STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions ('**Terms**') apply (unless otherwise previously agreed in writing) to the supply of Goods and/or Services by the Seller to the Customer from time to time. Any supply of Goods and/or Services by the Seller to the Customer made after the date of acceptance of these Terms is a supply pursuant to these Terms and does not give rise to new or separate agreements.

1 Definitions

Agreement means the contract formed between the Seller and the Customer constituted by contract details (if any), each Order, these Terms, and any schedules attached.

Blanket Purchase Order means an order made by the Customer for a specific amount of Goods, or for an amount of Goods to be determined in the future, and to be delivered over a period.

Change of Control means in respect of a party:

(1) the sale of the whole or substantially the whole of the assets of that party whether in a single transaction or a series of related transactions;

(2) the sale or transfer of the whole or substantially the whole of the issued shares of that party (if a company);

(3) a change in the identity of a person who is able to exercise Control directly or indirectly (including by its ability to remove or appoint all or a majority of the directors) over an entity.

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

Customer means the entity which orders Goods and requires Services (as applicable) from the Seller or to which Goods and/or Services are supplied (as applicable) by the Seller.

Customer Specifications means instructions or directions (including designs or drawings) issued by the Customer to the Seller in regards to specific requirements of the Customer in connection with the manufacture and supply of the Goods.

Goods means the goods purchased or ordered by the Customer from the Seller under the terms of this Agreement.

GST means goods and services tax imposed in Australia by the GST law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property means all present and future intellectual, industrial or proprietary rights conferred by statute, at common law or in equity anywhere in the world, whether issued or pending, registered or unregistered, including all forms of copyright, patents, trade marks, designs, trade secrets, know-how, confidential information and circuit layouts.

Modern Slavery Laws means the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW) and any other applicable law or regulation relating to modern slavery.

Modern Slavery Offence means any conduct or practice which would constitute modern slavery, or amounts to an offence, under Modern Slavery Laws.

Order means an order by the Customer to the Seller requesting the supply of Goods or performance of Services pursuant to the Agreement. An Order can be in the form of a Customer supplied Purchase Order, Blanket Purchase Order or by the Customer returning a signed Sales Quote to the Seller.

Permitted Security Interest means any security interest which the Seller consents to or otherwise agrees in writing with the Customer will be a Permitted Security Interest for the purposes of these Terms.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSR means the Personal Property Security Register.

PPS Regulations means the *Personal Property Securities Regulations 2010* (Cth).

Purchase Money Security Interest has the meaning given to that term in the PPSA.

Purchase Order means any authorised written order for the supply of Goods and/or Services provided by the Customer to the Seller to make a purchase under this Agreement.

Sales Quote means the applicable sales quote, quotation, proposal, statement of work, order acknowledgement, or other similar documentation setting forth the Goods and/or Services offered for sale by the Seller to the Customer.

Security Interest includes any security interest under the PPSA.

In these Terms, unless the context otherwise requires, the following terms and expressions have the same meanings given to them in the PPSA or the PPSA Regulations (as applicable): after-acquired property, circulating asset, purchase money security interest, collateral, control, commingled goods, financial property, financing change statement, financing statement, possession, purchase money security interest, security agreement and verification statement.

Seller means SMYJ Pty Ltd ACN 625 744 729 or any Related Body Corporate as defined by the *Corporations Act (2001)* (Cth).

Services means the services supplied by the Seller to the Customer under this Agreement.

Supply Chain Participant means a contractor or subcontractor of the Seller used to procure, provide or contribute to the provision of Goods or Services under this Agreement.

Term means the period commencing from the date of this Agreement and continuing until expiry (if applicable) or termination of this Agreement (whichever is the earlier to occur).

2 General

2.1 A Sales Quote made by the Seller to the Customer is an offer to sell or provide Goods and/or Services to the Customer, however it does not give rise to any obligation on the Seller to sell or provide Goods and/or Services to the Customer until accepted by the Seller in accordance with clause 2.4.

2.2 An Order constitutes an offer by the Customer to purchase Goods and/or Services from the Seller in accordance with this Agreement.

2.3 Orders provided by the Customer may be in the form of a Purchase Order, Blanket Purchase Order or signed Sales Quote and must:

(1) be in writing and submitted electronically;

(2) specify the Goods and quantities required;

(3) specify the Services required from the Seller (if any); and

(4) specify the delivery location and delivery date.

2.4 An Order does not become binding until accepted by the Seller. An Order is accepted on the first to occur of:

(1) the Seller advising the Customer of acceptance in writing or signing the Order; and

(2) any act undertaken by the Seller consistent with fulfilling the Order.

2.5 If the Seller makes any change to the Goods (component or Price) within a previously confirmed Order, the Customer must provide an Order with updated details.

2.6 If there is any inconsistency in this Agreement, to the extent of that inconsistency, unless expressly agreed in writing by duly authorised officers of the Seller, the terms prevail in the following order to resolve such inconsistency: contract details (if any), these Terms and any Order details. For the avoidance of doubt, these Terms prevail over any terms and conditions contained in any Order request from the Customer.

