of an Agreement.

Default Rate means the interest rate fixed from time to time pursuant to section 2 of the *Penalty Interest Rate Act 1983* (Vic).

Delivery Fee means:

- (a) the delivery fee set out in a Quote or agreed in writing between the parties; or
- (b) if no delivery fee is set out in a Quote or agreed in writing between the parties, the costs of the Company incurred in delivering the Goods to the Customer.

Force Majeure Event means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party including any fire, failure or shortage of power supplies or raw ingredients, abnormally inclement climate or weather conditions, flood, lightning, storm, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, riot, disease, civil commotion, insurrection, political instability, armed conflict, war, terrorist action, strike or other labour difficulty or shortage, unavailability of transport providers, action of

transport providers, failure or inability to obtain any licence or the threat of any of the foregoing.

Goods means the goods to be supplied by the Company to the Customer under an Agreement.

Group means Defab Weavers Pty. Ltd. (ACN 005 189 319) and Defab Weaving Pty Ltd (ACN 603 261 810).

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended, varied or replaced from time to time.

Insolvency Event means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; or in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; or the occurrence of any event that has substantially the same effect to any of the above events.

Intellectual Property Rights means any and all intellectual and industrial property rights anywhere in the world, including but not limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets and know how, throughout the world for the full period of the rights and all renewals and extensions.

Invoice has the meaning provided to it in clause 4.5.

Loss means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

Offer has the meaning provided to it in clause 3.1.

Order means any order or other request by or for the Customer to the Company for it to supply to the Customer any Goods or Services, whether such order or request is written, verbal or implied in the circumstances and which may have been given in response to a Quote.

PDH Goods or Services means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

Price List means any price list or catalogue of the Company's goods published and distributed by the Company in hard copy or electronically (including by making available for viewing through its official website) to its actual and prospective customers, as updated and replaced by the Company from time to time in its discretion.

Purchase Price has the meaning provided to it in clause 4.1.

Quotation or Quote means a quote provided by the Company to the Customer in respect of the Goods or Services.

Services means the services to be supplied by the Company to the Customer under an Agreement.

Specifications means any technical or descriptive specifications of the functional, operational, performance or other characteristics of the Goods which are to be supplied by the Company (including any tolerances which may exist between the Goods ordered and those actually delivered to the Customer) and which are attached to, incorporated in, or provided with the Quote.

Tax or Taxes means any tax, levy, charge, impost, fee, deduction, compulsory loan or withholding (including corporate tax, personal income tax, fringe benefits tax, payroll tax, withholding tax, excise and import duties, GST, consumption tax, value added tax or any other taxes, levies or charges), which is assessed, levied, imposed or collected by any government agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any such amounts.

Terms means these Terms and Conditions.

Trading Limit means the value of any trading account facility granted by the Group to the Customer under the Credit Application.

2 Application

These Terms apply to and govern the supply by the Group of Goods and Services to the Customer from time to time and, more specifically, apply to and govern the supply by the relevant Company of Goods or Services to the Customer which are to be provided under an Offer accepted by the Company.

3 Formation of Agreement

- 3.1 The Customer acknowledges and agrees that by submitting an Order the Customer makes an offer to the Company for the

Company to supply it with the Goods or Services on the terms of:

- (a) these Terms;
- (b) the Order;
- (c) the Quote;
- (d) the Specification (if any); and
- (e) the Consignment Agreement (if any),

(Offer).

- 3.2 A contract will be formed between the Company and the Customer in respect of each Offer upon the earlier of the Company:
- (a) notifying the Customer, either verbally or in writing, that it accepts the Customer's Offer;
 - (b) accepting, in full or part, payment from the Customer for the Goods or Services the subject of the Offer;
 - (c) making delivery of the Goods the subject of the Offer to the Customer; or
 - (d) performing the Services the subject of the Offer.
- 3.3 An Agreement formed under clause 3.2 will comprise these Terms, any Credit Application, the Order (only to the extent that any additional terms in the Order are accepted by the Company in writing), the Quote, any Specifications, any Consignment Agreement and the Invoice.
- 3.4 The Company is not bound to accept any Offer and may not accept any Offer for any reason and in the sole discretion of the Company.
- 3.5 Notwithstanding clause 3.3, the Customer acknowledges and agrees that the Goods will be delivered in accordance with the Specifications, including any tolerances or allowable variations or deviations set out in those Specifications.

