

ambience

MAKING LIGHT WORK

STANDARD TERMS AND CONDITIONS

Incorporating:

General Terms & Conditions
Application for Trading Account
Guarantee & Indemnity

GENERAL TERMS & CONDITIONS

1. DEFINITIONS

In this Agreement, unless the contrary intention appears or the context otherwise requires:

Agreement means these 'General Terms and Conditions' and any accepted Order or Tax Invoice for Goods or Services;

Buyer means the purchaser of the Goods or Services from the Supplier under an Order;

Claim includes any claim, notice, demand, costs (including legal costs and expenses), debts, dues, liabilities, damages, losses, taxes, duties, fees, suits, action, demands, proceeding, litigation, judgment, however it arises;

Confidential Information means all and any information relating to the business, products, affairs and finances of the Supplier in whatever form and including, without limitation, financial and operational information, project information, status reports, historical data, product details, supply details, marketing or business strategies, policies, materials, drawings, data, designs, diagrams, tables, charts, plans, formulations, specifications, software code, know-how, processes, concepts, methodologies, customer information, product development, marketing or sales information, trade secrets and any other information indirectly or directly furnished by the Supplier to the Buyer;

Due Date means the due date shown on the relevant Tax Invoice (or within 7 days if not displayed) unless otherwise agreed in writing;

Electronic Media means any electronic: file; data stream; storage or portable or wireless device; database; process; or structure, which contains data, software, code, video, images, sound, metadata, internet content or any other electronic media.

Goods means any goods to be supplied by the Supplier to the Buyer;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the terms "GST", "Taxable Supply" and "Tax Invoice" have the meanings given to them in the GST Act;

Guarantee means the 'Guarantee and Indemnity' attached to this Agreement;

Guarantor means the guarantor named under the Guarantee;

Intellectual Property means all intellectual and intangible property and owned or held or controlled by a Party or its related bodies or affiliates including: Confidential Information, Electronic Media, copyright; applications for registration of designs and rights in relation to registered or unregistered designs; rights in relation to trade secrets and Confidential Information; and applications for registration of trade-marks, patents and rights in relation to registered or unregistered trade-marks or patents including business and product names.

Jurisdiction means Victoria;

Order means an order or quote for Goods or Services;

PPS Act means the *Personal Property Securities Act 2009* (Cth);

PPSR means the 'Personal Property Securities Register' as defined within the PPS Act;

Price means the amount shown as payable on a quote, accepted order or Tax Invoice;

Privacy Act means *Privacy Act 1988* (Cth);

Services means any services to be supplied by the Supplier to the Buyer; and

Trading Account means, in the event a Buyer applies for the supply of Goods or Services on credit, the trading account operated by the Supplier to supply, sell or hire Goods and Services of whatever nature to the Buyer from time to time on credit.

2. INTERPRETATION

In this Agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural, and vice versa;
- (b) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (c) headings are for convenience only and must be ignored in construing this Agreement;
- (d) references to any person or any party include references to their or its respective representatives, nominees, contractors, sub-contractors, successors, permitted assigns and substitutes, affiliated companies, executors and administrators to the maximum extend allowable;
- (e) references to any law are references to that law as amended, consolidated, supplemented or replaced and includes references to regulations and other instruments under it;
- (f) references to time are references to time in the Jurisdiction;
- (g) the words "include" or "including" or cognate words and expressions are to be construed without limitation;
- (h) references to money and currency are Australian money and currency;
- (i) if a payment or other act (but for this clause) be made or done on a day which is not a Business Day, then it must be made or done on the previous Business Day;
- (j) a warranty, representation, covenant, liability, obligation or agreement given or entered into by more than one person binds them jointly and severally;
- (k) a reference to a document includes the document as modified from time to time and any document replacing it;
- (l) a reference to an obligation, warranty, covenant, representation, guarantee, security, mortgage, charge or a liability (**Responsibility**) in reference to the Buyer will mean that the Guarantor (to the extent it is able) has the same Responsibility; and
- (m) the words "in writing" include any communication sent by letter or facsimile transmission or email.