2.7 It is the Customer's responsibility when placing an Order to ensure that the Goods and/or Services ordered from the Seller conform to the Customer's requirements and are suitable and sufficient for the Customer's purposes.

2.8 To the extent permitted by law, the Seller will not accept the return of, or give credit for, any Goods accepted by the Customer.

2.9 It is the Customer's responsibility to obtain any approvals, licences or permits necessary for:
(1) the Customer to perform its obligations under this Agreement; and
(2) the use or sale of the Goods by the Customer.

2.10 All descriptive specifications, performance figures, drawings, data, dimensions, and weights furnished by the Seller or contained in catalogues, price lists or advertisements are by way of general description of the Goods only and do not form part of this Agreement.

2.11 It is the Customer's responsibility to provide all information necessary to enable the Seller to provide the Goods and/or Services in accordance with the Customer's requirements and the Customer is responsible for any costs arising directly or indirectly from any error or omission in that information or any delay in providing that information.

2.12 For Orders of a specified quantity of Goods with a non-specified delivery date, if the Customer does not specify a delivery date for any of the Goods within six (6) months of the date of the Order, then the delivery date for the Order will be six (6) months from the date of the Order, unless otherwise agreed in writing between the Customer and the Seller.

2.13 In the event of any dispute concerning any Order (including any question of identity, delegation or authority or any telephone, facsimile, email, ecommerce, or computer-generated order), the internal records of the Seller will be conclusive evidence of what was ordered, in the absence of manifest error.

2.14 Each Order the Customer places is a representation by it made at the time that it is, and will remain in the future, solvent and able to pay all its debts as and when they fall due.

2.15 When any Order is placed, the Customer must inform the Seller of any material facts which would or might reasonably affect the commercial decision by the Seller to accept the Order. The Customer is responsible for any costs arising directly or indirectly from its failure or delay in providing the material facts to the Seller.

2.16 Unless otherwise agreed in writing, an Order will be invoiced in full when the Goods are received into the Seller's warehouse.

3 Price

3.1 Prices quoted by the Seller for Goods and/or Services are based on the full quantities specified and do not necessarily operate pro rata for any greater or less quantities.

3.2 Prices quoted by the Seller for Goods and/or Services are exclusive of GST.

3.3 Prices quoted by the Seller for Goods and/or Services are based on the then present rates and costs of materials including Seller supplied raw materials or ingredients, resin, glass, metal, cardboard, labour, freight, currency exchange rates insurance, customs agents and carriers' fees, government tariffs, duties and taxes and are subject to increase in respect of any variation in such rates or costs or the method of assessment of the same occurring during the Term of this Agreement before delivery of the Goods to or performance of the Services for the Customer.

3.4 The Seller will review prices annually with new pricing effective for all Orders commencing 1st July each year.

3.5 The Seller may review prices throughout the year as the cost of inputs fluctuate.

3.6 The Customer acknowledges that to manufacture the Goods as requested by the Customer, the Seller may be required to acquire or develop specific tools or machinery for the Goods and that as a result, the Seller may require the Customer to order a minimum quantity of the Goods.

4 Terms of payment

4.1 The Seller may require a deposit on Order and any balance of the price owing must be paid either before or on delivery of the Goods to, or performance of the Services for, the Customer (or on the date that delivery is deemed to have taken place in accordance with these Terms), unless the Seller has agreed to provide the Goods and/or Services to the Customer on credit terms.

4.2 Payment for the relevant Goods and/or Services must be made in full within thirty (30) days from the end of the month in which the invoice relating to the relevant Goods and/or Services is issued (or such other period as agreed by the Seller in writing).

4.3 Interest must be paid by the Customer on overdue accounts calculated daily from the day following the day upon which payment should have been made, at the rate of eleven percent (11%) per annum and without any demand being necessary.

4.4 Upon demand being made by the Seller, the Customer must pay to the Seller as a liquidated debt all costs (including legal costs on a solicitor/client basis), expenses or other sums incurred by the Seller in exercising any right or remedy available to it upon default by the Customer.

4.5 Any quotation provided which contains a provision to supply Goods "ex stock" is subject to fulfilment of prior orders at the date of receipt of the Customer's Order.

5 Retention of title, delivery, risk and property

5.1 Any date quoted by the Seller for delivery of Goods or performance of the Services is an estimate only. The Seller is not liable to the Customer for any loss or damage, howsoever arising, for failure to deliver on or before the quoted date.

5.2 The Seller will provide reasonable written notice to the Customer as to when the Goods will be delivered and/or when the Services will be performed.

5.3 Unless as set out otherwise in this Agreement, the Goods will be delivered to Customer ex Works or EXW (Incoterms 2020 Rules).