4 Price and payment

- 4.1 Unless otherwise agreed by the parties and subject to clauses 4.2 and 4.3, the price the Customer must pay for the Goods or Services under each Agreement will be:
- (a) the price for the Goods or Services specified in the Quote or, if there is no Quote, the Price List; and
 - (b) the Delivery Fee,
- (Purchase Price).**
- 4.2 If:
- (a) the relevant Quote for an Agreement specifies that the prices for the Goods and Services have been determined with reference to the exchange rate set out in that Quote on the date of the Quote; and
 - (b) between the date of the Quote and the date of delivery of the relevant Goods, there is a devaluation of the Australian dollar which result in a change in the exchange rate of more than 2%,

the Company may, in its sole discretion, increase the price for the relevant Goods by an amount equal to the change in the exchange rate.

- 4.3 The Company reserves the right to increase the Purchase Price if any of the raw materials used by the Company in the manufacture of the Goods increases between the date of the Quote and the date the Goods are manufactured.
- 4.4 Unless otherwise expressly specified by the Company or in these Terms, all prices stated are exclusive of Taxes and the Customer is solely responsible for the payment of all Taxes levied or payable in respect of the Goods or Services and must immediately upon request by the Company provide the Company with evidence of payment of any Taxes.
- 4.5 The Company may invoice the Customer for the Purchase Price at any time following formation of the relevant Agreement **(Invoice).**
- 4.6 Subject to clause 4.7, unless otherwise agreed in writing between the Customer and the Company the due date for payment by the Customer to the Company of the Purchase Price for the Goods or Services supplied pursuant to an Agreement **(Due Date)** is:
- (a) the due date agreed by the Group when accepting the Credit Application but only if the value of the Invoice, combined with any outstanding amounts owed by the Customer to any member of the Group, does not exceed any approved Trading Limit; or

- (b) if the conditions set out in paragraph (a) are not satisfied, prior to the scheduled date of delivery for the Goods.

- 4.7 Notwithstanding any Credit Application accepted by the Company, if:
- (a) the Customer has previously failed to make any payment to the Company by the due date for that payment (whether under these Terms or otherwise); or
 - (b) the creditworthiness of the Customer is, in the Company's sole opinion, unsatisfactory,
- the Company may require payment of the Purchase Price in full prior to the Company delivering the relevant Goods or providing the Services.
- 4.8 If the Customer fails to make any payment by the Due Date, breaches any term of an Agreement or is the subject of an Insolvency Event, then, without prejudice to any other right or remedy available to the Company, the Company may, in its sole discretion, elect to do any one or more of the following:
- (a) suspend any further deliveries to the Customer arising from any Agreement;
 - (b) cancel any Agreement in respect of any Goods or Services not yet supplied to the Customer in whole or in part by the Company;
 - (c) terminate any Agreement in accordance with clause 18.1;
 - (d) enter the property of the Customer in order to repossess the Goods or Services and deal with the Goods and Services as it determines in its sole discretion;
 - (e) charge the Customer interest (both before and after any judgement) on the unpaid amount at the Default Rate, which interest will accrue and be chargeable from the first day on which such amounts become overdue until the Company receives payment of all such amounts (including all interest) by way of cleared funds;
 - (f) cancel any Trading Limits or account facilities previously granted to the Customer by the Company; and
 - (g) cancel any trade discounts or rebates provided, or otherwise offered, to the Customer under any Agreement or other arrangement.

- 4.9 The Customer may not set off or combine any amount owing by the Company to the Customer, whether or not due for payment, against any money due for payment by the Customer to the Company under an Agreement and the Customer must pay any amount due to the Company under an Agreement notwithstanding the Customer may be in dispute with the Company regarding the Goods or Services supplied by the Company to the Customer.

5 Delivery of Goods

- 5.1 The Company will deliver the Goods to the Customer in the manner:
- (a) determined by the Company; or
 - (b) as otherwise agreed between the Company and the Customer (including collection by the Customer or delivery in instalments where it has been agreed that the Purchase Price shall be paid by the Customer in instalments).
- 5.2 The Company will endeavour, but is not obliged, to deliver Goods between the hours of 9.00am and 5.00pm Monday to Friday (excluding public holidays) at the place of delivery.
- 5.3 In the event of the Customer returning or failing to accept any delivery of the Goods, the Company shall be entitled to payment for those Goods and to treat the obligation to supply the remainder of the Goods (if any) as cancelled by the Customer.
- 5.4 Without limiting any other rights the Company may have, the Company will be entitled to store at the risk and cost of the Customer any Goods which the Customer refuses or fails to take delivery of.
- 5.5 The Company will use its reasonable endeavours to deliver the Goods on any delivery date specified or estimated by the Company or set out in the Quote however delivery and despatch dates are estimates only and the Company will not, in any circumstances or for any reason (including the occurrence of a Force Majeure Event), be liable for late or part delivery of the Goods and later delivery of Goods does not entitle the Customer to cancel any order for the Goods.

