

# Terms and Conditions of Trade for Hunter Valley Steel & Engineering Supplies Pty Ltd ACN 002 347 391

These terms and conditions together with any credit application, quotation or proposal to which these terms are attached or in which these terms are referred and/or the content of the Supplier's website where that platform is being patronised or used by a purchaser or visitor, together make up a legally binding agreement (**Agreement**) between: Hunter Valley Steel & Engineering Supplies Pty Ltd ACN 002 347 391 (**Supplier**) AND the person(s) or company named in the attached or previously signed credit application, quotation or proposal (**Purchaser**) AND if the Purchaser is a corporation, the directors of the Purchaser who have signed or otherwise agreed to these terms (**Guarantor**).

This Agreement may be accepted by the Purchaser doing any one or more of the following:

- (a) signing these terms and conditions of trade; or
- (b) signing the credit application, proposal or quotation issued by the Supplier in which these terms and conditions were attached or referred; or
- (c) issuing a purchase order or making a request (whether in writing, by electronic means or verbally) for goods or services from the Supplier in response to the quotation or proposal referred to at (b) above or otherwise after receiving notice of these terms and conditions of trade.

THE PARTIES AGREE as follows:

## 1. Agreement to Buy and Sell

- 1.1 The parties acknowledge that the Supplier will sell and the Purchaser will purchase goods and/or services from time to time pursuant to this Agreement. If any future contract or document between the Supplier and the Purchaser is inconsistent with this Agreement, then this Agreement will apply unless the subsequent contract is signed by the Supplier, refers to and specifically alters this Agreement in writing.
- 1.2 Should there be any variation to any of the information supplied by the Purchaser in its credit account application or in the structure of the Purchaser's business (including without limitation a conversion to or from a company or trust or the appointment of new directors or change in shareholders), the Purchaser must immediately notify the Supplier in writing. Until a new credit application form is signed and approved in writing by the Supplier in its absolute discretion, the original Purchaser and those person(s) who signed or accepted these terms and conditions as guarantor(s) remain liable to the Supplier as though all goods and services were supplied to the original Purchaser.

## 2. Quotations

- 2.1 Any quotation issued by the Supplier for the supply of goods and/or services to the Purchaser (**Quotation**) should not be construed as an obligation to sell and no contractual relationship will arise from submission of the Quotation alone.
- 2.2 Unless otherwise specified by the Supplier, all Quotations are valid for acceptance for 30 days, unless withdrawn by the Supplier prior to acceptance.
- 2.3 A Quotation may be withdrawn or amended by the Supplier in its absolute discretion without prior notice to the Purchaser.
- 2.4 Quoted prices, unless otherwise specified, are subject to change without notice. All other Quotations are accepted on the basis that the Supplier reserves the right to adjust prices to the Supplier's prices prevailing at the time of shipment of the goods or delivery of the services (including but not limited to any component of such prices attributable to increments in any relevant foreign exchange rate or rates).

## 3. Placement of Orders and Variations

- 3.1 The Purchaser must order the goods and/or services from the Supplier in writing, by phone, email, facsimile, or other electronic communication acceptable to the Supplier (which includes without limitation purchase orders, the acceptance by the Purchaser of a quotation, proposal or variation prepared by the Supplier) (**Order**). Upon placement of an Order, the Purchaser will be bound to proceed with the purchase of the goods and/or services.
- 3.2 The Supplier will not be bound by any terms or conditions expressed in orders or acceptances generated by the Purchaser except to the extent that such terms have been expressly agreed upon between the parties in writing and signed by the Supplier. For the avoidance of doubt, the Supplier will not be bound by any other terms and conditions attached to or referred to in purchase orders or other requests for quotations or supply of goods and/or services, received after this Agreement has been entered into (**Additional Terms**) and

such Additional Terms will be of no force or effect against the Supplier unless it expressly agrees otherwise (by document in writing and signed by a director of the Supplier).