5.4 The Seller, at its discretion, may agree to act as agent for the Customer for delivery beyond the Seller's premises and in that regard:
(1) all costs of carriage and insurance must be paid by the Customer;

(2) risk in the Goods transfers to the Customer on pick up of the Goods from the Seller's premises by the carrier and the Seller is not liable for any damage caused to the Goods whilst they are in transit; and

(3) the Customer, at its expense must provide labour, cranes or forklift at the point of delivery as well as reasonable access to point of delivery for offloading of Goods without delay.

5.5 Where the Seller agrees to deliver the Goods to the premises of the Customer and where the Seller contracts with a carrier to do so, delivery of the Goods to the carrier in all circumstances constitutes delivery, and risk in the Goods transfers to the Customer on delivery to the carrier.

5.6 A certificate purporting to be signed by an officer of the Seller, or any signed delivery docket, confirming delivery is conclusive evidence of delivery, in the absence of manifest error.

5.7 Legal and beneficial ownership of the Goods will remain with the Seller and will not pass to the Customer until the Seller has received in full (cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which may become due to the Seller from the Customer under this Agreement or on any credit or other account with the Seller. Until ownership of the Goods has passed to the Customer, the Customer must keep such Goods stored separately during the time it has them in such a way that the Goods remain identifiable and must hold such Goods as fiduciary agent and bailee for the Seller. When such Goods are filled or used, even with loss of identity, legal title to the resultant product vests in the Seller.

5.8 If:

(1) the Customer fails to pay any amount (whether in part or whole) payable in respect of any Goods by the time required for payment; or

(2) the Customer is the subject of any insolvency event (such as receivership, administration or liquidation),

the Seller has:

(3) without notice to the Customer, the right to enter and inspect any of the Customer's premises where Goods are located (or believed by the Seller to be located) and where the Goods are or believed by the Seller to be located at a third party premises the Customer will procure access for the Seller to those premises to inspect the Goods; and

(4) the right and power to repossess any Goods to which it retains title and any other Goods to the value of the amount owing.

5.9 The Seller's permission to enter the Customer's premises for the purposes set out in clauses 5.8(3) and 5.8(4) is irrevocable. The Seller is not liable to the Customer in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by the Customer as a result of any action taken by the Seller under the preceding clause 5.8.

5.10 If the Customer resells the Goods referred to above before all moneys payable by the Customer to the Seller have been paid, the Customer agrees that it holds the proceeds of re-supply of the Goods on trust for, and as agent for, the Seller immediately when they are receivable or received, such proceeds to be kept in a separate account.

5.11 The Seller, at its discretion, may deliver the Goods ordered by instalments (without any liability to the Customer arising whatsoever.

5.12 From the date on which the Goods are ready for despatch, the Seller may store the Goods at its premises or elsewhere and the Customer agrees to pay the reasonable cost of storage, handling and insurance on demand by the Seller.

5.13 The Customer shall maintain all necessary insurance policies required to insure the Goods while they are in the Seller's possession, as well as in transit. Customer-owned Goods in storage should be covered by Customer insurance at the retail value of the Goods.

5.14 No delivery may be deferred except with the written consent of the Seller.

6 Cancellation

An Order may only be cancelled, varied or suspended with the written consent of the Seller and in the event of such cancellation, variation or suspension, the Seller may charge the Customer any costs, expenses or charges incurred by the Seller in preparation for, and in the execution of, an Order which may also include an amount equal to ten percent (10%) of the amount that would have been payable to the Seller had the Order proceeded.

7 Quantities

To the extent permitted at law, no claim for shortage of delivery or shortfall or excess in capacity or performance of less than ten percent (10%) of that ordered will be made by the Customer, and in any event, the Customer's remedy will be at the Seller's option to either replace the Goods or provide a refund of the unit price of the undelivered Goods. Excess delivery of up to ten percent (10%) of quantities ordered will be accepted by the Customer and payment made for such excess quantities in accordance with this Agreement.

8 Description and Customer Specifications

8.1 The Seller will use reasonable endeavours to supply the Goods in accordance with the Customer Specifications in all material respects for each production run.

8.2 Any additional item or services that create additional costs will be invoiced to the Customer.

8.3 The Customer acknowledges and agrees that any change in the Customer Specifications may result in a variation to the price of any Goods and/or Services supplied.

8.4 The Seller does not warrant or guarantee, and it is not a term of this Agreement that any Goods and/or Services manufactured, constructed or supplied by the Seller which are based upon any Customer Specifications will achieve any standard of performance or capacity whatsoever and the Customer acknowledges that it does not rely on the skill and judgment of the Seller for the fitness for any purpose of any Goods and/or Services so manufactured, constructed or supplied.

9 Access

9.1 In respect of any work done or Services performed on the Customer's premises or elsewhere other than at the Seller's premises, subject to any written agreement to the contrary, it is the duty of the Customer to ensure that the conditions under which the work or Services has to be performed, the layout, means of access, accessibility of the different parts of the subject matter being worked upon or handled and other material circumstances are suitable to the Seller, failing which the Seller is entitled to charge a reasonable increase in the price having regard to the prevailing circumstances.