3. ORDERS

When placing an Order with the Supplier, the Buyer has accepted these General Terms and Conditions.

No Order submitted by the Buyer is deemed to be accepted by the Supplier unless and until confirmed by the Supplier.

The Supplier reserves the right to accept or reject (in whole or in part), in its absolute discretion, any Order received by it from the Buyer and the Supplier does not accept any liability for any losses the Buyer may suffer as a result of any acceptance or rejection.

Order acceptance does not constitute an acceptance of terms and conditions attached to an Order by a Buyer. Unless expressly confirmed in writing these General Terms and Conditions shall apply to all Orders.

Unless otherwise agreed between the Supplier and the Buyer in writing, the content of any marketing materials or the content of other printed materials or the Supplier's website are not binding on the Supplier and are excluded from any contract.

4. GRANT OF CREDIT

For the avoidance of doubt, this clause 4 applies in the event of an application by the Buyer for the supply of Goods or Services on credit.

The Supplier may, in its absolute discretion and without assigning any reason:

- (a) grant, sell or supply any Goods and Services to the Buyer, as requested by the Buyer from time to time, on credit;
- (b) set, change or limit credit in relation to the Trading Account;
- (c) refuse to open a Trading Account;
- (d) close the Trading Account and refuse to extend credit to the Buyer on any account;
- (e) suspend or terminate the supply of Goods and Services;
- (f) place such conditions on a Trading Account as the Supplier determines is necessary;
- (g) debit the Trading Account with all amounts payable by the Buyer to the Supplier;
- (h) issue a Statement; and
- (i) terminate the Trading Account by notice in writing to the Buyer accompanied by a Statement showing the final balance of the Trading Account.

The Supplier's consent to open the Trading Account does not entitle the Buyer, at any time, to credit or any particular amount of credit.

5. DEPOSIT

This clause 5 does not apply to an approved Buyer permitted to purchase Goods and Services on credit by the Supplier, except in the case of custom jobs where a 50% prepaid deposit is payable.

The Buyer shall pay a 50% deposit to the Supplier upon confirmation of an Order by the Supplier.

Upon receipt of the deposit the Supplier will commence preparing the Goods and the provision of the Services. If the Buyer cancels the contract within 10 days of payment of the deposit, the balance of the deposit less reasonable costs already incurred by the Supplier shall be refunded to the Buyer. Should the contract be cancelled after more than 10 days, no refund will be paid by the Supplier.

Should the deposit not cover the reasonable costs incurred up to the date of cancellation, the deposit shall be forfeit and all reasonable costs incurred by the Supplier in excess of the deposit shall be payable on demand.

6. PAYMENT

The Buyer must, without demand from the Supplier, pay the Price on or before the Due Date. The Price will be paid without discount or allowance by cheque or EFT, payable to the Supplier using the account or payment details advised by the Supplier. The Buyer will not be entitled to withhold payment or make any deduction from the Price in respect of any alleged set off, counterclaim or dispute.

This clause does not affect the obligation of the Buyer to pay the entire Price prior to a Due Date where required under any other provision.

By setting the Due Date on a particular Tax Invoice:

- (a) the Supplier does not represent that the Due Date will be the same number of days from the date of the Tax Invoice in future Tax Invoices; and
- (b) the Supplier does not limit its right to vary the number of days between the date of a Tax Invoice and the Due Date from one Tax Invoice to another.

Subject to any statutory rights the Buyer may have as a consumer, and any other clause to the contrary, all payments accepted by the Supplier are non-refundable.

Any payments tendered by the Buyer to the Supplier shall be applied in the following order:

- (a) as reimbursement for any collection or delivery costs;
- (b) in payment of any interest charged;
- (c) in payment of any storage fees charged;
- (d) in satisfaction of any other amounts paid under this Agreement, including under any indemnity; and
- (e) in satisfaction or part satisfaction of the oldest outstanding portion of the Buyer's account.

