

## SPECIALISED FORCE PTY LTD (A.C.N 002 433 436) STANDARD TERMS

### 1. Definitions and Interpretation

**Agreement** means collectively any Quotation, Order, Special Conditions and/or these Terms.

**Company** means Specialised Force Pty Ltd (A.C.N. 002 433 436) and includes its successors, assigns, and representatives.

**Company Ts&Cs** means any terms and conditions of quotation and supply, however described, notified by the Company to the Purchaser (whether on an invoice, quote, through the Company's website, docket or otherwise), or supply agreement (however described) in the Company's standard form entered into in writing between the Company and Purchaser, including but not limited to these Terms.

**Consequential Loss** includes, but is not limited to, loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

**Account Application** means an application by the Purchaser to the Company requesting that the Company provide Goods and/or Services on credit to the Purchaser on the conditions set forth in these Terms and any terms set out in the Account Application together with any Special Conditions.

**Current Price List** means the Company's list of prices maintained as at the date of the Quotation, or if no Quotation, as at the date of the Order. The Company may, from time to time change its Current Price List.

**Delivery** means, subject to any Special Conditions, the delivery to the place designated by the Purchaser and agreed to by the Company. The time of Delivery is when the possession of the Goods passes to the Purchaser's nominated courier or representative.

**Goods** means the products and/or Services specified in an Order from the Purchaser to the Company.

**GST** means the Goods and Services Tax in Australia as determined in accordance with the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).

**Insolvency Event** means, for the Purchaser, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act (Cth) 2001) or analogous person appointed to the Purchaser or any of the Purchaser's property, being taken under section 459F(1) of the Corporations Act (Cth) 2001 to have failed to comply with a statutory demand, being unable to pay the Purchaser's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Purchaser's own affairs for any reason, taking any step that could result in the Company becoming an insolvent under administration (as defined in section 9 of the Corporations Act (Cth) 2001), entering into a compromise or arrangement with, or assignment for the benefit of, any of the Purchaser's members or creditors, or any analogous event.

**Loss** means any expense, cost or damage of any kind and includes but is not limited to Consequential Loss, fines or penalties imposed by a statutory or other authority.

**Maintenance** means any work the Company has expressly agreed to perform in relation to the Goods which is necessary to maintain their function but which is not a Repair.

**Order** means:

Where there is a Quotation, acceptance by the Purchaser of that Quotation.

Where there is no Quotation, it means the offer by the Purchaser to purchase Goods and/or Services and acceptance by the Company of that offer.

**Price** means the price of the Goods or the Service Fee as set forth in the Current Price List and/ or Quotation.

**Purchaser** means the purchaser of any Goods or Services specified in any Order or Tax Invoice and includes the Purchaser's successors, assigns and representatives.

**Quotation** means a quotation by the Company to the Purchaser offering to provide Services and/or to sell Goods to the Purchaser for the Price set forth in the Quotation or Service Fee on these Terms together with any Special Conditions.

**Real Property** means all real property interests held by the Purchaser now or in the future.

**Repair** means any repair required to the Goods in order to remedy a defect that existed at the time of Delivery.

**PPSA** means the Personal Property Securities Act (Cth) 2009 (as amended) and any other legislation and regulations in respect of it.

**Services** means any Maintenance or Repairs carried out, or agreed to be carried out by the Company in relation to the Goods.

**Service Fee** means the fee set out in the Quotation or Tax Invoice for the provision of the Services and includes all labour charges, if any, referred to in the Quotation or Tax Invoice.

**Special Conditions** means the Special Conditions, if any, contained in any Quotation or in any other document at the time of entering into an Agreement.

**Tax Invoice** means the tax invoice issued by the Company in respect of Goods and/or Services. Unless the Quotation or Special Conditions otherwise provide, the prices in the Tax Invoice will be in accordance with the Current Price List.

**Terms** means the present document, more fully to be referred to as the Terms and Conditions.

**Warranty Period** means the period of 12 months from Delivery unless otherwise stated in a Quotation or Special Conditions.

### 2. General

2.1 These Terms are intended to regulate key trading terms including the extension of credit in connection with the supply of Goods and/or Services by the Company to the Purchaser.

2.2 These Terms apply to all sales of goods by the Company to the Purchaser (including any sale to which a Quotation or Account Application relates) and supersede any previous Terms and Conditions applying between the Company and the Purchaser (however communicated).

2.3 These Terms and Conditions prevail over any Purchaser's terms of trade so that any sale by the Company is on these Terms and Conditions only.

2.4 The Company may change these Terms and Conditions at its own discretion and such amended Terms and Conditions will be either posted on the Company's website or provided in writing to the Purchaser and will apply to all Goods and Services ordered by the Purchaser from the date of such notice.