10 Inspection and Acceptance

10.1 Upon delivery of Goods, the Customer may inspect those Goods at its expense.

10.2 If the Customer, acting reasonably, believes that some or all of the Goods have not been provided in accordance with this Agreement including shortages, defects or other non-conformance with any Customer Specifications, the

Customer must provide written notice to the Seller specifying the details of the non-conformance within seven (7) days of the date of delivery. If the Customer fails to give any such written notice to the Seller, the Customer will be deemed to have irrevocably accepted the Goods and the Goods will be deemed to have been provided in accordance with this Agreement.

10.3 The Seller will arrange for the Goods to be inspected to determine whether they are defective or non-conforming with any Customer Specifications, and if, acting reasonably, the Seller agrees that any defect or non-conformance is due solely and directly to the negligence or wilful default of the Seller, the Seller will either (at its option) repair or replace the Goods, or pay the actual, reasonable cost of repairing or replacing the Goods. The Seller may charge the Customer a fee for its reasonable costs of inspecting the Goods, however any fee charged will be refunded or waived if the Seller determines the Goods are defective or non-conforming due solely and directly to the negligence or wilful default of the Seller.

11 Force Majeure

11.1 The Seller is not liable for failure or delay in the supply of the Goods and/or the Services, or if the Seller is prevented, impeded, or suffers interference in the performance of its obligations, due in any part to any cause (event or circumstance) beyond the control of the Seller such as, but not limited to, any act or neglect of any carrier, subcontractor, manufacturer or supplier of the Seller, acts of God such as fire, explosion, earthquake, lightning, storm, hurricane, typhoon, perils of the sea, flood, drought, epidemics, pandemics, war, riots, hostilities, strikes, lockouts, bans or other industrial disturbances, failure of international or domestic transportation, any interruption to the supply of the Goods and/or the Services or the materials used in the Goods and/or Services or information or any accidental breakdown of machinery, government interference, order or request, by-laws, rules or regulations, order of any competent authority, or any other similar events or circumstances beyond the control of the Seller. In any of such cases, the Customer shall have no claim against the Seller, and the Seller shall not be liable to the Customer, for any direct, indirect or consequential loss, injury or damage which shall include any loss of trade or profit which may be caused by or sustained by the Customer or any third party.

11.2 The Seller shall, upon the occurrence of any such cause, so inform the Customer in writing stating that such cause has delayed or prevented its performance hereunder within three (3) days of the occurrence of such Force Majeure.

11.3 The Seller shall, as soon as reasonably practicable, resume its obligations when the Force Majeure or the event or circumstance beyond the Seller's control has ceased. No such failure or delay entitles the Customer to withhold or delay payment to the Seller and the Seller's obligations to the Customer under this Agreement will be suspended without liability on the part of the Seller while such cause exists. If the Seller is unable to perform its obligations under this Agreement for a continuous period of thirty (30) days by reason of Force Majeure, then both parties, in utmost good faith, shall enter into discussions with a view to agreeing on such adjustments as may be mutually acceptable to continue the operation of this Agreement, or terminate this Agreement upon written notice to the other party.

12 Intellectual Property

12.1 The Seller owns all Intellectual Property Rights in anything produced by the Seller in connection with the supply of the Goods and/or Services.

12.2 If any Goods and/or Services are supplied in accordance with the Customer Specifications, the Customer warrants that the manufacture and supply of such Goods and/or Services will not infringe the Intellectual Property Rights of any third party (**Third Party IP**) and the Customer indemnifies the Seller against any action, loss, cost, claim, damage or liability that may be brought against or suffered by the Seller for any breach of this warranty by the Customer.

13 Default

13.1 If any of the following events occur, then there is a **Default**:

(1) A party goes into administration, receivership or liquidation.
(2) A party assigns its property for the benefit of creditors or has a receiver or official manager appointed to any of its assets.
(3) Execution is levied upon the assets of the Customer for an amount in excess of $1,000.00 and is not within seven (7) days satisfied.
(4) The Customer fails to make any payment to the Seller under this Agreement on the due date for that payment.
(5) There is a Change of Control in respect of the Customer without the prior written consent of the Seller, such consent not to be unreasonably withheld.
(6) A party breaches any provision of this Agreement and fails to remedy such breach within fourteen (14) days of receipt of notice from the other party requiring it to do so, or breaches any provision of this Agreement and that breach is not capable of remedy.

13.2 If a Default occurs and the Customer is the non-defaulting party, the Customer may, without prejudice to any other remedies available to it, terminate this Agreement (to the extent exercise of such termination right is not suspended by operation of law) and must pay to the Seller the contract price together with default interest in accordance with clause 4.3 for all Goods delivered and for freight, storage, handling and any other expenses incurred by the Seller up to and including the date of termination.