If there is any underpayment of the Price by way of any mistake or omission on the part of the Supplier, the difference between the Price agreed in the contract and the Price paid by the Buyer is a debt due from the Buyer to the Supplier.

If the Buyer fails to pay the Price and other amounts (and without prejudice to any other rights of the Supplier under this Agreement) the Buyer must pay to the Supplier interest on all unpaid amounts from the date when due until payment at the rate of 2% above the maximum overdraft rate charged by the Supplier's bankers from time to time being in force.

Time is of the essence in respect of the Buyer's obligation to make payment for Goods or Services provided by the Supplier to the Buyer.

7. Delivery Costs

The Buyer will either collect the Goods or, if the Goods are to be delivered by the Supplier, the Buyer must pay all delivery charges incurred by the Supplier for delivery of the Goods to the address nominated by the Buyer.

8. DEFAULT

Without limiting any other rights of the Supplier, if the Buyer defaults in the payment of any monies due to the Supplier, all monies owing by the Buyer to the Supplier will become immediately due and payable, together with all reasonable expenses, costs or disbursements (including legal costs on a full indemnity basis) incurred or to be incurred by the Supplier in recovering any outstanding monies from the Buyer, and the Supplier may, in its absolute discretion, do any one or more of the following:

- (a) enforce its rights under any security granted in favour of the Supplier by the Buyer.
- (b) demand in writing that all such monies are paid in full by the Buyer to the Supplier within 7 days of the date of that demand.
- (c) charge default interest on all outstanding amounts due and owing to the Supplier commencing from the date such amounts become due and continuing until the date payment is actually received.
- (d) enter the Buyers premises or any other premises where the Goods are stored at any time following the failure to remedy any default and retake possession of any Goods supplied by the Supplier to or on behalf of the Buyer that

are the subject of any security interest granted in favour of the Supplier or which are the property of the Supplier.

- (e) take any action under any security granted in favour of the Supplier to recover any Goods which are part of the collateral under that security, and recover any proceeds relating to the collateral under that security.
- (f) enforce any right or remedy provided to the Supplier as a secured party under Chapter 4 of the PPS Act.
- (g) refuse to supply further Goods and Services to the Buyer.
- (h) agree to only supply further Goods and Services to the Buyer on the condition that the Buyer pays for such further Goods and Services in advance to or immediately upon delivery by the Supplier.
- (i) immediately terminate this Agreement upon notice to the Buyer and take such action as the Supplier deems necessary to recover all amounts due.

The Buyer acknowledges that, unless the Supplier determines otherwise in its absolute discretion, the Supplier will not supply Goods or Services to the Buyer until all defaults by the Buyer have been remedied to the Supplier's satisfaction.

9. INDEMNITY

The Buyer fully indemnifies and releases the Supplier, its directors, employees, servants agents and representatives (**Indemnified Parties**) from all Liability and Claims (including legal costs on a full indemnity basis), whether caused by the negligence of the Indemnified Parties, or otherwise in relation to:

- (a) breach by the Buyer of any of its obligations under this Agreement;
- (b) the provision of Goods and Services or their resale;
- (c) cancellation of Orders;
- (d) the Supplier exercising its right of entry;
- (e) maintenance and repair of Goods or if not capable of maintenance or repair, the full replacement value of the Goods;
- (f) the costs of locating, recovering and repairing Goods;
- (g) any unplanned storage and redelivery of Goods;
- (h) any issue arising from dangerous or hazardous Goods; and
- (i) disposal, destruction, abandonment or rendering harmless any Goods,

and acknowledges that the Buyer will be liable for all Claims to the maximum extent allowable by law, regardless of the existence of an insurance policy which may cover all or partially any liability. The Buyer will pay on demand all costs indemnified against under this indemnity.