### 3. When the Agreement is Made

3.1 This Agreement is made, where there is a Quotation, when acceptance of that Quotation is communicated by the Purchaser to the Company.

3.2 Acceptance of a Quotation can be made in any form acceptable to the Company. The Company may specify in a Quotation a method of acceptance, in which event the Quotation can be accepted in that way, without limit to other possible modes of acceptance, unless expressly stated to the contrary in the Quotation.

3.3 A Quotation can be accepted by any form of written communication to the Company or by electronic communication including by facsimile or email.

3.4 Where there is no Quotation, the Agreement is made when the Company accepts the Purchaser's Offer. Such acceptance can be in any form, including in writing, orally or electronically.

### 4. Content of the Agreement

4.1 The Company shall provide the Services to the Purchaser or sell to the Purchaser the Goods as identified in the Quotation, or in the absence of a Quotation, as identified in the Order.

4.2 The content of the Agreement shall be the Quotation, if any, any Special Conditions, any Account Application and these Terms, all of which shall constitute the entire Agreement between the Company and Purchaser.

4.3 All implied terms that can be expressly excluded are expressly excluded and all prior representation, undertakings and statements are expressly excluded.

4.4 The Purchaser acknowledges it has not relied upon any prior representations, statements or undertakings in deciding to purchase the Goods or Services.

4.5 Unless withdrawn by the Company, any Quotation made by the Company is open for acceptance for the expiry period stated on the Quotation.

### 5. Solvency of the Purchaser

5.1 The Company may elect at any time to suspend credit or to change credit terms provided to the Purchaser or to require payment on a cash on delivery basis when, in the Company's opinion, the financial condition of the Purchaser so warrants.

### 6. Inconsistency

6.1 If there is any inconsistency between a Quotation or Special Conditions and these Terms, the Quotation or Special Conditions shall prevail and, to the extent only of any inconsistency, these Terms will not apply.

### 7. Price and Terms of Payment

7.1 The Purchaser shall pay the Price stated in the Tax Invoice. Such payment shall be made by a method of payment approved by the Company without deduction or set off.

7.2 Where payment is made with a credit card facility, the merchant fee is at the Purchaser's cost.

7.3 All payments are to be made in Australian currency.

7.4 Time shall be of the essence in relation to all payments for Goods and/or Services.

### 8. Tax Invoice

8.1 The Company shall render a Tax Invoice to the Purchaser upon Delivery of the Goods or the provision of the Services to the Purchaser.

8.2 Payment of the Tax Invoice must be made by the Purchaser within 30 days from end of month of the date of the Tax Invoice (the "Due Date").

### 9. Interest where payment not made by Due Date

9.1 If a Tax Invoice is not paid by the Due Date, the amount unpaid shall bear interest from the date of Delivery of the Goods or the provision of Services to the Purchaser until the Price is paid in full.

9.2 Any amount not paid by the Due Date will incur interest at a rate of 5% above the Reserve Bank of Australia Cash Rate calculated daily and compounded monthly but in no circumstances will the interest charged exceed 20% per annum.

### 10. Default, Termination and Suspension

10.1 If the Tax Invoice is not paid by the Due Date:

10.1.1 the Company is entitled to suspend all further Delivery of Goods and/or Services until full payment is made by the Purchaser; and

10.1.2 the Company may exercise its legal rights to recover what is owed in the event of non-payment.

10.1.3 The Company may, without prejudice to any of its rights or remedies, terminate any Agreement with the Purchaser immediately, and without any liability to the Purchaser, if any payment is not made by the Due Date or at the time or times specified in the Agreement.

10.2 If there is a dispute between the Company and the Purchaser relating to the Goods or to any Goods previously sold to the Purchaser, then the Company may at its absolute discretion either terminate the Agreement by giving notice to the Purchaser or require as a condition of Delivery that the Goods be paid for on a cash on delivery basis.

10.3 Upon termination of an Agreement, the Company shall be released from all liability to Deliver any Goods to the Purchaser whether paid for or not.

10.4 Where the Goods have been paid for or partly paid for and the Agreement is terminated because of the Purchaser's breach of the Agreement, the Company shall be entitled to retain a reasonable sum to cover any damage or loss it has sustained as a consequence of the Purchaser's breach.

### 11. Non-payment by Due Date

11.1 If payment for the Goods is not made by the Due Date, the Purchaser must return or deliver the Goods to the Company on demand.

11.2 If the Purchaser does not comply with such demand, the Company or its agents are entitled, in addition to any other rights the Company might have under the Agreement, to enter the Purchaser's premises at any time, take possession and remove the Goods.

11.3 The Purchaser indemnifies the Company against any claim, loss, liability, cost and expense that may be directly or indirectly incurred by the Company as a direct or indirect result of the entry of the premises where the Goods are situated or their removal therefrom.