13.3 If a Default occurs and the Seller is the non-defaulting party, then the Seller, without prejudice to any other remedies available to it, may do any one or more of the following:

(1) Suspend production of the Goods.
(2) Cease to perform the Services.
(3) Decline to deliver the Goods, or any balance of the Goods still due under this Agreement.
(4) Stop any Goods in transit and have them returned, at the expense of the Customer, to the Seller.
(5) Otherwise cease to perform any of its obligations to Customer, under this Agreement or otherwise.
(6) Terminate this Agreement (to the extent exercise of such termination right is not suspended by operation of law) without incurring any liability at law or in equity and without prejudice to the rights to recover amounts owing to it by Customer and/or other damages.
(7) In respect of a default under clause 13.1(4), enter onto any premises where Goods are located (or reasonably believed by the Seller to be located) and repossess any Goods already delivered but in respect of which part or all of the purchase price remains unpaid and any other Goods to the value of the amount owing. Except to the extent caused by the negligence or wilful default of the Seller, the Seller is not liable to the Customer in contract, tort or

otherwise for any costs, damages, expenses or losses incurred by the Customer as a result of any action taken by the Seller under this clause 13.3(7).

(8) Recover from the Customer the contract price together with default interest in accordance with clause 4.3 for all Goods delivered and for freight storage handling and any other expenses incurred by the Seller.

(9) Following expiry of the Collection Period (as defined in clause 14.2(1)(b)), to sell the Goods elsewhere and require the Customer to pay as damages any difference between the sale price received in that regard and the contract price for those Goods.

(10) For completed Orders in respect of which the Customer has not paid the contract price, require immediate payment for all Goods the subject of that Order.

14 Termination

14.1 Either party may terminate this Agreement without cause on sixty (60) days' written notice.

14.2 On expiry (if applicable) or termination of this Agreement:

(1) Goods in the Seller's possession and control will either be, at the Seller's option:

(a) delivered to the Customer at the Customer's cost; or

(b) made available for collection by the Customer and the Customer must collect those Customer Goods by no later than seven (7) days after being notified by the Seller that the same are available for collection ("Notification Period"). If the Customer does not collect the Customer Goods prior to expiry of the Notification Period, the Seller will be entitled to charge the Customer storage fees at the Seller's then current rates. If the Customer has not collected the Customer Goods within thirty (30) days from the date of expiry of the Notification Period ("**Collection Period**"), the Seller will be entitled to exercise its rights under clause 13.3(9).

(2) all Orders placed up to and including expiry or termination of this Agreement will be completed by the Seller and paid for by the Customer or cancelled in accordance with clause 6 of the Terms;

(3) all outstanding amounts payable by the Customer to the Seller as at the date of expiry or termination must be paid on the date of expiry or termination of this Agreement;

15 Warranty and liability of Seller

15.1 Neither party excludes or limits the application of any statute (including but not limited to the *Competition and Consumer Act 2010* (Cth) (**CCA**) as amended from time to time and its schedule 2, the Australian Consumer Law), where to do so would contravene that statute or cause a provision of these Terms to be void. Any stated exclusion or limitation in this Terms is only to the full extent permitted at law.

15.2 To the extent permitted by law, the liability of the Seller for any breach of this Agreement by the Seller, tort including negligence or otherwise, non-conformance of the Goods and/or Services with any Customer Specifications, late or non-delivery or for breach of any conditions, guarantee or warranty implied in this Agreement by law, solely and directly attributable to the Seller, is limited to one of the following, at the Seller's option:

(1) In the case of Goods:

(A) the replacement of the Goods or the supply of equivalent Goods;

(B) the repair of the Goods;

(C) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or

(D) the payment of the cost of having the Goods repaired.

(2) In the case of Services:

(A) the supplying of the Services again, or

(B) the payment of the cost of having the Services supplied again.

15.3 To the full extent permitted by law, all other warranties or liabilities imposed or implied, whether by law or by statute, are expressly excluded.

15.4 The Customer assumes all risk and liability resulting from the use of the Goods either alone or in conjunction with other Goods or materials even if the Seller had or should have had prior knowledge of use to which the Goods would be put.

15.5 To the extent permitted by law, the Seller is not liable to the Customer for any indirect or consequential losses, loss of profits or use, loss of opportunity, loss of revenue, any rectification costs or third-party claims in connection with providing the Goods or the Services.

15.6 To the extent permitted by law, the Seller's maximum liability to the Customer for all claims in connection with this Agreement under any circumstances will not exceed the price paid for the Goods and/or Services supplied by the Seller which gave rise to that claim.

15.7 In the event the Goods are covered by insurance taken out by the Seller, the Seller will only be liable for any amounts recovered under that insurance policy.

15.8 As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the Customer, the Customer must immediately notify the Seller in writing of those facts or matters.

