

## The entire Terms and Conditions of Supply of all Goods supplied by Eurofit Hardwares Pty Ltd ACN 106 455 369, known as EUROFIT or EUROFIT HARDWARE (“the Supplier”)

**Clause 1 sets out a glossary to help the parties read and understand the Terms.**

### 1. DEFINITIONS AND INTERPRETATION

**Account Customer** means a Customer who has a Credit Account with Us.

**Additional Expenses** means any duties, fees, taxes (including GST), delivery charges, merchant fees, account keeping fees, installation fees, storage fees and levies imposed by these Terms.

**CBD Customer** means a Customer who is not an Account Customer.

**Credit Account** means the approved commercial account You have with Us to purchase Goods on credit pursuant to these Terms.

**Customer** means any person, firm or company placing an order with Us for the purchase of Goods pursuant to these Terms, any Quote or Order and includes Your agents and permitted assigns (all of which are referred to as “You” and “Your”).

**Deposit** means the part payment of each Order price, as advised by Us.

**Due Date** means the date listed on Our invoice for Your payment of Goods, or otherwise 30 days from the end of the month in which the Invoice is issued

**Goods** means any goods and services supplied by Us to You pursuant to any Quote, Order and/or these Terms, including but not limited to drawer and door systems, handles and knobs, hinges and pistons, legs and castors, fasteners, locks, inserts and accessories, and general hardware.

**Insolvency Event** means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

**Loss** means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

**Order** means an order for the purchase of Goods placed by You.

**PPS Law** means:

- (a) the *Personal Property Security Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

**Quote** means a written description of the Goods to be provided by Us to You.

**Supplier** means the entity specified in these Terms as supplying Goods to You and includes any associated, related, subsidiary and parent companies, successors and assigns who supply Goods to You (all of which are referred to as “Us”, “We” and “Our”).

**Terms** means the contract between the Customer and Supplier created by these Terms and Conditions of Supply.

**Website** means [www.eurofit.com.au](http://www.eurofit.com.au) as redirected from time to time.

In these Terms:

- (a) A Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods are being supplied;
- (b) a reference to writing includes email and any communication through Our website;
- (c) a reference to a clause or paragraph is a reference to these Terms;
- (d) a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings and any explanatory notes and paragraphs are for ease of reference only and do not affect the meaning or interpretation of these Terms; and
- (g) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

**Clauses 2 – 4 outline how these Terms are set up, our relationship under these Terms and how these Terms can be changed**

### 2. THIS AGREEMENT AND OUR RELATIONSHIPS

- (a) These are the entire terms and conditions of sale of all Goods supplied by Us to You. Except where the parties agree otherwise (which must be by a duly authorised officer and in writing), these Terms apply notwithstanding any provisions to the contrary which may appear on any other document, including a Quote, Order or Invoice.
- (b) You warrant that You have obtained all the necessary authorisations to enter into and perform the contract created by these Terms.
- (c) You accept these Terms by signing and returning a copy of them to Us or by other conduct, for example by oral acceptance, making an Order.
- (d) You engage Us to provide Goods strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.

### 3. APPLICABLE LAW

- (a) You agree that these Terms are interpreted according to the laws of the State or Territory as We may determine in Our sole discretion. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of Victoria applying the laws of that State.

### 4. CHANGES AND UPDATES TO THE TERMS

- (a) From time-to-time, and at any time, We may update or alter these Terms, including prices. Any updated or altered Terms will apply from the date of alteration. A copy of current Terms can be found on Our website or by requesting a copy from Us.
- (b) We will endeavour to notify You of any updated or altered Terms, including prices. However, there is no obligation whatsoever on Us to notify You of updated or altered Terms and You agree that You must regularly inspect Our website for any updated or altered Terms.
- (c) You must notify Us in writing of any material change to Your organisation, including a change of name, structure, status, trustee, partner, director, contact details, bank account details or address. We may ask You for a new credit application, Terms or any personal guarantee in Your new entity name as restructured or changed.

- (d) We may assign and transfer all or any of Our title, estate, interest, benefit, rights, duties and obligations in these Terms to any person, provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (e) You must not assign, transfer, charge, encumber or otherwise deal with any of Your rights and obligations under these Terms, or attempt or purport to do so, without Our prior written consent.
- (f) If any provision (whole or part) of these Terms is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If modification is not possible, the relevant provision (whole or part) will be deleted. Any modified or deleted provision will not affect the validity and enforceability of the rest of these Terms.