11.4 If the Company takes possession of the Goods as contemplated by this clause, the Company may sell those Goods as it thinks fit but must apply the proceeds of such sale towards the reduction of the amount owing by the Purchaser to the Company.

11.5 The Purchaser acknowledges that the Goods are not intended to become affixed to any premises and must ensure that the Goods may be removed from those premises without causing damage of any kind to the premises.

11.6 The Purchaser agrees to pay all costs and expenses (including legal costs, commissions paid by the Company to any commercial or mercantile agent and dishonour fees) incurred by the Company in connection with the recovery of overdue amounts.

11.7 As security for any amounts due to the Company from time to time, the Purchaser charges all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all Real Property to the Company.

11.8 Without limiting the generality of the charge in clause 11.7, the Purchaser agrees, on request by the Company, to execute any documents and do all things reasonably required by the Company, (including if a beneficial owner, as beneficial owner under the Conveyancing Act 1919 (NSW) or of any analogous implied term under the applicable governing law) to perfect the charge given in clause 11.7 including registering a Caveat over any Real Property.

11.9 The Purchaser consents unconditionally to the Company lodging a Caveat or Caveats noting its interest in any Real Property.

11.10 The Purchaser appoints the Company to be the Purchaser's lawful attorney for the purposes of executing and registering such real property dealings and taking all such steps in that regard.

11.11 The Purchaser appoints the Company as its non-exclusive agent to collect any debts owed by the Purchaser that are due from time to time to the Company.

11.12 A statement in writing signed by an authorised officer of the Company setting out the moneys due or owing to the Company at the date of the statement shall be sufficient evidence of the amount so due or owing.

## **12. Return of Goods, Credits and Refunds**

12.1 Goods may only be returned for credit, exchange or refund where the Purchaser has notified the Company in writing within 7 days of Delivery of their intention to return the Goods (the "Notice Period").

12.2 Any credit, exchange or refund in accordance with Clause 12.1 is conditional upon the:

12.2.1 Goods not being of merchantable quality;

12.2.2 Goods not matching their description;

12.2.3 Goods being damaged prior to Delivery;

12.2.4 Goods being incomplete at Delivery; or

12.2.5 Any circumstance in which the Company is obliged by statute to provide a credit, exchange or refund.

12.3 If notice is not given within the Notice Period, the Purchaser shall be deemed to have accepted the Goods as being in accordance with the Agreement.

12.4 No refunds will be made or credit given where the Purchaser has used, repaired, changed, modified or damaged the Goods in any way.

12.5 A re-stocking fee may be charged by the Company to the Purchaser for any return of Goods at a rate of 15% of the total invoice fee.

## **13. Merchantable Quality**

13.1 Where under any legislation there is an implied warranty that goods or services are required to be of merchantable quality or fit for their intended purpose then the Company and the Purchaser agree that to the extent (if at all) that such legislation permits the warranty to be excluded or limited, the warranty is excluded and/or limited to the fullest extent permitted by law.

13.2 Any express or implied warranty as to merchantable quality or fitness for intended purpose shall (to the maximum extent permissible by law) be deemed waived by the Purchaser to the extent that the Goods are not merchantable or fit for their intended purpose as a consequence of defects in the Goods drawn to the Purchaser's attention:

13.2.1 before entering into an Agreement; or

13.2.2 where the Purchaser has examined the Goods before entering into this Agreement and could be reasonably expected to be aware of the defects; or

13.2.3 the defects have been caused after Delivery or by the Purchaser failing to properly store or use the Goods;

13.2.4 or where repairs have been carried out or where the Goods have been altered.

## **13.3 Consumer Law**

13.3.1 The Company's goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Purchaser is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Purchaser is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. The term "major failure" has a defined meaning under the Australian Consumer Law.

13.3.2 No additional express warranty for defects or otherwise are provided for our products. Consumers may rely upon their statutory rights and remedies under the Australian Consumer Law.

13.3.3 The Company can be contacted in relation to claims as follows:

a) Telephone Number: (02) 9547 1844

b) Email Address: sales@specialisedforce.com.au

c) Mailing address: 131 Woids Avenue, Carlton NSW 2218

13.3.4 Any cost incurred in contacting the Company or delivering the product to the Company will be borne by the Purchaser.

## **14. Liability for Delay**

14.1 The Company shall be liable for delays in the delivery of Goods only if, and to the extent that, all of the following conditions are fulfilled:

14.1.1 A fixed delivery date has been expressly agreed upon in writing between the parties;

14.1.2 The delivery date is more than 5 weeks after that agreed date; and

14.1.3 The delay is caused by the Company's negligence.

14.2 If a delay occurs that satisfies all three criteria in 14.1, the Purchaser shall have the right to cancel the purchase of the delayed portion of the delivery.