- 3.3 The Supplier may decline to accept any order without providing a reason in its absolute discretion.
- 3.4 If the Purchaser requests or the Supplier deems there to be a variation in the scope of the supply of goods and/or services the subject of an Order (**Variation**), then the Supplier may (but is not obliged to) notify the Purchaser in writing of the particulars of the Variation, associated delays and any other information the Supplier deems relevant.
- 3.5 Where the Supplier notifies the Purchaser of a Variation, the Supplier is not obliged to commence any supply associated with the Variation unless and until the Purchaser acknowledges and accepts in writing the particulars of the Variation contained in that notice.
- 3.6 The Purchaser warrants and guarantees that the information provided to the Supplier when placing an Order is reliable, complete and accurate.

## 4. Delivery of Orders

- 4.1 The Purchaser acknowledges that the Supplier will not be liable for any loss, damage or delay occasioned to the Purchaser or any other person arising from late delivery or non-delivery of goods the subject of an Order or any actions or obligations conducted or incurred by the Purchaser in reliance on any expected delivery date, to the extent permitted by law. Delay in delivery or completion shall not constitute a breach of this Agreement, nor shall it affect any other provisions of this Agreement to the Supplier's disadvantage.
- 4.2 Deliveries shall be made during normal working hours and at the cost and risk of the Purchaser. If the Purchaser or the Purchaser's agent is not on site to accept the delivery, the delivery may be unloaded and left on any part of the Site that the Supplier or its carrier considers reasonable in the circumstances and then the driver's signature denoting the time, date & place of delivery, is deemed to be acceptance of the said delivery by the Purchaser. Delivery of goods and/or services to a third party nominated by the Purchaser is deemed to be delivery to the Purchaser.
- 4.3 It is the responsibility of the Purchaser to carefully inspect the goods immediately after they are delivered and to assess the services immediately after they are rendered. Any claims with respect to damage, shortage or defect will only be considered if made in writing to the Supplier within 7 days of delivery.
- 4.4 If a claim is made to the Supplier in accordance with clause 4.3, the Purchaser must provide access to the goods to allow the Supplier to inspect and assess the validity of the claim. If the Supplier accepts the claim it will (at its election) either repair or replace the damaged or defective item.
- 4.5 The Supplier will not make any delivery to the Purchaser unless it considers it to be safe to do so. To ensure the Supplier is able to deliver the goods in accordance with the Supplier's health, safety and environmental requirements, the Purchaser:
  - (a) must, where applicable, complete the Supplier's pre-delivery checklist and inform the Supplier or its courier about any site-specific safety regulations upon arrival; and
  - (b) must ensure each delivery point is correctly and clearly labelled; and
  - (c) must ensure that its delivery site adheres to the latest applicable storage regulations and that there is clear and safe access to all delivery points; and
  - (d) will have sole responsibility for providing suitable, safe and secure means and facilities for the reception and unloading of the goods and for the storage of the goods after delivery.
- 4.6 Without limiting the above, where the size or quantum of the Order requires the use of machinery or equipment to facilitate the delivery, unless agreed in writing and signed by a director of the Supplier, the Purchaser will be solely responsible and liable for provision, operation and maintenance of that machinery or equipment.

## 5. Payment and Price

- 5.1 All supplies are made at the price current at the time of delivery or completion in \$AUD. The price of the goods and/or services is quoted EXW (Incoterms 2010) from the Supplier's premises. Costs and charges for freight and handling at the point of delivery to the Purchaser or the Purchaser's agent are payable by the Purchaser unless otherwise agreed in writing by the Supplier.
- 5.2 The Supplier may in its absolute discretion require the Purchaser to pay a percentage of the Order price at the time of placing the Order, so or all of which may be non-refundable. The Supplier will notify the Purchaser of any such requirement after the Order is placed.