15.9 The Seller is not liable in any circumstances for any:

(1) damage to Goods caused by any condition or defect to the Goods outside of the Seller's direct control;

(2) defects in the quality of any packaging material, including but not limited to corks, labels, foil and related effects of such packaging material;

(3) defects or damage caused in whole or in part by misuse, abuse, neglect, electrical or other overload, non-suitable lubricant, improper installation repair or alteration (other than by the Seller) or accident;

(4) any transport installation removal labour or other costs;

(5) Goods not manufactured by it, but the Seller will endeavour to pass on to the Customer the benefit of any claim made by the Seller and accepted by the Customer and the benefit of any claim made by the Seller and accepted by the manufacturer of such Goods under a warranty given by the manufacturer;

(6) technical advice or assistance given or rendered by it to the Customer whether or not in connection with the manufacture, construction or supply of Goods for or to the Customer, provided always that the Seller has rendered such Services with due care and skill and that any materials supplied in connection with those Services are reasonably fit for the purpose for which they are supplied; or

(7) tooling and dies.

15.10 All patterns, dies or other tooling manufactured or obtained by the Seller on behalf of the Customer will be at the sole cost of the Customer. The Seller will use its reasonable endeavours to maintain all such items in good order and

condition unless the Seller, in its sole discretion, determines that the effective working life of such items has expired in which case the Seller will notify the Customer accordingly. If within three (3) months after notifying the Customer of the Seller's intention to dispose of such items, and the Customer fails to claim possession of them, the Seller will dispose of them at the Customer's expense. The Customer must insure such items against all risks whilst in the Seller's custody. The Seller is not responsible for any loss, damage or injury occurring to such items unless such loss, damage or injury has been solely and directly occasioned by the negligence or wilful misconduct of the Seller. Any claim for such loss, damage, or injury may not exceed the actual reasonable, cost of restoring them to good order or condition or replacing them, whichever is the lower.

15.11 The Customer is not entitled to claim possession of any Goods or any items and products or materials provided by the Customer to the Seller until payment in full of all amounts owing for any reason to the Seller by the Customer has been made, including any amount owing under this Agreement (or any other arrangement), and in addition to any right of lien to which the Seller may by law be entitled.

15.12 To the extent the Seller does not have a statutory or common law lien over the Goods under this Agreement, the Customer agrees that the Seller has a general lien over all Goods the subject of any and all services provided by the Seller to the Customer under this Agreement including for the unpaid price of any Goods and other charges under this Agreement or any other contract and any moneys owing (or that may be owed) by the Customer to the Seller (together, **Unpaid Monies**), including a right to sell such Goods where the Customer is in default under this Agreement and to apply such sale proceeds against all Unpaid Monies including but not limited to all costs and expenses of exercising the lien.

15.13 Any proceeds that exceed the amounts owed to the Seller will be credited to the Customer's account.

16 Modern slavery

16.1 The Seller must take reasonable steps to comply with Modern Slavery Laws.

16.2 The Seller represents and warrants to the Customer that at the date of entering into this Agreement and on a continuing basis:

(1) it has no knowledge of a Modern Slavery Offence which has occurred or is occurring within its or a Supply Chain Participant's business or operations;

(2) it has not been convicted of any breach of Modern Slavery Laws and is not subject to any investigation, enquiry or enforcement proceedings anywhere in the world in respect of any breach or alleged breach of Modern Slavery Laws;

(3) it has in place adequate and reasonable policies, controls, procedures and training designed to prevent, detect, assess, manage and remedy a Modern Slavery Offence; and

(4) it has taken, or will take, prior to procuring from, sub-contracting or outsourcing to a Supply Chain Participant, all reasonable steps to confirm that the Supply Chain Participant is not engaging in a Modern Slavery Offence.

16.3 The Seller must promptly notify the Customer in writing and no later than ten (10) Business Days after becoming aware of a Modern Slavery Offence occurring within its or a Supply Chain Participant's business or operations.

16.4 The Seller must promptly provide the Customer with any information that the Customer reasonably requests in writing in order to assist it to comply with its obligations under Modern Slavery Laws, including details of:

(1) its and each Supply Chain Participant's business and operations and any potential risks of modern slavery practices; and

(2) any actions taken by the Seller or a Supply Chain Participant to assess and address the risks of modern slavery practices, including due diligence and remediation processes.

17 Miscellaneous

17.1 This Agreement is governed and construed in accordance with the law of the State or Territory in which the Seller performs the Service and the parties submit to the non-exclusive jurisdiction of the courts of that State or Territory.

17.2 This Agreement is the entire agreement between the parties with respect to the supply of Goods and/or Services to the Customer by the Seller, and any terms and conditions submitted by the Customer to the Seller will be of no effect or application.

17.3 All notices to be served upon the Customer will be duly served if left at or sent by ordinary prepaid post, or by email, to the last known address of the Customer. The Customer will be deemed to have received any notice two (2) days after posting or if emailed before 5pm on a business day, one (1) hour after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, if after 5pm, then the next business day.

17.4 The Customer may not assign any of its rights or obligations under this Agreement without the prior written consent of the Seller. The Seller may assign any of its rights or obligations under this Agreement without the prior written consent of the Customer.

17.5 No conduct by the Seller with respect to any default of the Customer in the performance of any obligation or condition of this Agreement will be a waiver of that or any other obligations or condition. A waiver is valid only if in writing and signed by the Seller.