14.3 Apart from such cancellation, the Purchaser shall have no other remedy, and the Company shall have no liability, for any delay by the Company in delivering the Goods, whether or not the criteria in 14.1 are satisfied.

14.4 If the Company cancels the delivery at the latest 4 weeks before the agreed date, no damages or any other compensation shall be payable to the Purchaser.

14.5 If the Company cancels the delivery later than 4 weeks before the agreed date, damages, if any, payable to the Purchaser for non-delivery of the Goods shall be equal to the losses actually sustained by the Purchaser. However, the total amount of such damages shall in no event exceed 5% of the price allocated to the non-delivered products.

## **15. Privacy Disclosure & Consent**

15.1 The Purchaser agrees that, subject to the terms of the Privacy Act 1988 (as amended), the Company may, in its absolute discretion, disclose the status of a Purchaser's account to any person or corporation.

15.2 The Purchaser authorises the Company to:

15.2.1 obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in this document and from any other credit provider or credit reporting agency for the purpose of assessing an Account Application or in connection with any guarantee given by the Purchaser

15.2.2 use, disclose or exchange with other credit providers information about the Purchaser's credit arrangements in order to assess an Account Application, monitor credit worthiness and/or collect overdue accounts; and

15.2.3 disclose the contents of any credit report on the Purchaser to the Company and any of their solicitors and agents.

15.3 The Company complies with the privacy principles imposed by law in relation to the collection and disclosure of information regarding individuals.

## **16. GST and Taxes**

16.1 All Prices are exclusive of GST.

16.2 Where GST is payable by the Company on the supply of Goods or Services to the Purchaser, the Purchaser will pay the Company the Price plus GST.

16.3 The Purchaser must provide the Company with its ACN or ABN.

16.4 Any tax, import duty or excise duty is payable by the Purchaser.

16.5 The Purchaser shall not deduct any tax, import or excise duty from the Price payable to the Company.

16.6 All taxes and duties will be added to the Tax Invoice as separate charges.

## **17. Delivery & Storage**

17.1 If the Purchaser requests the Company to store Goods or defer Delivery, the Company may, in addition to the Price, charge the Purchaser a fee for storage of the Goods.

17.2 If the Company is required to deliver the Goods to a place other than the Company's nominated warehouse, then the cost of Delivery and all freight shall be payable by the Purchaser or charged to the Purchaser's account.

17.3 Risk in the Goods passes to the Purchaser upon the Delivery of the Goods.

17.4 Whether or not risk has passed to the Purchaser, the Company shall to the fullest extent permitted by law, be under no liability in respect of any damage caused to or any deterioration of the Goods during transit.

17.5 A certificate signed by the Company's representative confirming Delivery is conclusive evidence of Delivery as is any signed delivery docket.

## **18. Partial Delivery/Forward Orders**

18.1 If the Purchaser places any Forward Order with the Company for Goods, then the Purchaser agrees to pay for so much of any Order as is from time to time Delivered and no delay or failure to fulfil any part of any Order shall entitle the Purchaser to cancel the Agreement, vary the Agreement or delay, or reduce any payment for the Goods.

## **19. Packing and Pallets**

19.1 All packing for Delivery in Australia will be in accordance with the Company's standard practice and is included in the Price.

19.2 If the Purchaser requests any special form of packing or packing material the Purchaser is responsible for any associated additional costs.

19.3 If required by the Company, payment must be made in advance for such packing and packing material.

19.4 If the Goods are to be delivered outside Australia, the Company may, in addition to the Price, charge the Purchaser for all associated international packing and packing material costs.

19.5 If the Goods are to be delivered on pallets, the Purchaser acknowledges that it does not own the pallets and must return, on demand, all pallets provided to the Purchaser by the Company in good order and condition within 7 days.

19.6 The Purchaser agrees to hold pallets as bailee for the Company.

## **20. Force Majeure**

20.1 The Company shall not be held liable for any delay caused by reason of force majeure events or other circumstances or impediments beyond the Company's control.

20.2 Force Majeure events shall include, but are not limited to acts of God, industrial or labour disputes, riots, fires, floods, wars, embargoes, shortage of labour, raw materials, energy or means of transportation or for circumstances caused by reason of laws, regulations, orders or acts of any government or authority.

20.3 In the event of such delay, the Company's performance date(s) will be extended for such length of time as may be reasonably necessary to compensate for the Force Majeure event.

20.4 If a Force Majeure event continues for a period of 3 months or more, the Company may terminate this Agreement immediately by written notice to the Purchaser.

## **21. Limitation of Liability**

21.1 In addition to any other limitation, qualification or pre-condition to liability under these Terms, the liability of the Company to the Purchaser is excluded or limited (where applicable) as follows:

21.2 To the fullest extent permitted by law, all statutory and other implied conditions and warranties relating to the supply of Goods by the Company or the provision of Services by the Company are hereby expressly excluded.