- 5.3 Subject to clause 5.4, payment terms are strictly 30 days from the date of the invoice.
- 5.4 Where any form of credit has been granted to the Purchaser by the Supplier:
- the Purchaser must pay to the Supplier the price in relation to each purchase of goods and/or services as set out in the corresponding tax invoice;
  - Payment terms are strictly 30 days from the date of the invoice, unless the Supplier has otherwise agreed in writing;
  - the Supplier has the right to demand payment in full before delivering any goods or performing any services to or for the Purchaser.
- 5.5 The Supplier may refuse to grant or may withdraw credit facilities to the Purchaser at any time without notice. Without limiting the Supplier's rights to withdraw credit, the Supplier reserves the right to stop and place the Purchaser's account and any supply on hold until the Purchaser pays any outstanding arrears on its account and rectifies any breach of this Agreement, and the Supplier agrees to recommence supply. Where credit has not been extended to the Purchaser or is otherwise suspended or withdrawn, then the Purchaser must pay for all goods and/or services purchased in full in cleared funds prior to the Supplier releasing those goods and/or services for shipping or collection.
- 5.6 The Purchaser must pay interest on all overdue amounts at the rate of 2% above the Supplier's then current financial institution's overdraft rate for \$100,000, calculated daily and compounding monthly.
- 5.7 Under no circumstances may the Purchaser deduct or set off any amount under any invoice.
- 5.8 The Purchaser must also pay any third party costs incurred by the Supplier on behalf of the Purchaser, including but not limited to engaging third party suppliers. The Purchaser acknowledges and agrees that any third party costs will not be placed on or added to the Purchaser's credit account. The Supplier will invoice the Purchaser for such third party costs as they are incurred and the Purchaser must pay those third party costs within the time specified in the relevant tax invoices, or where no time is stipulated, within 7 days.

## 6. Passing of Title and Risk

- 6.1 The Supplier reserves the following rights in relation to all goods and/or services supplied to the Purchaser until all outstanding amounts owed by the Purchaser to the Supplier are paid in full:
- title of all goods; and
  - entry into the Purchaser's premises (or the premises of any associated company or agent where goods are located) without liability for trespass or any resulting damage to retake possession of the goods; and
  - to keep or resell any goods repossessed pursuant to clause 6.1(b).
- 6.2 If the Purchaser:
- resells the goods; or
  - sells products manufactured using the goods; then
- the Purchaser must hold the portion of the proceeds of the sale that equates to the invoice price of the goods sold or used in the manufacture of the goods sold in a separate identifiable account as the beneficial property of the Supplier. The Purchaser must pay such amount to the Supplier on demand.
- 6.3 Notwithstanding clauses 6.1 and 6.2, the Supplier may take action against the Purchaser for the purchase price and all risk regarding the goods will pass to the Purchaser upon delivery.
- 6.4 In the event that the Purchaser is in default of this Agreement or in the event that an administrator, liquidator or trustee in bankruptcy is appointed to the Purchaser or the Guarantor, the Purchaser appoints the Supplier as the Purchaser's attorney to secure performance of the Purchaser's obligations under this Agreement.
- 6.5 Risk in all goods supplied to the Purchaser will pass to the Purchaser on delivery.

## 7. Security and PPSA

- 7.1 For the purposes of this clause, "PPSA" means the Personal Property Securities Act 2009 (Cth) as amended from time to time. Where a particular section or term from the PPSA is used in this Agreement, it is deemed to be that section or term as defined or used in the PPSA as amended, renumbered or replaced from time to time.
- 7.2 By accepting this Agreement, the Purchaser hereby charges all of its real and personal present and after-acquired property in favour of the Supplier.
- 7.3 The Purchaser acknowledges and agrees that:
- this Agreement constitutes a security agreement for the purposes of the PPSA;

- the Supplier (as Secured Party) holds a Security Interest in all present and after-acquired Goods supplied by the Supplier to the Purchaser in accordance with the PPSA;
- the Supplier is entitled to register its Security Interest in the Goods supplied or to be supplied to the Purchaser under this Agreement on the Register constituted and maintained under the PPSA;
- any goods purchased by the Purchaser on credit terms from the Supplier will constitute a "Purchase Money Security Interest" in favour of the Supplier;
- the Supplier will continue to hold a Security Interest in the Goods in accordance with and subject to the PPSA, notwithstanding that the Goods may be processed, commingled or become an accession with other goods.