17.6 This Agreement may be amended, modified or superseded only in writing by the parties.

17.7 Should any provision of this Agreement be declared null, void or unenforceable by any competent government agency or court, this will not affect the other provisions of this Agreement which are capable of severance and which will continue unaffected.

17.8 The termination or expiration of this Agreement will not abrogate, impair, release or extinguish any debt, obligation, or liability of either party incurred or arising prior to the date of termination or expiration of this Agreement; and all undertakings, obligations, releases or indemnities, which by their terms or by reasonable implication are to survive, or are to be performed in whole or in part after the termination or expiration of this Agreement will survive.

17.9 The singular includes the plural and vice versa, words importing any gender include every other gender and where there is more than one Customer, those Customers are bound to the Seller jointly and severally.

17.10 If the Customer is a corporation (with the exception of a public listed company), it must advise the Seller of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders, the Seller may ask for new guarantors to sign a guarantee and indemnity.

17.11 If the Customer is a corporation, the Customer warrants that it has signed this Agreement in accordance with section 127 of the *Corporations Act 2001* (Cth) and that its directors will enter into a guarantee and indemnity with the Seller in relation to the Customer's obligations to the Seller.

18 Credit

18.1 If any Goods and/or Services are supplied to the Customer on credit, the Seller may need to disclose to a credit reporting agency certain information about the Customer when assessing the Customer's application for credit and managing the Customer's account with the Seller. The Customer authorises the Seller to disclose such information to a credit reporting agency.

18.2 The Customer agrees that the Seller may obtain information about the Customer from any business which provides information about the commercial creditworthiness of persons for the purposes of assessing the Customer's application to purchase the Goods and/or Services on credit and collecting any overdue amounts.

18.3 The Seller may refuse to supply the Goods and/or Services to the Customer on credit on the basis of the Seller's credit assessment of the Customer.

18.4 The Customer represents to the Seller, and acknowledges, that any credit provided to the Customer by the Seller is provided and will be applied wholly or predominantly for business purposes.

18.5 The Seller reserves the right to vary the terms of credit or withdraw credit provided under this Agreement at any time, with notice to the Customer, whether the Customer is in default under the terms of this Agreement or not, at its sole discretion without liability to the Customer or any other party.

18.6 Upon cancellation of any credit offered to the Customer, all liabilities incurred by the Customer become immediately due and payable to the Seller.

19 Privacy

The Customer acknowledges the Privacy Policy of the Seller located on the Seller's website and agrees to the Seller collecting, using and disclosing personal information of the Customer for various purposes, including to:

(1) assess creditworthiness in the above paragraph "Credit Assessment";
(2) supply the Goods to the Customer and the management of the Customer's account;
(3) communicate to the Customer about the Goods which the Seller or its partners or affiliates may provide to the Customer;
(4) implement this Agreement; and
(5) comply with relevant laws.

20 Costs

20.1 The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Seller relating to any default by the Customer.

20.2 The Customer must also pay for all stamp duty and other taxes payable on this Agreement (if any).

20.3 Except to the extent the relevant loss was caused by the Seller, and subject to the Seller's obligation to use reasonable endeavours to mitigate its loss, the Customer agrees to indemnify the Seller and keep the Seller indemnified against any claim, including any legal fees and expenses the Seller incurs in order to enforce its rights against the Customer under this Agreement, for any loss or damage to the Goods or property, personal injury or death, or infringement of third party rights in connection with the supply to, and use of the Goods by, the Customer including, but not limited to:

(1) information upon a label or carton used under this Agreement in accordance with the Customer Specifications;
(2) a defect in, the Seller acting on or being unable to use or act on, the Customer Specifications; or
(3) the Customer's, improper storage, handling, transport, sale or consumption of the Goods, or anything they contain, previously handled by the Seller.

20.4 The Customer acknowledges and agrees that payments by the Customer will be applied by the Seller as follows.

(1) Firstly, in payment of any and all collection costs and legal costs in accordance with clause 4.4.
(2) Secondly, in payment of any interest required to be paid under this Agreement.
(3) Thirdly, in payment of the outstanding invoice(s).

21 Set-off

21.1 All payments required to be made by the Customer under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding.

21.2 Any payments required to be made by the Seller to the Customer may be set off against any amounts which may be or may become payable to the Seller by the Customer.

22 PPSA

22.1 The Customer acknowledges that these Terms constitute a security agreement, and entitle the Seller to claim a security interest in the Goods and their proceeds and a Purchase Money Security Interest over the Goods and their proceeds.

22.2 Until such time as payment in full has been received by the Seller from the Customer in respect of all Goods, the Customer covenants to the Seller not to create, cause or permit to exist any other Security Interest over any Goods other than a Permitted Security Interest. The Customer further covenants that it will comply with the terms of each Permitted Security Interest binding on it in respect of the relevant Goods from time to time and will ensure that:

(1) there is no increase in the amount secured under a Permitted Security Interest (excluding any part of a Permitted Security Interest which is a purchase money security interest); and
(2) there is no variation to a Permitted Security Interest that increases the collateral of the subject of the Permitted Security Interest, other than in the case of a purchase money security interest, without obtaining the prior written consent of the Seller.