***Clauses 5 and 6 deal with how to purchase from Us, including quotes, orders, supply and delivery***

**5. PRICES, QUOTATIONS AND ORDERS**

- (a) You may purchase Goods by placing an Order with Us verbally or in writing. You warrant that the person who places the is authorised by You to place the Order.
- (b) We may issue a Quote to You, but a Quote is not an offer by Us to supply Goods to You. All Quotes expire on the date stated on the Quote or otherwise 30 days after the date the Quote is issued by Us. We may vary or cancel any Quote before an Order is accepted.
- (c) We may accept or decline any Order by notifying You in writing or by delivering the Goods to You. The parties agree that these Terms apply to all Orders for the supply of Goods.
- (d) If You are a CBD Customer,
  - i) We may require You to pay a Deposit upon receipt of a Quote from Us;
  - ii) If We ask You for a Deposit, We will not be deemed to have accepted Your Order until payment of the Deposit has been made;
  - iii) The full price of the Order must be paid no later than three (3) days prior to delivery of the Goods.
- (e) You may cancel an Order within twenty-four (24) hours of placing the Order without incurring any cancellation fees. If you cancel an Order after twenty-four (24) hours, You:
  - i) Will be required to make full payment of Your Order;
  - ii) Agree that we will be entitled to retain any Deposit paid by You and apply the payment at Our discretion towards any sum owed to Us.
- (f) Unless the parties agree differently in writing, the price You must pay for Goods is specified in Our invoice and may include Additional Expenses. We have the right to change the prices of Goods supplied under these Terms, without notice, before accepting any Order or request for a Quote.
- (g) All amounts payable by You for Goods are inclusive of GST (unless expressly stated otherwise). You must pay Us GST imposed on any supply of Goods made under these Terms. Payment of any GST must be made at the same time as payment for the Goods.

**6. SUPPLY AND DELIVERY**

- (a) The specifications for the Goods to be supplied under these Terms are contained in the Order/s for Goods You submit from time-to-time.
- (b) At any time, We may appoint an agent to perform Our obligations of supply and delivery under these Terms.
- (c) To supply the Goods to You, we may make the Goods available for Your collection or deliver the Goods. Delivery may be by a third-party carrier and delivery by instalments.
- (d) We will use our best endeavours to notify You twenty-four (24) hours prior to any scheduled delivery time.
- (e) You authorise Us to deliver the Goods to the place nominated by You. You also authorise Us to leave the Goods at this place whether

or not any person is there to accept delivery. We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of the Goods being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Goods delivered.

- (f) You must provide a suitable and safe area for Us to deliver the Goods, including a delivery site that is compliant with occupational health and safety legislation and fully insured for Our (or Our agents, employees or contractors) safe use.
- (g) All delivery times indicated by Us are estimates only. Delivery times are subject to the Goods being available and subject to Our reasonable ability to make the delivery on that date. We will endeavour to deliver Goods at the time you need, but if We fail to deliver Goods within a specified time or We fail to deliver any instalment, You are not allowed to cancel Your Order, refuse to accept delivery or refuse to pay for the Goods.
- (h) Delivery of the Goods is deemed to occur when the Goods are:
  - i) Handed to You or Your representative; or
  - ii) Delivered to the site nominated by You or appearing on Your invoice for the Goods; or
  - iii) Collected from Us by You or Your representative, whichever occurs first.
- (i) When delivery occurs Our delivery obligation is discharged.
- (j) If You do not collect the Goods by the nominated collection date, then We may deliver the Goods to any site nominated by You or appearing on Your invoice for the Goods. We may also store the Goods or refuse to store the Goods if full payment has not been received from You.
- (k) You agree to examine the Goods immediately on delivery.
- (l) We are not liable for any Loss suffered by You whatsoever after delivery of the Goods to You.
- (m) You must pay all costs and fees We incur due to:
  - i) Our storage or delivery of the Goods where You have failed to collect them by the nominated collection date;
  - ii) Any delay in delivery of the Goods which is caused by You, the conditions of the nominated delivery site or the nature of the Goods being delivered;
  - iii) Any unexpected labour, permit, licence or additional costs in connection with the delivery.
- (n) Entry onto Our premises is at Your own risk. It is also at the risk of Your agents, employees, contractors and other representatives. We are not liable for any Loss whatsoever that You (or any of Your agents, employees, contractors or other representatives) incur at Our premises.