7.4 For the avoidance of doubt, the Purchaser acknowledges and agrees that it grants to the Supplier a security interest in all goods supplied by the Supplier to the Purchaser (whether now or in the future) and in any proceeds from the sale of those goods.

7.5 To the extent permitted by law, the following provisions of the PPSA do not apply, and for the purposes of section 115 of the PPSA are contracted out of this Agreement:

- sections 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Purchaser, 96 (retain of accession) and 125 (obligation to dispose of or retain collateral);
- section 130 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Purchaser;
- section 132(3)(d) (contents of statement of account after disposal);
- section 132(4) (statement of account if no disposal);
- section 135 (notice of retention);
- section 142 (redemption of collateral);
- section 143 (reinstatement of security agreement).

7.6 For the purposes of section 14(6) of the PPSA, the Purchaser (and the Supplier) agree that any payments received from the Purchaser by the Supplier pursuant to or in any way connected with this Agreement, will be applied in such order as the Supplier deems fit in its absolute discretion.

7.7 The Purchaser consents to:

- and agrees to execute any other document or instrument required to give effect to the security interests created by this Agreement; and
- the registration with the relevant authority or public register of any security interest created by this Agreement or any other document required to give effect to a security interest created by this Agreement, including without limitation the registration of a financing statement or financing change statement on the Personal Property Securities Register.

7.8 The Purchaser must pay all costs of and incidental to the preparation, execution and registration of any instrument which is executed for the purposes of giving effect to this clause and must also pay all costs incidental to the withdrawal, discharge or release of such instrument.

## 8. Limitation of the Supplier's Liability

8.1 The Purchaser acknowledges and agrees that to the extent permitted by law, the Supplier will not be liable for, and the Purchaser releases the Supplier from all liability in respect of, any claim, loss, cost, damage or expense (**Claim**) arising from or out of any act or omission of the Supplier or its employees, officers or agents unless that Claim is a direct result of the negligence or breach of this Agreement or a warranty by the Supplier.

8.2 The parties agree that any liability for a Claim against the Supplier that cannot be lawfully modified or excluded under this Agreement will be limited to the lesser of:

- the re-supply of defective goods or services (if applicable);
- the cost of the re-supply of defective the goods or services in question (if applicable); or
- the contract price of the original supply of the goods or services.

8.3 Notwithstanding any of the above, the parties agree that the Supplier will under no circumstances be liable to the Purchaser for any indirect or consequential loss, loss of income, profit or opportunity or for any contingent, consequential direct/indirect special, or punitive damages arising out of or in connection with this Agreement, at law or in equity.

8.4 The Supplier's liability/obligation to honour any Claim under or in connection with this Agreement (including a Claim for breach of warranty) does not extend to:

- rectification of defects, loss or damage which is caused or contributed to by use, storage or operation of any part of the goods otherwise than in accordance with the more stringent of

- the guidelines or specifications supplied by the Supplier or the manufacturer of the goods, or under normal working conditions;
- (b) rectification of defects, loss or damage arising out of or in connection with the misuse, neglect, or wilful destruction of any part of the goods or the use by the Purchaser or any third party other than in accordance with the more stringent of product information guidelines and instructions provided by the Supplier (if any) or industry best practice;
- (c) any damage caused by or to the goods as a result of continued use of any part of the goods after a defect has been detected or ought to have been detected;
- (d) removing, transporting or re-installing defective Goods; or
- (e) any goods that have been manufactured, repaired, modified, altered, dismantled or otherwise interfered with by a person other than the Supplier.

8.5 For the avoidance of doubt:

- (a) where the Purchaser engages the Supplier to install Goods manufactured by a third party (**Manufacturer**), the Supplier does not provide and expressly excludes all warranties and representations with respect to those Goods other than those provided by the Manufacturer;
- (b) where the Purchaser engages the Supplier to supply (and not install) Goods, the Supplier will not be liable under any circumstances for the removal, transportation or re-installation of those Good;
- (c) where the Purchaser engages the Supplier to supply and install Goods, the Supplier will not be liable under any circumstances for the removal, transportation or re-installation of those Goods except where the installation of those Goods is demonstrated to be defective following a Claim by a Purchaser.