21.3 The liability of the Company to the Purchaser pursuant to any provision of any legislation or pursuant to any other potential liability, whether arising from negligence or not including consequential loss, is limited at the option of the Company to:

21.3.1 the replacement of Goods;  
21.3.2 the supply of equivalent Goods;  
21.3.3 the Repair of the Goods;  
21.3.4 the payment of the cost of replacing the Goods;  
21.3.5 acquiring equivalent Goods; or  
21.3.6 the payment of the cost of having the Goods Repaired.  
21.4 Where the Company provides Services to the Purchaser, then in respect to those Services, the liability of the Company to the Purchaser is limited to the supply of those Services again or the payment to the Purchaser of the cost of having those Services supplied again.  
21.5 Except as expressly provided for in these Terms, the Company shall not be liable to the Purchaser, for any loss, damage, injury to property or persons (whether caused by the negligence of the Company or not) and this exclusion of liability shall include, but is not limited to, all economic or financial loss, consequential damage, loss of profits, loss of business, or loss or opportunity of whatsoever kind or nature arising directly or indirectly out of or in any way attributable to or caused by any defect in the Goods, any late Delivery, or the performance or non-performance by the Company or its agents or contractors or any Services or the failure to carry out those Services adequately.  
21.6 The Purchaser indemnifies the Company against all liability, loss or damage arising directly or indirectly out of any actions, proceedings or claims (including without limitation, claims for Consequential Loss and loss of profits) whatsoever brought against the Company, in the relation to any injury, loss of life or damage to any property, howsoever caused (whether by the negligence of the Company or not) that is in any way attributable to or caused by any defect in the Goods, any late Delivery, or the performance, non-performance or inadequate or part performance by the Company or its agents or contractors of any Services.  
21.7 This indemnity does not limit or affect in any way any other indemnity provided under these Terms or in the Special Conditions.

## **22. Applicable Standards**

22.1 If there are any industry standards, codes or regulatory requirements that may regulate the Goods and/or Services supplied by the Company then the Company gives no warranty to the Purchaser that the Goods and/or Services so comply and the Purchaser has made its own enquiries as to compliance of the Goods and/or Services with those industry standards, codes or regulatory requirements.

## **23. Specifications**

23.1 If the manufacturer of Goods has provided specifications as to the use of the Goods then the Purchaser has satisfied itself as to those specifications and accepts the Goods on that basis.

## **24. Risk and Retention of Title**

24.1 Risk in relation to any Goods passes to the Purchaser at the time the Goods are dispatched from the Company's premises.

24.2 Title in the Goods will pass from the Company to the Purchaser upon full payment by the Purchaser to the Company of all money owing by the Purchaser to the Company.

24.3 While title in the Goods remains with the Company, the Purchaser agrees with the Company that:

24.3.1 The Purchaser has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Company owes to the Purchaser;

24.3.2 The Purchaser cannot claim any lien over the Goods;

24.3.3 The Purchaser will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Company;

24.3.4 The Purchaser will not allow any person to have or acquire any security interest in the Goods without the express written consent of the Company;

24.3.5 The Purchaser must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Purchaser carries on business; and

24.3.6 The Purchaser must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.

24.3.7 Where the Purchaser is in actual or constructive possession of the Goods:

24.3.7.1 The Purchaser will not deliver them or any document of title to the Goods to any person except as directed by the Company; and

24.3.7.2 The Purchaser is in possession of the Goods as a fiduciary and bailee of those Goods and owes the Company the duties and liabilities of a fiduciary and bailee for the Company.

24.3.8 The Purchaser agrees to store the Goods separately and in such a manner to enable them to be identified as the Company's Goods and cross-referenced to particular Tax Invoices of the Company.

24.3.9 The Purchaser agrees to allow the Company, its employees or agents to enter the Purchaser's premises between 9:00am and 5:00pm on any business day to inspect the Goods.

24.4 Where the Purchaser has insured the Goods against loss or destruction, but has not paid for the Goods, the Purchaser shall hold the proceeds of any claim under any such policy of insurance on trust for the benefit of the Company to first pay therefrom such amount of the Price then unpaid.

24.5 Notwithstanding any contrary clause in these Terms, if the Purchaser supplies any of the Goods to any entity or individual before all monies payable by the Purchaser have been paid to the Company (and have not been claimed or clawed-back by any entity or individual standing in the place of or representing the Purchaser), the Purchaser agrees that:

24.5.1 It holds the proceeds of re-supply of all the Goods on trust for and as agent for the Company immediately when they are receivable or are received;

24.5.2 It must either pay the amount of the proceeds or re-supply to the Company immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Company; and

24.5.3 If the Purchaser fails to pay for the Goods within the period of credit (if any) extended by the Company to the Buyer, the Company may recover possession of all the Goods at any site owned, possessed or controlled by the Purchaser and the Purchaser agrees that the Company has an irrevocable licence to do so.