- 5.6 Without limiting clause 5.5, the Company may deliver a portion of the Goods and may invoice or otherwise charge the Customer for that portion. The Customer may not refuse to accept delivery of the Goods or to pay for the Goods because only a portion of the quantity ordered was delivered and the Customer agrees that the Company will not be liable for any Loss that the Customer suffers as a result of any delay or cancellation.
- 5.7 There must be a representative of the Customer present at the delivery location at the time delivery is made of the Goods and, if no such representative is present, a redelivery fee may be charged by the Company.
- 5.8 The Customer acknowledges and agrees that:
- (a) the Company may, but will not be required to, provide proof of delivery or other similar documentation (whether at the time of delivery or after);
 - (b) any proof of delivery or other similar documentation provided by the Company will be conclusive evidence of the delivery of the relevant Goods;
 - (c) it will not request proof of delivery or other similar documentation from the Company; and
 - (d) it will not dispute any Invoice based on (in whole or in part) proof of delivery or other similar documentation not having been provided by the Company.
- 6 Return of Goods**
- 6.1 The terms of this clause 6 are subject to clause 9.
- 6.2 The Customer may only return the Goods to the Company if it believes the Goods are not supplied in accordance with the description, quality or quantity set out in the Agreement, the claim relates to more than one liner metre or one kilogram of the relevant Goods, and the Customer has provided the Company with a written notice of its claim.
- 6.3 Any written notice under clause 6.2 must be made within 14 days of the date of delivery or collection of the Goods.
- 6.4 If the Company, at its sole discretion, determines that the Goods specified in a written notice under clause 6.2 do not meet the description, quality or quantity set out in the Agreement the Company may, at its sole discretion, supply replacement Goods to the Customer or provide the Customer with credit to be applied against future Orders.
- 6.5 All Goods which are returned to the Company must be packed in their original containers and if the Goods are soiled or damaged the Goods may be rejected by the Company or credited at a reduced amount in the Company's sole discretion.
- 6.6 Minor deviations or variations in the Goods shall not give rise to any claim under clause 6.2.
- 7 Title and risk of Goods**
- 7.1 For the avoidance of doubt, if the Company and the Customer have entered into a Consignment Agreement, the terms of the Consignment Agreement will determine when title and risk to the Goods passes from the Company to the Customer and the terms of the Consignment Agreement will take precedence over any inconsistency with the terms in the balance of this clause 7.
- 7.2 Title to, and property in, any Goods supplied under an Agreement remain with the Company and will only pass to the Customer once all moneys owing by the Customer to the Company in respect of the Agreement or any other agreement or arrangement between the Customer and any member of the Group have been paid in full.
- 7.3 Risk in the Goods passes to the Customer upon the Goods being removed from the Company's premises (or that of the Company's supplier) for delivery to the Customer or collection by the Customer, and:
- (a) the Customer is responsible for arranging, and taking out in its own name and its own cost, any insurance in respect of the Goods from the time risk passes to the Customer under this clause; and
 - (b) the Customer indemnifies the Company against any Loss or damage to the Goods, however caused, occurring after the Goods have been removed from and left the Company's premises (or the premises of the Company's supplier).
- 7.4 In the event that the Customer is required to return any Goods to the Company, risk in the Goods passes to the Company on confirmation of receipt of the Goods by the Company.
- 7.5 Until such time as full title, property and ownership of the Goods passes to the Customer in accordance with clause 7.1, and while the Goods remain in the Customer's full control and possession:
- (a) subject to clause 7.6, the Customer must hold the Goods as the Company's fiduciary agent and bailee and must not sell, lease, dispose of or otherwise deal with the Goods in any way without the Company's prior written consent;
 - (b) the Customer must, if directed to do so by the Company, insure the Goods for their full replacement value and store the relevant Goods separately from any other goods and in a way that enables the Goods to be clearly identified as the Company's and referable to a particular Invoice;
 - (c) the Company may enter the premises of the Customer or any third party where the Goods are stored during the hours of 9.00am to 5.00pm to inspect the Goods and:
 - (i) the Customer expressly authorises and grants the Company an express, irrevocable licence to enter the premises of the Customer or relevant third party to inspect the Goods; and
 - (ii) the Customer indemnifies the Company against any Loss that may be incurred or sustained by the Company, its employees or agents, as a result of the entry of those premises where the Goods are stored;
 - (d) the Company may at any time after payment is overdue require the Customer to deliver up the Goods to the Company and, if the Customer fails to deliver up the Goods immediately, the Company may enter the premises of the Customer or any third party where the Goods are stored and repossess them and:
 - (i) the Customer expressly authorises and grants the Company an express, irrevocable licence to enter the premises of the Customer or relevant third party to remove or arrange for the removal of the Goods; and
 - (ii) the Customer indemnifies the Company against any Loss that may be incurred or sustained by the Company, its employees or agents, as a result of the entry of those premises where the Goods are stored; and
 - (e) the Customer must not pledge or grant a security interest in or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Company. If the Customer does pledge or in any way charge by way of security, for any indebtedness, any of the Goods for which property and ownership has not passed to the Customer, the Customer must remove the pledge, charge or security interest immediately and all moneys owing by the Customer to the Company will (without prejudice to any other right or remedy of the Company) immediately become due and payable to the Company.
- 7.6 Notwithstanding that title to the Goods has not passed to the Customer under clause 7.1, the Customer may resell the Goods or any part thereof in the name of the Customer but only as agent for the Company and may deliver any such Goods to the buyer of those Goods but only on terms which will not prejudice the Company's ability to obtain the sale proceeds thereof and:
- (a) any amount paid by the buyer of such Goods to the Customer (**Sale Proceeds**) must be held by the Customer on trust for the Company and banked in a separate bank account relating only to the sale proceeds of any Goods and shall be forwarded as soon as possible to the Company in satisfaction of any amount owed by the Customer in respect of the Goods; and
 - (b) if and when the full amount due to the Company in respect of the Goods has been received by the Company, any further Sale Proceeds may be retained by the Customer.
- 7.7 In the event that the Customer processes, incorporates or transforms the Goods (or any portion of them) into any other goods manufactured or produced by the Customer or a third party, then the Customer must hold a proportion of any payment (**Relevant Proportion**) received by the Customer for such Goods on trust for the Company and the Customer acknowledges that the Relevant Proportion must be not less