8.6 To the extent permitted by law and unless otherwise expressly agreed, the Supplier does not provide and expressly excludes all warranties whether implied by statute or otherwise in respect of any goods.

8.7 The Supplier acknowledges that the Purchaser, as a consumer, has legal rights under the Australian Consumer Law within Schedule 2 of the Competition and Consumer Act 2010 that cannot be limited or excluded. The Supplier in no way intends to limit or exclude those rights.

## 9. Exclusion of Warranty

- 9.1 To the extent permitted by law, the Supplier does not provide and expressly excludes all warranties and representations whether implied by statute or otherwise in respect of any goods and services.
- 9.2 The Purchaser warrants that the Purchaser has not relied on any representations made by the Supplier that are not expressly contained in this Agreement, or any descriptions or illustrations contained in any specification document including catalogues produced or circulated by the Supplier.
- 9.3 The Supplier will use reasonable endeavours to assign the benefit of any warranties given by third party manufacturers of the goods supplied, to the extent those warranties are transferrable. However, the Supplier will not be liable for negotiating with manufacturers on behalf of the Purchaser and will not be liable to provide warranties to the Purchaser in addition to those provided by the manufacturer and transferred under this clause.
- 9.4 To the maximum extent permitted by law, the Supplier bears no responsibility or liability for any misuse of data that was deceitfully, fraudulently or illegally obtained from the Supplier.

## 10. Term and Amendment

- 10.1 This Agreement commences on the date of its acceptance by the Purchaser and will expire upon reasonable notice being given by one party to the other or in accordance with clause 10.2.
- 10.2 Without limiting any other rights of the Supplier, the Supplier may terminate the Agreement without notice if:
  - (a) the Purchaser fails to pay any monies due and payable under this Agreement;
  - (b) the Purchaser breaches, repudiates or purports to terminate this Agreement;
  - (c) wind up proceedings are commenced against the Purchaser;
  - (d) a Liquidator, Administrator, Receiver, Manager or Controller (as defined by the Corporations Act 2001 is appointed to the Purchaser, any part of its assets or a Guarantor);
  - (e) the Purchaser commits an act of bankruptcy (as defined by the Bankruptcy Act 1966);
  - (f) the Supplier has reasonable belief that the Purchaser is insolvent or a party may attempt to levy any form of execution against any goods supplied by the Supplier;
  - (g) the Purchaser suspends, or threatens to suspend, the conduct of its business; or

- (h) the Purchaser becomes unable to pay its debts as and when they fall due.

10.3 The Supplier may assign or otherwise transfer any of its rights under this Agreement.

10.4 The Purchaser may not without the prior written consent of the Supplier assign or otherwise transfer any of its rights or obligations under this Agreement.

10.5 The Supplier reserves the right to amend this Agreement, provided such amendments are conveyed to the Purchaser in writing. The Purchaser further acknowledges that such writing will be by ordinary mail to the address or by electronic mail to the email address, set out in the original credit application, proposal or quotation, unless the Purchaser advises in writing to the Supplier a new address or email address, and this new address is acknowledged by return in writing by the Supplier. Any amendments will be deemed to be accepted upon placement of a further order with the Supplier after notice of the amendment, or 28 days, from notice, whichever occurs first.

## 11. Defaults and Rights

11.1 If the Purchaser is in default under this Agreement (including without limitation on the happening of any of the events set out in clause 10.2), irrespective of whether the Supplier has terminated this Agreement, the whole of any outstanding balance will become immediately due and payable by the Purchaser to the Supplier together with all legal costs and expenses associated with recovery of the outstanding balance on an indemnity basis.

11.2 The certificate of a director or the credit manager of the Supplier will, in the absence of evidence to the contrary, be conclusive as to the amount of the outstanding balance.

11.3 No failure or delay of the Supplier to exercise any right enforce any obligation of the Purchaser hereunder, and no custom or practice of the parties which is at variance with the terms of this Agreement, and no waiver by the Supplier of any particular default by the Purchaser shall affect or prejudice the Supplier's rights in respect of any subsequent default, and no indulgence or forbearance by the Supplier of its rights under this Agreement shall adversely affect or prejudice its rights in relation to such default or any subsequent default.