10. TITLE TO GOODS

The Supplier will:

- (a) in relation to Goods which are sold to the Buyer, remain the sole and absolute owner of the Goods until the price for the Goods has been received in full by the Supplier from the Buyer;
- (b) in relation to Goods provided by the Supplier in connection with the provision of Services, remain the sole and absolute owner of the Goods until the price for all Services provided by the Supplier in connection with the Goods has been received in full by the Supplier; and

- (c) be entitled to retake possession of all Goods in the possession of the Buyer which have been supplied by the Supplier sufficient to clear any outstanding indebtedness by the Buyer to the Supplier under the contract and the Supplier will not be required to distinguish between Goods which have been paid for and Goods which have not been paid for.

Until the supplier has been paid for the goods in full and all other outstanding monies owed to the Supplier have been paid:

- (a) the Buyer will be bailee of the Goods for the Supplier and will store them upon its premises separately from its own Goods or those of any other person and will store them in a manner enabling them to be readily identifiable as Goods of the Supplier;
- (b) the Supplier will have the right at any time to enter the Buyer's premises and retrieve the Goods; and
- (c) the Buyer will not sell or dispose of any of the Goods or any interest in the Goods without the prior written consent of the Supplier.

11. RISK

The Goods will be at the Buyer's risk from the occurrence at the earliest point of time, of any of the following events:

- (a) the physical delivery of the Goods to the Buyer;
- (b) the physical delivery of the Goods to the Buyer's carrier or to an independent carrier for the purpose of transmission to the Buyer or his nominee; or
- (c) the physical delivery of the Goods to the Buyer's place of business.

Notwithstanding the risk in the Goods has passed to the Buyer, the Supplier may effect insurance of the Goods in its own name and in their full value, or such value as the Supplier may decide, against, all usual risks and the costs of such insurance will be determined as at the date of and included in the invoice. All insurance monies received will be applied towards replacement or repair of the Goods.

12. DESIGN

Where the Supplier is requested by the Buyer to provide design services, the terms and conditions contained in this clause 12 shall apply.

The Buyer acknowledges and agrees:

- (a) the lighting plan provided as part of any design specifications is for lighting purposes only and should not be used for construction purposes;
- (b) the lighting plan is designed to be integrated into the construction set drawings;
- (c) if the lighting fixtures are not supplied by the Supplier then the Buyer must supply all relevant IES/LDT files for lux level calculations;
- (d) the Supplier will not be liable for any incorrect IES/LDT files supplied by the Buyer's preferred lighting supplier or for lux level calculations;
- (e) it is the Buyer's responsibility to ensure all relevant IES/LDT files are accurate and correspond with the requirements specified by their lighting supplier;
- (f) it is the Buyer's responsibility to ensure all drawing files, data, information and design specifications provided to the Supplier, are accurate, to metric scale and correct;

- (g) the Buyer is responsible for converting all imperial dimensions to metric dimension and providing scaled drawings;
 - (h) the Supplier will not be liable for any discrepancies or inaccuracies on any drawing files, data, information and design specifications or any incorrect dimensions or scaling of drawings provided;
 - (i) once a lighting plan has been approved by the Buyer, should the Buyer make additional changes to the specifications and supplied light fittings, any additional costs incurred shall be at the Buyer's sole expense;
 - (j) any design brief documents filled out by the architect or Buyer and agreed to by the Supplier must only be amended with the prior written consent of the Supplier. Any changes made prior to the lighting plan being approved or supplied but without the consent of the Supplier shall be at the sole expense of the Buyer;
 - (k) the Supplier will not be liable for any changes to the lighting plan or fittings caused due to a change in site conditions. Any changes to the plan or fitting shall be at the sole expense of the Buyer.
- (c) the use of accessories or equipment including hardware not authorised by the Supplier in writing;
 - (d) any contamination or foreign materials caused or induced by the Buyer;
 - (e) any modification of the Goods or Services which is not authorised by the Supplier including tampering or any attempt to disassemble the Goods or Services;
 - (f) any misuse of the Goods or Services by the Buyer or anyone for who the Buyer has legal responsibility;
 - (g) any use of the Goods or Services outside the specifications for those Goods or Services including electrical power, temperature, humidity or dust;
 - (h) failure for any reason to follow the directions for use in any instructions or manual;
 - (i) inadequate or improper maintenance or storage of the Goods or Services; and
 - (j) normal wear and tear including from cleaning, accidents, acts of God, force majeure event, theft, vandalism or misuse beyond the reasonable control of the Supplier.