than the dollar value of the portion of the Goods processed, incorporated or transformed.

- 7.8 If an Insolvency Event occurs in respect of the Customer then, without the need for notice or demand by the Company, the Customer acknowledges that any sale or purported sale of the Goods will not be in the ordinary course of the Customer's business and the proceeds of any Goods sold in such circumstances will, to the extent of any money owing by the Customer to the Company, be held on trust for the Company by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.

8 PPSA

- 8.1 Words and expressions used in this clause 8 which are not defined in these Terms but are defined in the *Personal Property Securities Act 2009 (Cth)* (PPSA) have the meaning given to them in the PPSA.
- 8.2 Unless a Customer has paid for Goods in respect of an Agreement before they are delivered to the Customer, each Customer acknowledges that:
- the Agreement for the supply of Goods created under these Terms is a security agreement for the purposes of the PPSA, under which the Customer grants the Company a security interest in the Goods to secure all monies owing by the Customer to the Company from time to time;
 - where the Company has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply; and
 - the Company is not obliged to act in any way to dispose of or to retain any Goods which have been seized by the Company or any person nominated by the Company under its rights under the PPSA.
- 8.3 Without limiting anything else in these Terms, the Customer consents to the Company effecting a registration on the Personal Property Securities Register (PPSR) in relation to any security interest created by or arising in connection with, or contemplated by, these Terms, including in relation to the Goods. The Customer agrees to promptly do all things necessary to ensure that any security interest created under these Terms is perfected and remains continuously perfected, the Company's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.
- 8.4 The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by the Company for that purpose in relation to the Goods). Without limiting the foregoing, the Customer must:
- create and implement appropriate policies and systems to register a security interest in relation to the Goods where the Customer on sells the Goods to a third party; and
 - where appropriate, take reasonable steps to identify security interests in relation to the Goods in the Customer's favour and to perfect and protect them, with the highest priority reasonably available.
- 8.5 The Customer must indemnify, and on demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the PPSR, and for the enforcement of any rights arising out of any of the Company's security interests.
- 8.6 The Customer must not change its name, address or contact details without providing prior written notice to the Company and must not register a financing change statement or a change demand without the Company's prior written consent.
- 8.7 To the extent that the PPSA permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
- 8.8 The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if the Company has given prior written consent.