## 12. Intellectual Property

12.1 "Intellectual Property Rights" means copyright, trademark, design, patent, semiconductor or circuit layout rights and any other rights (including software and services) whether or not they are registered or registrable, relevant to, among other things, the textual, graphical, audio and other information, content, data or material used by the Supplier in the delivery of the goods or performance of the services in accordance with this Agreement.

12.2 Any pre-existing Intellectual Property Rights owned by the Supplier before the commencement of this Agreement, will remain vested in the Supplier.

12.3 Any pre-existing Intellectual Property Rights owned by the Purchaser before the commencement of this Agreement, will remain vested in the Purchaser.

12.4 The Purchaser agrees to grant to the Supplier a non-exclusive, transferable, royalty free licence to use the Purchaser's pre-existing Intellectual Property Rights to the extent that such use is required or beneficial for the completion of this Agreement by the Supplier (including without limitation in the proper use and performance of any goods supplied by the Supplier).

12.5 Subject to any Intellectual Property Rights existing in any third party materials, all Intellectual Property Rights created by the Supplier on or after the commencement of this Agreement will remain vested in the Supplier absolutely regardless of whether those rights were created pursuant to or for use in or with the goods and/or services supplied by the Supplier (**Agreement IP**).

12.6 Subject to the Purchaser's continued compliance with this Agreement, the Supplier agrees to grant to the Purchaser a limited, non-exclusive, non-transferable, revocable, royalty free licence to use the Agreement IP, but only to the extent that such use is required for operation of the completed goods or services.

12.7 The Purchaser must not reverse engineer, disassemble, decompile, alter, modify or develop the goods or services. Notwithstanding the foregoing, if the Purchaser does alter, modify or develop the goods or services, then subject to any third party Intellectual Property Rights, all Intellectual Property Rights then existing in the goods or services as altered, modified or developed will immediately vest in the Supplier upon their creation. The Purchaser will do all things and sign all documents to ensure vesting occurs in a timely fashion if for some reason it does not occur immediately upon creation, or as otherwise directed by the Purchaser.

Initials: .....

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12.8 This clause 12 survives completion of the goods and/or services and expiration or termination of this Agreement.

### 13. Applicable Law

13.1 The parties expressly agree that this Agreement will be governed by and interpreted in accordance with the laws of the State of New South Wales.

### 14. Defaults and Rights

14.1 Each of the following events constitute a default by the Purchaser under this Agreement:

- (a) any amount or any part thereof or any other money payable under this Agreement by the Purchaser to the Supplier remains unpaid for a period of 7 days or more after its due date of payment; or
- (b) the Purchaser fails to observe or perform any obligation, liability or other provision of this Agreement on its part to be observed or performed (other than any failure to pay within the terms of sub-clause (a) above) and such failure continues for a period of 7 days or more after notice in writing has been given by the Supplier requiring the Purchaser to remedy the same; or
- (c) The Supplier ascertains that any warranty, representation or statement made by the Purchaser under or in connection with this Agreement is or becomes false or misleading in any material respect; or
- (d) any insurance policy in respect of the goods is cancelled, rendered void or is not renewed; or
- (e) the Purchaser commit or suffer or suffer to be committed any act of bankruptcy or, being a body corporate, a resolution is passed for its winding up or a meeting is convened for such purpose or an order is made by any court for its winding up or dissolution or an official manager or provisional liquidator is appointed in respect of it or a receiver or manager or receiver and manager is appointed in respect of the whole or any part of its assets or any inspector is appointed to investigate the Purchaser's affairs; or
- (f) execution or distress is levied against the Purchaser or any of the Purchaser assets; or
- (g) the Purchaser enters or proposes to enter into any arrangement, reconstruction or composition with any of the Purchaser's creditors; or
- (h) the Purchaser ceases or threatens to cease to carry on the Purchaser's business or are unable to pay the Purchaser's debts as they fall due or suspends payment generally; or
- (i) the Purchaser assigns or disposes of or parts with the whole or a substantial part of the Purchaser's undertaking or assets or attempts to do so; or
- (j) the Purchaser, being an individual, is declared mentally ill or is convicted of a criminal offence or die; or
- (k) there is a material adverse change in the Purchaser's business or financial condition which could adversely affect the Purchaser's ability to meet the Purchaser's obligations under this Agreement.