## **25. Security Interest**

25.1 References to sections in this clause are to sections of the PPSA.

25.2 The Purchaser hereby acknowledges that the retention of title arrangement described in clause 24 hereof hereby constitutes the grant of a purchase money security interest by the Purchaser in favour of the Company in respect of all present and after acquired Goods supplied to the Purchaser by the Company.

25.3 The Purchaser undertakes to:

25.3.1 immediately, if requested by the Company, sign any documents, provide all necessary information and do anything else required by the Company to ensure that the Company's purchase money security interest is a perfected security interest;

25.3.2 not register a financing change statement as defined in section 10 or make a demand to alter the financing statement pursuant to section 178 in respect of the Goods without the prior written consent of the Company;

25.3.3 give the Company not less than 14 days' written notice of any proposed change in the Purchaser's name and/or any other changes in the Purchaser's details (including changes in the Purchaser's address, facsimile number, email address, trading name or business practice);

25.3.4 pay all costs incurred by the Company in registering and maintaining a financing statement (including registering a financing change statement) on the Personal Property Securities Register ("PPSR") and/or enforcing or attempting to enforce the security interest created by these Terms including executing subordination agreements;

25.3.5 be responsible for the full costs incurred by the Company (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182;

25.3.6 give the Company free and immediate access to its premises or places within its control to enable the Company to enforce its Security Interests;

25.3.7 procure, immediately upon request by the Company from any persons considered by the Company to be relevant to its security position, such agreement and waivers as the Company may at any time require;

25.3.8 waive any rights it may have under sections 115 upon enforcement; and

25.3.9 not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods until the Company has perfected its purchase money security interest.

25.4 The Purchaser hereby waives any rights the Purchaser may otherwise have to:

25.4.1 apply to a Court for an order concerning the removal of an accession under section 97;

25.4.2 object to a proposal of the Purchaser to purchase or retain any collateral under ss 130 and 135;

25.4.3 receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Company may have in Goods supplied to the Purchaser from time to time under section 157; and

25.4.4 make any request of the Company under section 275, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

25.5 For any Goods supplied that are not goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 in relation to the Goods.

25.6 The following expressions have the respective meanings given to them in the PPSA: accession, collateral, financing change statement, financing statement, interested person, perfected security interest purchase money security interest, register, registration, security agreement, security interest and verification statement.

## **26. Warranty Period**

26.1 During the Warranty Period, the Company will provide the Services.

## **27. Service Fees**

27.1 If either in the Quotation or the Special Conditions the Company has agreed to maintain the Goods, all Maintenance and Repair work shall, unless otherwise agreed, be carried out at the Company's nominated premises or at such other place as the Company may nominate.

27.2 If the Purchaser is obliged under the Agreement to pay Service Fees, they must be paid by the due date in the Quotation.

27.3 The Company's obligation to carry out Maintenance is subject to the Purchaser having paid all Service Fees when due.

27.4 The Company shall be entitled to suspend or cancel the carrying out of any Services if the Purchaser fails to pay any Service Fees when due.

27.5 The Company may terminate the Agreement to maintain the Goods if the Purchaser attempts to carry out its own maintenance and repairs or modifies or in any way changes the nature of the Goods without the prior written approval of the Company.

27.6 All spare parts and replacement parts will be charged to the Purchaser by the Company and must be paid for within 30 days from the end of the month of the day of rendering of the Tax Invoice for those spare parts and/or replacement parts.

27.7 The Company, at its absolute discretion, may refuse to carry out any Service if the Goods have been damaged and, in the Company's reasonable opinion:

27.7.1 it is not practical to repair them; or

27.7.2 the Goods have been misused by the Purchaser, its servants or agents; or

27.7.3 there has been any failure by the Purchaser, its servants or agents to follow any directions given by the Company, its servants or agents in respect to the storage, use or day to day maintenance of the Goods.

27.8 The Company is not liable for any loss or damage including Consequential Loss or damage suffered by the Purchaser or any other person as a direct or indirect result of any delay in carrying out any repair work or any delay in the carrying out of any maintenance.

27.9 With respect to Maintenance and Repair work, the Warranty Period in relation to such work is 3 months from the date of the Tax Invoice.

## 28 Credit obligations

28.1 This clause applies if the Company accepts any order for Goods or Services or both from the Purchaser, whether for cash or on credit, or an Account Application from the Purchaser. The Purchaser has no entitlement to credit unless, in the Company's sole discretion, the Company extends credit to the Purchaser.