***Clauses 7 - 9 outline how we get paid including making payment, credit accounts and security***

**7. PAYMENT AND CREDIT**

- (a) Unless the parties agree differently in writing, You must pay for Goods and all Additional Expenses charged in relation to the Goods on or before the Due Date.
- (b) If You believe You have a set-off or claim against Us, You cannot withhold any payment on that basis without Our prior written consent.
- (c) If You do not pay for Goods by the Due Date, We may:
  - i) Charge You a reasonable surcharge for processing payments made by credit card, at an amount advised by us from time to time;
  - ii) Charge You interest on all overdue accounts a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and

compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;

- iii) Require You to pay cash on delivery of any further Goods or suspend any further deliveries of Goods or cease supplying Goods to You;
  - iv) Demand Your immediate payment of all outstanding monies;
  - v) Charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider). The reasonable fee will be an amount advised by us from time to time;
  - vi) Credit any payments received from You first against any interest charges and costs and all such charges will be payable on demand; and
  - vii) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.
- (d) You may apply for a Credit Account with Us to purchase Goods. We have no obligation to provide or continue to provide credit facilities to You. You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (e) A Credit Account must only be used by You, which means it cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent. Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (f) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to return Your Credit Account to the credit limit before placing any further Orders.
- (g) You also authorise Us to debit Your Credit Account with the price of Goods supplied to You and all other amounts owed by You to Us (including fees and interest payable under the Contract).
- (h) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt owed to Us by You.
- (i) Time is of the essence in relation to this section. This section survives expiry or termination of these Terms.

## 8. RISK AND OWNERSHIP

- (a) Unless the parties agree differently in writing, all risk in the Goods passes to You when the Goods are delivered to You (or Your agent, representative or nominated carrier) or when the Goods are collected by You (or Your agent or nominated carrier).
- (b) Legal ownership of any Goods does not pass to You until We have received all amounts owing by You on any account whatsoever with Us including any Additional Expenses.
- (c) We license you to install the Goods. If the Goods are affixed to other material, We retain ownership of the totality of the Goods and the materials until legal ownership passes to you in accordance with these Terms.
- (d) If the materials that the Goods are affixed to is owned by a third party, the totality of the Goods and the materials is deemed to be owned as tenants in common by Us and the third party in shares corresponding to the amounts paid by the third party and payable by You.
- (e) Until legal ownership of the Goods passes to You, the Goods are held by You for Us as bailee. You must store the Goods separately from Your own or anyone else's Goods. Storage must be in a way that clearly identifies the Goods as Our property and prevents the Goods from being damaged or spoiled.
- (f) You may resell any Goods before legal ownership passes to You, provided that You:
- i) Resell the Goods to a third party in the ordinary course of

business;

- ii) Act in any transaction as Our fiduciary agent;
  - iii) Hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
  - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
  - v) Allow us to inspect any records of any payments received for Goods.
- (g) If You do not pay for any Goods by the Due Date or You suffer an Insolvency Event, then We may repossess the Goods wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any premises occupied by You without notice for the purpose of identifying and repossessing any of the Goods. We reserve these repossession rights without being liable to You or any other third party in any way.
- (h) You must insure the Goods at Your own cost and expense. Insurance must be to the full extent of the price paid or payable for those Goods and remain valid at all times. This includes, but is not limited to, between the time that risk in the Goods passes to You and the date that title in the Goods passes to You.

## 9. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Goods supplied by Us from time to time and any proceeds of the sale of the Goods to secure payment for the Goods ("**Security Interest**").
- (b) Each sale or supply of Goods by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Goods and the proceeds of the sale of the Goods, including as a purchase money security interest (as that term is defined in the PPSA) ("**PMSI**"), pursuant to these Terms.

## Assurances

- (d) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods, including for the purposes of:
- i) Ensuring that any Security Interest created under, or provided for, by these Terms:
    - a. Attaches to the collateral that is intended to be covered by that Security Interest; and
    - b. Is enforceable, perfected and otherwise effective; and
    - c. Has the priority required by Us.
  - ii) Enabling Us to prepare and register a financing statement or financing change statement;
  - iii) Enabling Us to register a PMSI under the PPSA; and
  - iv) Enabling Us to exercise and maintain any of the Our rights or powers in connection with any such Security Interest.
- (e) If You dispose of the Goods, You must:
- i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
  - ii) Not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
- (f) If a higher-priority security interest does arise in the Goods despite Your obligations under this section, You must:
- i) Ensure that You receive cash proceeds for the Goods of at least equal to the market value of the Goods; and
  - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards

amounts owing by You to Us in such order as We see fit.