14.2 In the event of a default under this Agreement by the Purchaser, the whole of any outstanding balance will become immediately due and payable by the Purchaser to the Supplier together with all legal costs and expenses associated with recovery of the outstanding balance on an indemnity basis.

14.3 The certificate of a director or the credit manager of the Supplier will, in the absence of evidence to the contrary, be conclusive as to the amount of the outstanding balance.

14.4 No failure or delay of the Supplier to exercise any right or obligation hereunder and no custom or practice of the parties which is at variance with the terms of this Agreement and no waiver by the Supplier of any particular default by the Purchaser will affect or prejudice the Supplier's rights in respect of any subsequent default and no indulgence or forbearance by the Supplier of the Supplier's rights under this Agreement will adversely affect or prejudice the Supplier's rights in relation to such default or any subsequent default.

### 15. Guarantor and Purchaser's Warranties

15.1 The Guarantor and Purchaser (and each director and office bearer if the Purchaser is a company) separately warrants that:

- (l) In the case of a natural person, he/she has never been a bankrupt or entered into a deed of arrangement or compromise or any other arrangement under Part X of the *Bankruptcy Act* or otherwise assigned his/her assets for the benefit of creditors.
- (m) It has never been under external administration or subject to the appointment of an external receiver or controller or entered into a deed of company arrangement and that it is solvent and able to pay its debts as and when they fall due.

(n) They are not executing this Agreement as a result of or by reason of or in reliance upon any promise, representation, statement or information of any kind whatever given or offered to them by or on behalf of the Supplier whether in answer to an enquiry or otherwise.

(o) Prior to the placement of any order, they have made their own independent enquiries and satisfied themselves as to the quality and fitness for purpose of the goods and/or services and, to the extent permitted by law, the Supplier makes no warranty, promise or representation in relation to the goods and/or services, either expressly or impliedly and any warranties, terms and conditions in relation to the state, quality or fitness of the goods for any purpose, whether implied by use, statute or otherwise are, to the extent permitted by law, hereby excluded.

(p) Any information, data or other documents supplied or provided by or on behalf of the Purchaser detailing the Purchaser's requirements of the goods and/or services (**Purchaser's Specifications**) are accurate, complete and not misleading.

(q) The Supplier has relied on the Purchaser's Specifications in manufacturing and/or supplying the respective order and the Purchaser releases and holds harmless the Supplier from any claim, loss, cost, damage or expense suffered or incurred as a result of any of the Purchaser's Specifications being incorrect, inaccurate or incomplete including without limitation any claim resulting from the goods and/or services (as modified to the Purchaser's Specifications) not being fit for the Purchaser's purpose

### 16. The Supplier Relies on Guarantor and Purchaser's Warranties

16.1 In entering into this Agreement, the Supplier relies upon the warranties provided above and upon any information supplied by the Purchaser in an accompanying credit account application.

16.2 The Supplier relies upon the representation that the person signing this Agreement has authority to execute it on behalf of the Purchaser described in the Schedule.

### 17. Personal Information

17.1 The Purchaser and Guarantors consent to the Supplier from time to time, seeking, advising, exchanging and verifying any personal or commercial information of the Purchaser or the Guarantors with any third party and to carrying out any further pertinent investigation about the Purchaser's or Guarantor's contact/address details, credit arrangements, trading terms, credit worthiness, credit standing, credit history or credit capacity, financial status etc.

### 18. Goods and Services Tax (GST)

18.1 GST will be charged to all relevant goods and services and will be payable by the Purchaser at the time of payment, including but not limited to all stock, services, costs, fees, freight charges and any other amounts that become payable by operation of this Agreement.