To obtain the benefit from this warranty:

13. CUSTOM DESIGNS

The following terms apply to any custom designs, fittings, specifications, finish and dimensions (**Custom Designs**) ordered by the Buyer from the Supplier:

- (a) all Custom Designs must be signed off and approved by the Buyer prior to commencement of any work; and
- (b) once approved, should the Buyer alter the approved Custom Designs, any additional costs incurred will be at the sole expense of the Buyer.

14. WARRANTY

In addition to any applicable manufacturer's warranty, the Supplier warrants all Goods or Services supplied by the Supplier will be free from defects in workmanship and in good working order for a period of 1 year from installation, unless an extended warranty period has been granted by the Supplier in its absolute discretion (**Warranty Period**).

Notwithstanding the above, our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Buyer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Buyer 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 Supplier does not warrant the operation of Goods or Services, the Buyer must read and follow all instruction manuals and instructions. If the Buyer fails to do so it may invalidate this warranty.

This warranty does not apply to any third party goods or services not provided by the Supplier.

During the Warranty Period the Supplier will replace or repair any defective Goods or Services provided by the Supplier without charge, so long as the damage does not arise from:

- (a) improper use, adjustment or operation of the Goods or Services by the Buyer or any other third party not engaged by the Supplier;
- (b) continued use of any Goods after a defect becomes apparent or should have become apparent to a reasonably prudent operator or user;

- (a) the Goods and Services must have been supplied or provided by the Supplier;
- (b) the Buyer must:
 - (i) have complied with any manual or operating instructions in using the Goods and Services;
 - (ii) contact the Supplier within the Warranty Period or within 7 days of discovery of the claimed problem whichever is earlier.
- (c) The Buyer must send a notice in writing to the Supplier enclosing proof of purchase and any other relevant documentation issued by the Supplier upon providing or installing the Goods and Services.
- (d) Upon receipt of the notice the Supplier will contact the Buyer to determine the extent of the issue.
- (e) If there is an issue with the Goods and Services covered by this warranty and that cannot be remedied by the Buyer, the Buyer must arrange with the Supplier a time for a representative of the Supplier to visit the Buyers premises or other location upon which the Goods and Services are located.
- (f) to the extent the Supplier is liable in relation to any defective Goods or Services, the Buyer's remedies is limited to, in the Supplier's absolute discretion:
 - (i) in relation to Goods:
 - A. replacement of Goods;
 - B. repair of Goods;
 - C. the cost of replacing the Goods or acquiring equivalent Goods; or
 - D. costs of having the Goods repaired,
 - (ii) in relation to Services:
 - A. repeating the Services or component of the Services found to be defective; or
 - B. costs of having the Services re-performed,

and provided that the cost of returning items to the Supplier's premises for replacement or repair, or the repeat of Services, will be borne by the Buyer.