- (g) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

#### **Exclusion of Notices and Other Obligations**

- (h) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
  - i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
  - ii) Sections 142 and 143 are excluded;
  - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (i) To the extent permitted by law, You agree to waive:
  - i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
  - ii) Any time period that must otherwise lapse under any law before a secured part or a receiver exercises a right, power or remedy.
- (j) If the law that requires a period of notice or a 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).

#### **Provision of Information**

- (k) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, 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.
- (l) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
  - i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
  - ii) We disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (m) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (n) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

#### **Other**

- (o) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (p) Nothing in this part limits or is limited by any other provision of these Terms and Conditions or any other agreement between the parties.

***Clauses 10 and 11 make sure You get what You paid for, including returns and any warranties that apply to goods sold***

#### **10. RETURNS**

- (a) Unless We agree differently in writing, We are not required to accept returned Goods from You.
- (b) If We agree to accept Goods by return, You must provide Your proof

of purchase for the Goods being returned. We may charge You reasonable restocking, disposal or repacking charges which We incur from the Goods being returned.

- (c) Any Goods which are not in original or resaleable condition cannot be returned, including Goods which have been cut to length and bespoke Goods which have been custom-made to Your instructions.
- (d) You are responsible for any Additional Expenses associated with any return of Goods.

#### **11. WARRANTIES**

- (a) If You are a consumer as that term is defined under the Australian Consumer Law, Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are 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 benefits provided to You under this part are in addition to other rights and remedies available to You under the law.
- (b) We do not give any warranties or guarantees in addition to those provided by the Australian Consumer Law.
- (c) We only deal with commercial Customers purchasing Our Goods for business purposes, and not Customers who are consumers (as that term is defined under the Australian Consumer Law). The Australian Consumer Law will not apply to Goods sold by Us. When purchasing Our Goods You warrant that You are not a consumer (as that term is defined under the Australian Consumer Law).
- (d) If You think any Goods are defective, damaged, missing or misdelivered, You must notify Us of any complaint in writing and within seven (7) days of delivery/collection of those Goods. You must take all steps necessary to mitigate any Loss arising from any defect in the Goods supplied. You will be deemed to accept the Goods (including any defects) if You do not make a complaint in accordance with these Terms.
- (e) Any complaint under this section must be accompanied by:-
  - i) Proof of purchase;
  - ii) Written details of the alleged defect including photographs;
  - iii) Appropriate documentation (such as installation and maintenance records).
- (f) You must allow Us or Our authorised representatives access to the Goods for inspection.
- (g) Goods which are not manufactured by Us are subject solely to the warranties (if any) specified by the manufacturers or the third-party suppliers to Us. To the extent permitted by law, We give no warranties beyond the manufacturers or supplier's warranties.

***Clauses 12 and 13 outline the exclusions, limitations and indemnities applicable to each party under these Terms***

#### **12. LIMITS AND EXCLUSIONS**

- (a) Neither party excludes or limits the application of any statute (including the Competition and Consumer Act 2010 (Cth) as amended from time to time ("the Act")), where to do so would contravene that statute or cause any provision of these Terms to be void. Nothing in these Terms modifies, restricts or excludes the conditions, warranties, and undertakings and other legal rights under the Act and any other law applicable to the supply of Goods which cannot be modified, restricted or excluded. Except as expressly set out in the Act, these Terms or a separate warranty document, We make no warranties or other representations under or in connection with these Terms, and in that regard Our liability is limited to the fullest extent permitted by law.
- (b) To the extent permitted by law, all implied terms, guarantees, conditions and warranties are excluded from these Terms, including:
  - i) all conditions and warranties as to the quality or merchantability of the Goods or their fitness for any particular purpose (whether