28.2 If in a particular case, the Company gives the Purchaser credit, the Company still reserves the right at any time and for any reason in the Company's sole discretion to refuse to supply any further Goods or Services to the Purchaser and to refuse to supply any Goods or Services or both to the Purchaser on credit terms.

28.3 If the Company does decline to give the Purchaser further credit then that decision does not affect the credit terms which apply to any amounts the Purchaser then owes to the Company.

28.4 If the Purchaser fails to comply with any of the terms of these Conditions or in respect of any obligation to pay money to the Company when due, suffers an Insolvency Event or makes any misrepresentation to the Company, the balance of the Purchaser's account to the Company will become due and payable immediately.

28.5 The Purchaser agrees that it must:

28.5.1 pay, without any deduction or setoff, the price charged by the Company for Goods or Services supplied to the Purchaser on delivery or performance, or, if credit terms are offered, within 30 days following the end of the month during which the goods or services were supplied or provided.

28.5.2 pay any stamp duty assessed on this document or fee to register or maintain any security interest held by the Company in respect of Goods or Services supplied to the Purchaser.

28.5.3 advise the Company in writing of the occurrence of any Insolvency Event, any change in its name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of its gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring.

28.6 If the information in any Account Application is found to be misleading or incorrect by its content or omissions or if the Purchaser is in breach of the Account Application or the Agreement, the Company may refuse to supply the goods and/or services and terminate any credit facility immediately.

28.7 Where the Purchaser has more than one Proprietor, or where there is more than one Purchaser, the liability of those purchasers under these Terms will be Joint and Several.

The Purchaser acknowledges that, despite any such event, change, or step the Purchaser remains liable to pay the price for all Goods or Services supplied.

## 29. Notices and Communications

29.1 Any notice to be given by the Purchaser to the Company must be in writing and be delivered to the Company's registered address.

29.2 Any notice given by the Company to the Purchaser must be in writing and (without limitation to other possible modes of service) may be sent by post, facsimile or email to the Purchaser's registered office, principal place of business, last known address, facsimile number or email address.

29.3 If the Order notes the Purchaser's address, facsimile number or email address then, in the absence of any notification of any change thereto, such address, facsimile number or email address shall for all purposes be the Purchaser's last known address, facsimile number or email address.

29.4 A notice is deemed given on:

29.4.1 the day it is personally delivered to a Director or Employee of the Purchaser; or

29.4.2 3 days after posting (excluding the day of posting) by pre-paid post to the Purchaser's address in Australia; or

29.4.3 5 days after posting (excluding the day of posting) by air mail to the Purchaser's address if outside Australia; or

29.4.4 on the day after the day if is sent by facsimile or email.

29.5 A facsimile confirmation is conclusive evidence of the day the facsimile has been sent and or its receipt.

## 30. Intellectual Property

30.1 Where the Company is the owner or licensee of any registered design, copyright, patent or trademark, nothing in these Terms or anything done pursuant to these Terms shall confer on the Purchaser any right or interest in any registered designs, copyright, patent or trademark whatsoever.

30.2 The Purchaser warrants that any design or instruction furnished to the Company will not cause the Company to infringe a patent, registered design or trade mark in the execution of the Purchaser's Order.

30.3 The Purchaser indemnifies the Company against any claim, loss, liability, cost and expense that may be incurred by the Company as a result of any infringement or unauthorised use of patents, trademarks, designs or copyright arising out of the manufacture or use of the Goods.

## 31. Export and Exclusion of Vienna Convention

31.1 Where the Goods are to be exported to the Purchaser then the Company may include additional provisions relating to the shipment of the Goods to the Purchaser.

31.2 The parties expressly agree that any Agreement shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods adopted in Vienna in 1980 (the "Vienna Convention") and that the provisions of the Vienna Convention are expressly excluded.

## 32. Governing Law and Severability

32.1 These Terms are governed by, and interpreted in accordance with, the laws of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts located in Sydney, New South Wales.

32.2 It is agreed that if any provision of these Terms should be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.

32.3 These Terms supersede all previous Terms.

## 33. Waiver or Variation

33.1 A failure or delay to exercise a power or right conferred under these Terms does not operate as a waiver of that power or right.

33.2 The exercise of a power or right conferred under these Terms does not preclude:

33.2.1 its future exercise; or

33.2.2 the exercise of any other power or right.

33.3 These Terms may be, at any time, and from time to time altered, amended, added to or deleted by the Company.

## 34. Guarantee and Indemnity

This Clause 34 applies if the Company requires the Purchaser to provide a guarantor when purchasing Goods and/ or Services from the Company.