- (g) Any service outside the scope of the warranty will be charged at the rates and on the terms confirmed by the Supplier in writing.
- (h) All transportation or other ancillary charges incurred in the repair, replacement or re-performance of the Goods or Services, or any of its component parts, to the Supplier for repair or inspection, and the cost of returning them to the Buyer must be paid by the Buyer.
- (i) Subject to any statutory provisions to the contrary, this warranty does not extend to cover any consequential loss either directly or indirectly due to the defective Goods or Services after the Buyer pays.
- (j) Any notice or other communication including any request, demand, consent or approval, to or by the Buyer must be in legible writing and in English addressed as shown below:

Ambience Lighting Australia Pty Ltd
 416 Heidelberg Road, Fairfield, Victoria 3078
 Tel: +61 3 9486 3699
 email: info@ambielighting.com.au

15. RETURNS

In relation to current stock Goods only, these Goods may be returned and refunded if in re-saleable condition, clean, undamaged, in original packaging and within 14 days of purchase.

Subject to clause 14, custom made Goods or special orders and clearance stock items have a strict no return policy.

16. CLAIM FOR DAMAGE

Where by express written agreement the Supplier becomes responsible for a Claim, no Claim will be allowed unless the Claim is lodged in writing within 72 hours and the Buyer substantiates the Claim. Failure to Claim within 72 hours is evidence of satisfactory performance. Time is of the essence in this clause.

Claims for damage must be reported to sales@ambielighting.com.au within 72 hours.

A goods return application form (**GRA**) must be completed and sent with the Goods. The GRA can be requested by emailing sales@ambielighting.com.au

Goods must be returned to the Supplier accompanied with a completed GRA. Failure to do so, will result in further delays in processing any Claims including any refund or credit.

17. TRUSTEE PURCHASER

In the case where the Buyer enters into the Agreement as the trustee of a trust, it is acknowledged that the Buyer will be liable under this Agreement both as trustee of the trust and in the Buyer's own right and that in addition the assets of the trust will be available to satisfy the Buyer's liabilities under the Agreement.

18. SECURITY

The Buyer grants to the Supplier a security interest in:

- (a) all Goods and Services supplied by the Supplier to the Buyer; and
- (b) over any monies outstanding from time to time as security of the Buyer's obligations under the Agreement.

The Buyer acknowledges and agrees that the Agreement will be taken to be a security agreement for the purposes of each relevant security interest and each supply of Goods and Services to the Buyer by the Supplier.

The Buyer consents to the Supplier perfecting its security interest in all Goods and Services supplied by the Supplier to the Buyer from time to time (and all proceeds relating to the same) by registration on the PPSR.

The Buyer must do all things that the Supplier may require from time to time to ensure that the Supplier has a perfected purchase money security interest over Goods and Services supplied by the Supplier to the Buyer.

To the extent the law permits, the Buyer and the Supplier agree that:

- (a) for the purposes of section 115(1) and 115(7) of the PPS Act:
 - (i) the Supplier need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPS Act; and
 - (ii) sections 142 and 143 of the PPS Act are excluded;
- (b) for the purposes of section 115(7) of the PPS Act, the Supplier need not comply with sections 132 and 137(3) of the PPS Act; and
- (c) the Buyer will not exercise its rights to make any request of the Supplier under section 275 of the PPS Act, 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.

To the extent the law permits, the Buyer waives:

- (d) its rights to receive any notice that is required by:
 - (i) any provision of the PPS Act (including a notice of a verification statement); or
 - (ii) any other law before a secured party exercises a right, power or remedy; and

any time period that must otherwise lapse under any law before a secured party exercises a right, power or remedy.

If the law which requires a period of notice or lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer). However, nothing in this clause prohibits the Supplier from giving a notice under the PPS Act or any other law.

The Buyer acknowledges that it has received value as at the date of first delivery or collection of Goods or Services supplied by the Supplier and has not agreed to postpone the time for attachment of the security interest granted to the Supplier.

Terms used in this clause which are defined terms in the PPS Act, will have the same meaning as given to them in the PPS Act.

Any expenses, costs or disbursements (including solicitors' costs on a full indemnity basis) incurred by the Supplier in recovering any outstanding monies under the contract is to be paid by the Buyer immediately upon the Buyer receiving written demand for payment from the Supplier.