9 Warranties and liability

- 9.1 If the Customer is a Consumer and the Company supplies PDH Goods or Services to the Customer, the Company acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Goods or Services supplied by the Company and nothing in this Agreement should be interpreted as attempting to exclude, restrict or modify the application of any such rights.
- 9.2 If the Customer is a Consumer and any goods or services supplied by the Company to the Customer are non PDH Goods or Services, the Company's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at the Company's discretion) to the cost of the Company resupplying those non PDH Goods or Services or payment of the cost of having the non PDH Goods or Services supplied again.
- 9.3 If:
- the Customer is not a Consumer; or
 - the Australian Consumer Law does not apply,
- then to the extent permitted by law, the Company expressly excludes all liability in respect of the Goods or Services supplied by the Company to the Customer.
- 9.4 If the Customer is liable to pay damages to a Consumer under the Australian Consumer Law in relation to the supply of Goods which are non PDH Goods or Services, the Company's liability to the Customer is limited to an amount equal to the lower of:
- the cost of replacing the Goods;
 - the cost of obtaining equivalent Goods; or
 - the cost of having the Goods repaired.
- 9.5 If the Customer makes a claim against the Company which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee, the Company expressly excludes all liability in respect of the Goods or Services supplied by the Company to the Customer.
- 9.6 Without limiting any other provision in these Terms and subject always to the balance of this clause 9, the Company is not liable for any Loss the Customer suffers as a result of, or in connection with:
- damage caused by deterioration of the Goods while in the possession of the Customer;
 - processing, weaving or cutting of the Goods or processing, incorporating or transforming the Goods (or any portion of them) into any other goods;
 - unprocessed material or yarns being left with the Company for longer than three calendar months without any weaving or processing instructions being provided by the Customer to the Company or any materials being left with the Company for more than one calendar month after completion of any weaving or processing by the Company;
 - the supply to the Customer by the Company of any Goods sold as 'seconds' or not as new;
 - improper use or consumption of the Goods; and
 - misuse or neglect of the Goods or any other use or consumption of the Goods which is outside of the ordinary commercial application of the Goods or is otherwise inconsistent with the Company's instructions in relation to the use or consumption of the Goods.
- 9.7 Subject to the rest of this clause 9, the aggregate liability of the Company to the Customer arising out of or in connection with an Agreement will in no event exceed:
- in respect of any claim in connection with any Goods commission woven or processed by the Company, an amount equal to cost charged by the Company to the Customer for the weaving or processing; and
 - in respect of any other claim, an amount equal to the amount of the Purchase Price under that Agreement.

10 Intellectual Property

- 10.1 The Customer grants to the Company a non-exclusive, royalty free licence during the term of each Agreement to use, reproduce, modify, adapt and further develop all Intellectual Property Rights in those portions of the Customer Background

Materials which are required to enable the Company to supply the Goods or perform the Services.

10.2 The Customer represents and warrants to the Company that:

- (a) the Customer is the legal and beneficial owner of, or is entitled to use (or will on creation own or be entitled to use); and
- (b) is entitled to licence to the Company in accordance with clause 10.1,

the Intellectual Property Rights in the Customer Background Materials.

10.3 The parties acknowledge and agree that nothing in these Terms shall be construed as an implied or express transfer from the Company to the Customer of the ownership of, or title to, any of the Intellectual Property Rights in the Goods or any other Intellectual Property Rights owned by or licensed to the Company and the Customer agrees that it must not infringe or use the Intellectual Property Rights of the Company which exist in the Goods for anything other than for the sole purpose of using the Goods.

11 Indemnity

The Customer indemnifies the Company and holds the Company harmless from and against all Losses (including all legal costs, and any other associated fees and costs) for which the Company incurs as a direct or indirect result of:

- (a) recovering any amounts the Customer owes to the Company (including any fees paid to a debt collector or similar);
- (b) any breach of an Agreement by the Customer (including any breach of the warranties provided by the Customer);
- (c) any negligent or wilful act or omission by the Customer, the Customer's employees, agents, servants, contractors or others for whom the Customer is legally responsible; and
- (d) any infringement or alleged infringement of Intellectual Property Rights owned by a third party in respect of any of the Customer Background Materials.