### 19. Credit Limit

19.1 Notwithstanding any other provision in these terms, the Supplier may grant credit to the Purchaser under these terms either unconditionally or with any condition it sees fit, including, without limitation, a cap on the amount of credit the Supplier is comfortable extending to the Purchaser. The Supplier may increase or decrease any such cap as it sees fit from time to time throughout the duration of these terms by notice to the Purchaser in writing

19.2 If a credit limit is set and then exceeded by the Supplier, such excess will not be a breach of this Agreement by the Supplier.

19.3 In the event that the Supplier serves notice in accordance with clause 18.2 then, apart from any extension, increase or reduction set out in the notice, this Agreement and any supporting guarantee will continue to operate in its amended form.

19.4 However, should the Supplier decide to extend beyond the credit cap in place from time to time, then the cap will in no way act to limit the ability or right of the Supplier to recover any monies owing to it nor will such cap act to limit the liability of the Purchaser or any Guarantor to pay those monies to the Supplier.

### 20. Force Majeure

20.1 A Force Majeure event means anything outside reasonable control of a party, including but not limited to:

- (a) power, data or communication outages;
- (b) acts of God or the public enemy, national emergencies, radioactive contamination, insurrection, riot, hostile or warlike action or sabotage;
- (c) global pandemic or government mandated lockdown;
- (d) a transportation embargo;

- (e) industrial action (including a picket); and
- (f) any legislation or regulation and any action or inaction of any government or government agency

20.2 If any party is wholly or partially unable to perform its obligations because of a Force Majeure event, except for its obligation to pay money, then:

- (a) as soon as reasonably practicable after the Force Majeure event arises, the party must notify the other party of the extent to which the notifying party is unable to perform its obligations; and
- (b) that party's obligation to perform will be suspended for the duration of the delay arising directly out of the Force Majeure event.

**21. Confidentiality**

21.1 Both parties will keep in confidence all information which it receives from the other party which is either marked in any way so as to indicate its confidentiality or which by its nature is confidential and will not, without prior written consent of the disclosing party, publish, disclose or otherwise make available, directly or indirectly, any item of such information to any person other than its employees, agents, or contractors who need to know the same in the performance of their duties. The receiving party further agrees that it will only use such confidential information in connection with the obligation arising as a result of the Agreement. Such confidential information does not include any data or information which:

- (a) was in the receiving party's lawful possession prior to the submission thereof by the disclosing party;
- (b) is later lawfully obtained by the receiving party from a third party under no obligation of confidentiality;
- (c) is independently developed by the receiving party; or
- (d) is, or later becomes, available to the public through no act or failure to act by the receiving party.

**22. Returns**

22.1 To the extent permitted by law, return on goods can only be accepted if authorised in writing by the Supplier (which may be given, given with conditions including the payment of a restocking fee or withheld in the absolute discretion of the Supplier), and the goods are in the same condition as delivered to the Purchaser, and the goods are returned to the Supplier in their original packaging along with evidence of purchase within 30 days of delivery.

**23. Guarantee and Indemnity by Director(s), Trustee(s) and Guarantor**

23.1 In consideration of the Supplier agreeing to supply goods and/or services to the Purchaser, the Guarantors:

- (a) unconditionally guarantee to the Supplier the due and punctual performance by the Purchaser of all the Purchaser's obligations under this Agreement and each and every Order made pursuant to this Agreement including, without limiting the generality of the foregoing, the payment by the Purchaser of all moneys (which term includes, without limitation, principal, fees, interest and costs) payable or repayable (whether presently or in the future, actually or contingently) under each this Agreement and the Guarantors promise to pay to the Supplier on demand all moneys which the Purchaser defaults in paying under this Agreement including all moneys arising by way of costs, expenses, bank charges, losses or damages incurred by arising from any default by the Purchaser under or relating to any Agreement;
- (b) acknowledge and agree in their capacity as Guarantor that the Guarantee and Indemnity that they have previously given continues to secure any and all liabilities and obligations of the Purchaser/debtor.