19. FORCE MAJEURE

If the Supplier is prevented or delayed (directly or indirectly) from carrying out an obligation or making delivery of the Goods or Services or any part thereof, either in whole or in part by reason of force majeure or any cause outside its control or by reason of strike, lockout, labour dispute or shortage, trade dispute, fire, breakdown, flood, serious inclement weather, cyclone, natural disaster, earthquake, lightning, explosion, accident, road or rail closure, rail derailment, wharf delays, act or omission of air traffic

control, act of god, acts of war, acts of public enemies, terrorist acts, sabotage, epidemic, quarantine restriction, riots or civil commotion, the Supplier's obligations will be suspended and the Supplier will be under no liability whatsoever to the Buyer and the Supplier is be entitled at its option either to cancel the contract or to extend the time for its performance of the contract.

20. LIMITATION OF LIABILITY

Liability of the Supplier for breach of a condition or warranty compulsorily implied into the contract by the *Competition and Consumer Act 2010* (Cth) (as amended), or any other legislation, will be limited to the maximum extent permitted by that legislation and the Supplier will have no obligation beyond the obligations imposed by that legislation.

21. TERMINATION

The Supplier may terminate this Agreement at any time by giving the Buyer 7 days' notice in writing.

The Supplier may terminate this Agreement immediately by written notice to the other party if the Buyer:

- (a) is in default under the terms of this Agreement and, if the default is capable of remedy but the Buyer does not remedy that default within 14 days of notice requiring it to do so;
- (b) goes into liquidation or provisional liquidation, has an administrator or controller appointed to it or any of its property, fails to comply with a statutory demand, is unable to pay its debts or otherwise becomes insolvent; or
- (c) any of its personnel, servants or employees are convicted by a court of law of any criminal act in relation to the Goods or Services supplied under this Agreement.

On termination of this Agreement the Buyer must immediately:

- (a) pay all outstanding amounts due to the Supplier; and
- (b) return all Goods that have not been paid for by the Buyer but may be in the possession of the Buyer to the Supplier.

22. NOTICES

A notice under this Agreement must be signed by or on behalf of the party giving it, addressed to the party to whom it is to be given and:

- (a) delivered by hand to that party's address;
- (b) sent by pre-paid mail to that party's address; or
- (c) sent by email to that party's email address.

A notice given to a party in accordance with this clause is treated as having been given and received if:

- (a) delivered to a party's physical or email address, on the day of delivery if a Business Day, otherwise on the next Business Day; or
- (b) sent by pre-paid mail, on the third Business Day after posting.

For the purposes of this clause the addresses and email addresses of a party are those address of which a party may from time to time give by Notice to any other party.

23. GST

Where not explicitly indicated otherwise all prices are exclusive of GST.

To the extent that a party makes a Taxable Supply under or in connection with this Agreement, the consideration payable by a party under or in connection with this Agreement represents the

value of the Taxable Supply for which payment is to be made and on which GST is to be calculated.

If a party makes a Taxable Supply under or in connection with this Agreement for a consideration, which represents its value, then the party liable to pay for the taxable supply must also pay at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

The right of a party to payment under this clause is subject to a Tax Invoice being issued and delivered by the supplier of the taxable supply to the recipient.

24. DISPUTE RESOLUTION

A Party must not start a Claim (except for proceedings seeking injunctive, declaratory or interlocutory relief) in respect of a dispute arising out of this Agreement (**Dispute**) unless it has complied with this Dispute Resolution Process.

A Party claiming that a Dispute has arisen must provide a Notice to the other Party, giving details of the Dispute (**Dispute Notice**).

During the 14 day period after a Dispute Notice is given (or longer period if agreed in writing by the parties to the Dispute) (**Initial Period**) each Party must use its best efforts to resolve the Dispute.