12 Notification of claims

12.1 The Customer shall notify the Company immediately if it becomes aware of:

- (a) any claim; or
- (b) any death, serious injury or serious illness,

in respect of, or caused by, the Goods or other goods of which the Goods are a component or mixed with and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.

12.2 If Goods are sold by the Customer to a third party for commercial use by that third party, the Customer must impose on the third party an obligation to notify the Customer immediately if the third party becomes aware of:

- (a) any claim; or
- (b) any death, serious injury or serious illness,

in respect of the Goods or other goods of which the Goods are a component or mixed with and to take all reasonable steps to mitigate Loss arising as a consequence of the claim, death, serious injury or serious illness.

12.3 The Customer must, and must impose on any third party to whom it sells the Goods an obligation to:

- (a) not, without the Company's express written consent, make any representation to any Consumer regarding the purpose, performance or durability of the Products, which is in breach of the Australian Consumer Law;
- (b) take all steps and do all things necessary to promptly pass on to the Company any claim made by a Consumer arising out of or in connection with the Australian Consumer Law and must, at the Customer's expense, assist the Company to comply with its obligations under the Australian Consumer Law; and
- (c) not agree to settle any claim made by a Consumer without the prior written consent of the Company.

13 No representations

The Customer acknowledges and agrees that it has not relied on any representations, inducements or statements made to it by the Company regarding the supply of the Goods or Services

and it has satisfied itself that the Goods and Services are fit for the purpose it requires them for.

14 Confidentiality

14.1 The Customer:

- (a) may use Confidential Information solely for the purposes of the relevant Agreement;
- (b) must keep confidential all Confidential Information; and
- (c) may disclose Confidential Information only to (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by the Company, or (ii) as required by law or securities exchange regulation.

14.2 The Customer must notify the Company immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

15 Privacy

The Customer acknowledges and agrees that personal information (as that term is defined in the *Privacy Act 1988* (Cth)) regarding the Customer may be collected, held, used and disclosed by the Company for the purposes set out in the Company's privacy policy (which privacy policy is available on the Company's website or on request from the Company). The Customer consents to the Company collecting, holding, using and disclosing any such personal information for all purposes specified in the Company's privacy policy.

16 GST

All amounts payable by the Customer in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by the Company under these Terms, the Customer must pay to the Company, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by these Terms to reimburse or indemnify the Company for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that the Company will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by the Company in respect of the reimbursement or payment. This clause does not merge on completion or termination of the relevant Agreement or contract. In this clause, words and expressions which are defined in the GST Act have the same meaning given to them by the GST Act.

17 Force Majeure

17.1 The Company will not be liable for any failure to perform or delay in performing its obligations under an Agreement if that failure or delay is due to a Force Majeure Event.

17.2 If a Force Majeure Event under clause 17.1 exceeds 20 Business Days, the Company may immediately terminate the Agreement by written notice to the Customer.

18 Termination

18.1 Without limiting the Company's other rights under these Terms, the Company may terminate any and all Agreements and any account facility under a Credit Application with immediate effect by written notice to the Customer if:

- (a) the Customer is the subject of an Insolvency Event;
- (b) the Customer has breached any term of the relevant Agreement (including these Terms); or
- (c) in accordance with clause 17.2.

18.2 On termination of an Agreement, the Customer must, at its cost and within 10 Business Days of the date of termination, return to the Company all Goods the subject of the Agreement (other than any Goods which have been paid for) and any displays and other promotional materials in relation to the Goods.

18.3 Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.

19 Acknowledgements and representations

19.1 If an Offer has been accepted by the Company, the Customer acknowledges that the Offer was accepted by the Company on

the basis of, and in reliance upon, any information, specifications, data, representations, statements and documents provided by the Customer.

19.2 By making an Offer, the Customer warrants and represents to the Company that it has read and understood these Terms prior to making the Offer, and agrees to be bound by them in full.

19.3 The Price List, goods lists and other similar documents or catalogues do not constitute an offer by the Company to supply Goods appearing in those lists or catalogues or an offer by the Company to supply Goods at the prices set out in those lists or catalogues. The Company's price lists and catalogues may be changed by the Company at any time without notice.