22.3 The Customer acknowledges that the Seller may do anything it considers necessary, including but not limited to, registering on the PPSR any security interest in the Goods which the Seller has and including registration as a purchase money security interest in order to perfect the Seller's security interest as a first priority interest under the PPSA.

22.4 The Customer covenants to the Seller that it will sign anything and do anything the Seller reasonably requires to assist the Seller to undertake the matters set out in the preceding clause 22.3. This includes anything the Seller requires in order for it to:

(1) register and maintain (including renew before expiry) one or more financing statements in relation to any Security Interest in the relevant Goods created by these Terms and/or any Order;

(2) remove any financing statement which is registered against the Customer or in relation to a Security Interest which is not a Permitted Security Interest; and
(3) obtain possession or control of any Goods for the purposes of perfecting any Security Interest in that property by possession or control for the purposes of the PPSA.

22.5 The Goods supplied or to be supplied under these Terms to the Customer fall within the PPSA classification of "Other Goods".

22.6 The Customer waives pursuant to section 157(3) of the PPSA its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of the Seller under the PPSA. The Seller and the Customer agree, that pursuant to section 115 of the PPSA, the following provisions of the PPSA are contracted out of insofar as they require the Seller to give any notice or statement or allow any period of time or grant any opportunity to remedy to the Customer: sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143.

22.7 Solely to preserve their confidentiality, to the extent allowed under section 275 of the PPSA, the Seller and the Customer agree that neither will disclose information if requested by a third party under section 275(1) of the PPSA.

22.8 The Customer agrees that any rights of the Seller under these Terms are in addition to and not in substitution for its rights under the PPSA.

22.9 The Customer must not without the Seller's consent specify an order of application of payments made to the Seller different to that set out in section 14 of the PPSA or different to any other order specified by the Seller at any time.

22.10 The Customer undertakes to give the Seller not less than fourteen (14) days prior notice of any proposed change in the Customer's name or any other change in the Customer's details (including but not limited to, changes in its address, phone or facsimile number and trading name).

23 Trustee capacity

23.1 If the Customer is the trustee of a trust (whether disclosed to the Seller or not), the Customer warrants to the Seller that:
(1) the Customer enters into this Agreement in both its capacity as trustee and in its personal capacity;
(2) the Customer has the right to be indemnified out of trust assets;
(3) the Customer has the power under the trust deed to sign this Agreement; and
(4) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Seller.

23.2 The Customer must give the Seller a copy of the trust deed upon request.

24 Partnership

24.1 If the Customer enters into this Agreement as partners, the Customer warrants that all of the partners have signed this Agreement and that all of the partners will enter into a guarantee and indemnity with the Seller in relation to the Customer's obligations to the Seller.

24.2 If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Seller. In the case of a change of partners, the Seller may ask for new guarantors to sign a guarantee and indemnity.

25 Confidentiality

25.1 Each party will not, without the written consent of the other, use or disclose to any third party (except approved employees, contractors and advisers) any Confidential Information of the other party, except in performing its obligations under this Agreement.

25.2 Clause 25.1 does not apply where:
(1) disclosure is required by law or by a valid order of a court of competent jurisdiction or of a government or regulatory agency;
(2) the Confidential Information is in the public domain through no breach of this Agreement or fault or action of the recipient, its employees or subcontractors;
(3) the Confidential Information was received by the recipient on a non-confidential basis from a third party who is not prohibited from disclosing it;
(4) the Confidential Information was already in the possession of the recipient with the full right to disclose prior to its receipt from Discloser; or
(5) the Confidential Information was independently developed by an employee of the recipient who had no access to the Confidential Information.

25.3 The recipient acknowledges that any disclosure or misappropriation of the discloser's Confidential Information in violation of this Agreement may cause irreparable harm to the discloser and, agrees that the discloser will have the right to apply to a court of competent jurisdiction for an order restraining any further disclosure or misappropriation and for all other relief the discloser deems appropriate. The rights of the discloser are in addition to remedies otherwise available at law or in equity.

25.4 These obligations of confidentiality will survive termination of this Agreement.

25.5 For the purposes of this Agreement, Confidential Information of a party is any information (not generally available to the public) a party identifies as being confidential or which would reasonably be regarded as confidential and includes without limitation, this Agreement, information relating to the party's intellectual property rights, organisational structure, financial position, personnel, policies and business strategies (whether verbal or written, in tangible or intangible form).

26 Electronic Execution

26.1 This Agreement may be executed using any electronic means and the parties intend that such electronic means of execution will legally bind the parties to the terms of this Agreement with the same effect as if the signature was an original signature.

27 Understanding and Independent Advice

27.1 Each party acknowledges it has:
(1) had the opportunity to read and understand these Terms;
(2) seek independent legal advice; and
(3) negotiate the substance of these terms.