34.1 In consideration of the Company agreeing to provide credit to the Purchaser at the Guarantor's request, the Guarantor hereby guarantees (and where the Guarantor consists of more than one person, the Guarantors guarantee jointly and severally) to the Company, the punctual performance by the Purchaser of its obligations under the Company's Terms and any other contractual arrangement it has with the Company from time to time, including its obligations to pay money.

34.2 The Guarantor indemnifies, must keep the Company indemnified and will hold the Company harmless against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against the Company or which the Company may pay, sustain or incur as a direct or indirect result of any breach or non-performance of the Purchaser. The Company may enforce this right of indemnity against the Guarantor at any time, including before the Company has incurred the liability, loss or costs and without first taking proceedings against the Purchaser.

34.3 The Guarantor acknowledges that the Company may rely on this guarantee in providing Credit to the Applicant, and that it is a continuing guarantee to the Company for the whole of the Purchaser's indebtedness or liability to it in respect of goods and/or services supplied to the Purchaser on any other account however and whenever arising.

34.4 This Guarantee is binding on the Guarantor's personal representatives and will be for the benefit of the Company, its successors and assigns.

34.5 The Company may, in its absolute sole discretion, be entitled to:

34.5.1 release or discharge the Guarantor or where the Guarantor comprises two or more persons, release or discharge one or more (but not all) of the persons included as a Guarantor from time to time; or

34.5.2 specify a time for payment, accept any composition from or make any other arrangements with any of these persons included as a Guarantor, without releasing or discharging the other persons included as a Guarantor, without prejudicing or affecting the rights and remedies of the Company against the other persons included as a Guarantor, provided that any part payment or indulgence granted by the Company in writing will constitute discharge of liability to the extent of such part payment or indulgence.

34.6 The Guarantor hereby acknowledges that it is jointly and severally liable for the Purchaser's indebtedness to the Company.

34.7 As security for payment of the Guarantor's obligations under this Guarantee and Indemnity, the Guarantor (and where applicable, each person comprising the Guarantor) agree to grant the Company a Security Interest (as defined in the Personal Property Securities Act 2009 (Cth) (PPSA) in their personal assets including all after acquired property and an irrevocable right to register this interest against it or its property (as the case may be) on the Personal Property Securities Register established under Chapter 5 of the PPSA (Register) including (without limitation) where applicable, as a purchase money security interest. The Guarantor (and where applicable, each person comprising the Guarantor) grants the Company an irrevocable right to search the Register from time to time in relation to it or its property. The Guarantor (and where applicable each person comprising the Guarantor) agrees for the purposes of the PPSA and to the extent permitted by law, Sections 95, 121(4) 128, 129, 130, 132(3) (d), 132(4), 135 and 143 of the PPSA are not required to be complied with by the Company and the Company is not required to give notice under section 135 of the PPSA. The Guarantor acknowledges that if the Company receives any notice in relation to the Purchaser under section 64 of the PPSA, all outstanding payments will become immediately due and payable. The Guarantor (and where applicable each person comprising the Guarantor) agrees to pass such resolutions, execute and sign any documents or forms, as required from time to time to formalise, affirm or perfect the said Security Interest.

34.8 For the purpose of securing payment to the Company the Guarantor (and where applicable, each person comprising the Guarantor) hereby charges all of its, his or her (as the case may be) real property (including all real property acquired after the date of this Agreement) whatsoever and wheresoever situated and all of its or his estate and interest therein, in favour of the Company with the payment of all sums of money whether present future or contingent to which the Guarantor may become liable to pay to the Company and covenants to deliver to the Company within 7 days of written demand a memorandum of mortgage in registrable form, payable on demand and incorporating the covenants contained in Memorandum No.Q860000 registered at the land Titles Office in Sydney and authorises and consents to the Company taking all action necessary to give effect to this security including the lodgement of a Caveat upon title of the Guarantor's real property. The Guarantor (and where applicable, each person comprising the Guarantor) hereby irrevocably appoints the Company and any person nominated by the Company severally, as the attorney of the Guarantor with power to execute sign seal and deliver (which delivery may be subject to such Terms and Conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.

34.9 If the charge created by clause 8 is or becomes void or unenforceable, it may be severed from this Guarantee without any effect on its validity and the Guarantor will not be exonerated on the whole or in part nor will the Company's right, remedies or recourse against the Guarantor be in any way prejudiced or adversely affected by such severance.

34.10 The Guarantor acknowledges that the Company has afforded it full and unrestricted opportunity of seeking independent legal advice on the Guarantor's obligations under the Guarantee prior to signing of this Agreement.

34.11 The Guarantor acknowledges that the Guarantor has made his own enquiries of the Purchaser regarding the Purchaser's past and prospective dealings with the Company and is satisfied as to the extent of his obligations arising from this Guarantee and Indemnity. The Guarantor further acknowledges that the Company is under no obligation to notify him of any changes to its trading terms or dealings with the Purchaser.