19.4 Where any instructions or material in whatever form (including documents, specifications, designs, plans, processes, information and data) are required to be provided by the Customer to the Company before the Company can proceed with or complete the provision of the Goods or Services such instructions or materials must be supplied by the Customer to the Company within a reasonable time (as determined by the Company) so as to enable the Company to deliver the Goods or Services within any agreed time frame.

20 Inconsistency

20.1 Unless otherwise specified in these Terms, in the event of an inconsistency between any of the documents listed in clause 3.3, the following order of precedence shall apply to the extent of the inconsistency:

- (a) the prices and quantity of Goods set out in a Quote;
- (b) the Specifications (if any);
- (c) the Consignment Agreement (if any);
- (d) these Terms;
- (e) the Credit Application;
- (f) any other terms of the Quote (if applicable);
- (g) the Invoice; and
- (h) without limiting clause 20.2, any terms in the Order which are accepted by the Company in writing.

20.2 These Terms shall prevail over any Customer terms and conditions, except to the extent specifically agreed by the Company in writing and any terms or conditions included in an order or other document provided or issued by the Customer will only be binding on the Company if expressly agreed by the Company in writing.

21 Cancellation

21.1 Without limiting clause 4.8(b), the Company may cancel or suspend any Agreement effective immediately upon providing the Customer with written notice of cancellation or suspension where the Company believes (for any reason) that it will be unable to supply the relevant Goods to the Customer, provided that if the Company cancels an Agreement under this clause 21.1 it will refund to the Customer any amounts already paid by the Customer for the Goods subject to the cancellation. The refund of any such amounts will be the Customer's sole remedy against the Company in respect of any cancellation pursuant to this clause 21.1.

21.2 Neither an Agreement nor any Offer that has been submitted can be cancelled by the Customer except with the prior written consent of the Company and, without prejudice to any other rights the Company may have, the Customer indemnifies the Company for any Loss incurred by the Company in connection with such cancellation.

22 Miscellaneous

22.1 In these Terms:

- (a) the singular includes the plural and vice versa;
- (b) the word person includes a firm, a body corporate, an unincorporated association, body or organisation established pursuant to international treaty, intergovernmental body, or government authority and other official authority;
- (c) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;

(e) headings are inserted for convenience and do not affect the interpretation of these Terms;

(f) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms; and

(g) unless otherwise provided, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.

22.2 The Customer must maintain and keep current and complete records of the Goods which the Company has supplied to the Customer, including the Goods which are sold by the Customer to a third party and must, immediately upon written request from the Company, provide the Company with access to, or copies of, those records.

22.3 The Customer must not assign or otherwise deal with any of its rights or obligations under these Terms without the Company's prior written consent. The Company may assign, subcontract or deal with any of its rights or obligations under these Terms (including any right to be paid or chose in action) at any time and without any requirement to notify the Customer.

22.4 For the purposes of clause 22.3, a Change in Control of the Customer shall be considered an assignment of the Customer's rights or obligations under these Terms.

22.5 The Company may, to the extent permitted by law, vary these Terms from time to time with the variation becoming effective as soon as the Company provides the Customer notice of the variation.

22.6 A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future. Waiver of any of these Terms must be in writing and is only effective to the extent set out in that written waiver.

22.7 If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.

22.8 These Terms and the accepted Agreement constitute the entire agreement between the Customer and the Company in respect of the supply of the Goods or Services and supersede all previous communications, representations, understandings or agreements.

22.9 These Terms are governed by the laws in force in Victoria, and the Customer and the Company submit to the non-exclusive jurisdiction of the courts of Victoria.

22.10 The provisions of clauses 1, 7, 8, 9, 11, 12, 14, 15, 18, 20 and 22 of these Terms survive the expiry or termination of the Agreement.

22.11 Each party must:

- (a) do all acts necessary or desirable to give full effect to an Agreement; and
- (b) refrain from doing anything which might prevent full effect being given to an Agreement.

22.12 The relationship between the parties is and will remain that of independent contractors, and nothing in the Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.

22.13 Notices by a party must be delivered by hand, prepaid post, facsimile or email and sent to the address of the receiving party specified in the Agreement. Notices shall be deemed to have been received by hand upon delivery, by post within two (2) Business Days of sending, by facsimile upon receipt of a successful transmission report and by email one hour after the email (unless the sender knows that email has failed to send).