If the Parties are unable to resolve the Dispute within the Initial Period, each Party agrees that the Dispute must be referred for mediation (**Mediation**), at the request of any Party, to:

- (a) a mediator agreed on by the Parties; or
- (b) if the Parties are unable to agree on a mediator within 7 days after the end of the Initial Period, a mediator nominated by the then current President of the Law Institute of Victoria or the President's nominee.

Once a mediator has been chosen, the Parties agree to attend and complete Mediation in good faith, within 14 days and on the basis to resolve the Dispute.

The role of any mediator is to assist in negotiating a resolution of the Dispute and a mediator may not make a decision that is binding on a Party unless that Party has so agreed in writing.

Any information or documents disclosed by a Party under this clause:

- (a) must be kept confidential; and
- (b) may not be used except to attempt to resolve the Dispute.

Each Party must bear its own Costs of complying with this clause and the Parties must bear equally the Costs of any mediator engaged.

After the Initial Period, a Party that has complied with this clause may terminate the Dispute Resolution Process by giving notice to the other Party.

25. PRIVACY

In applying for a Trading Account the Buyer gives permission to the Supplier and any credit reporting agency or similar organisation to:

- (a) use the personal information supplied by the Buyer to assess the credit worthiness of the Buyer;
- (b) obtain a consumer credit report about the Buyer;
- (c) create or maintain a credit information file containing information about the Buyer; and
- (d) notify other credit providers or any credit reporting agency of any default by the Buyer.

The permission is effective from the date the "Application for Trading Account" is submitted, until the termination of the Trading Account or notice from the Supplier that it declines to provide, or continue to provide, credit to the Buyer. The information that can be used can include, without limitation, anything about the Buyer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to use or exchange under the Privacy Act.

26. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- (a) Information is not considered Confidential Information if it is information which:
 - (i) has become available to the public through no fault or breach of the Buyer;
 - (ii) the Buyer rightfully had in its possession prior to this Agreement; or
 - (iii) is required to be disclosed by any law.
- (b) The Buyer must not, without the prior written approval of the Supplier in each instance or unless otherwise expressly permitted, use for its own benefit, publish or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of the Supplier, any of the Confidential Information and may only disclose Confidential Information if required by a judicial or governmental request, requirement or order provided that it will take reasonable steps to give the Supplier sufficient prior notice of such request so the Supplier may at its option contest such request, requirement or order.
- (c) The ownership of all rights, including Intellectual Property rights, in any Confidential Information, remain the property the Supplier, and no licence or other right to the Confidential Information is granted or implied.
- (d) The Buyer agrees that it will not acquire any ownership or other rights (including Intellectual Property and moral rights) over any Confidential Information provided to it by the Supplier.

27. GENERAL

The Buyer is required to comply with all applicable laws especially safety laws and those relating to the carriage of dangerous or hazardous Goods, if applicable.

The Supplier may have one or more sub-contractors perform all or any part of the Services. The Supplier will act as the agent and trustee for sub-contractors who have the benefit of these

conditions as if this contract was entered into by the sub-contractor.

This Agreement may only be amended in writing and signed by all parties.

The Buyer must not assign or deal with any right under this Agreement without the prior written consent of the Supplier and any purported dealing in breach of this clause is of no effect.

This Agreement will be binding on the parties and their respective representatives, successors and assigns.

The parties are responsible for their own costs or expenses incurred in connection with preparing and executing this Agreement.

This Agreement contains the entire understanding between the parties concerning the subject matter contained herein. All previous representations, warranties, explanations and commitments, expressed or implied, affecting the subject matter (except for agreements and deeds and documents reasonably ancillary to this Agreement and signed or executed on or about the same time) are superseded by this document and have no effect.

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

The obligations in this Agreement (to the maximum extent possible), survive expiry of this Agreement and are enforceable at any time at law or in equity.

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

To the extent enforceable this Agreement and its subject matter are governed by the law in the Jurisdiction and the parties submit to the non-exclusive jurisdiction of the Jurisdiction's courts and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Agreement and its subject matter.