- express or implied and even if that purpose is made known to Us); and
- ii) No sale under these Terms constitutes a sale by sample or description. You acknowledge that a sample Good may vary from the Goods supplied and that any description of Goods is for identification purposes only. You are responsible for ensuring that the Goods are suitable for Your intended use.
- (c) You agree that You have not relied on any inducement, representation or statement made by Us or on Our behalf in purchasing the Goods.
  - (d) To the extent permitted by law, Our liability arising from the breach of guarantees or warranties will be limited to Our choice of:
    - i) re-supply of the Goods; or
    - ii) the cost to replace the Goods with equivalent Goods; or
    - iii) repair of the Goods, or cost to repair the Goods; or
    - iv) reimbursement of some or all of the price paid by You for the Goods.
  - (e) In any other situation, including but not limited to Our breach of these terms, tort law or negligence, then Our liability to You will not exceed the price of the Goods supplied by Us (to the extent that is permitted by law). We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages or indirect or consequential loss of any kind.
  - (h) We will not be liable to You if:
    - i) The Goods have not been paid for;
    - ii) The Goods have been abused, misused or neglected by you;
    - iii) We cannot establish any defect in the Goods after inspection;
    - iv) You have used the Goods other than for the purposes for which they were designed, including for an illegal purpose;
    - v) The Goods have been repaired, altered or modified by someone other than Us;
    - vi) The Goods have been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure or other stress; and
    - vii) The defect in the Goods has arisen due to Your failure to install, use, assemble, handle and maintain the Goods in accordance with Our care and maintenance recommendations or industry-accepted standards;
  - (f) Neither party will be liable for any breach of these Terms which is wholly or partly caused by something outside the party's reasonable control, including war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, pandemics, epidemics, storm or tempest, theft, vandalism, civil commotions or accidents of any kind. This exclusion does not include Your obligation to pay for Goods.

### 13. INDEMNITIES

- (a) To the extent permitted by law, You indemnify Us against and You must pay Us for any Loss that We may suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) in relation to the Goods and/or these Terms, including but not limited to any breach of these Terms by You, Your negligence, Your failure to perform the obligations in these Terms and any claim made by You against Us.
- (b) You must indemnify Us for and hold Us harmless (or Our agents, employees or contractors) from:
  - i) All reasonable legal costs which We incur as a result of any breach, act or omission by You under these Terms, however that breach, act or omission arises. This includes, but is not limited to, legal or mercantile agent fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Goods and any action taken to secure any Charge;
  - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with the Credit Account, supply of Goods and any deed of guarantee, indemnity

and charge;

- iii) Any loss and damage incurred by Us as a result of You cancelling your Order after twenty-four (24) hours, including but not limited to any Additional Expenses;
  - iii) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
  - iv) Any and all Loss arising out of delivery of the Goods (including any loss or damage caused by delivering the Goods to an unattended site, any loss and damage suffered as a result of third party carriers nominated by You and any loss or damage suffered by Us as a result of any property damage or personal injury caused by the delivery and unloading of the Goods);
  - v) Any loss, damage and costs associated with a complaint or warranty claim where no defect is found or the Goods are subject to any of the circumstances in Clause 13(f) above;
  - vi) Any and all Loss arising out of Your (or Your agent, employee, contractor or other representative's) attendance at Our premises;
  - vii) Any and all Loss arising out of Your failure to provide a safe, suitable and compliant nominated delivery site except to the extent that We (or Our agents, employees or contractors) have committed an act of negligence, breach of the law or breach of the Terms;
  - viii) Any loss or damage occasioned to the Goods between the time that risk in the Goods passes to You and the time that the full price of the Goods is paid by You to Us.
- (c) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms. For clarity, this indemnity does not apply to Loss which is caused by Our breach of these Terms.

***Clauses 14 and 15 outline how to resolve any disputes and terminate these Terms, if necessary***

### 14. DISPUTE RESOLUTION

- (a) If a dispute arises between the parties, the following procedure applies:
  - i) Either party may give the other a notice of the dispute. This means that the dispute must be dealt with in accordance with this section;
  - ii) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless the dispute has been referred for resolution under this paragraph;
  - iii) Either party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph;
  - iv) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible, but at least within 30 days (or other period as agreed between the parties);
  - v) At Our sole discretion, We may elect to resolve any dispute by mediation via the Australian Commercial Disputes Centre (ACDC) before commencing arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The ACDC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;
  - vi) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists (including the referral of the dispute to mediation);
  - vii) The parties must keep all information relating to any dispute

confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

## 15. TERMINATION

(a) Our termination rights are:

### What We can do

We can:

- Suspend or cancel delivery of Goods or any current Order(s) for the supply of Goods; and/or
- Suspend or terminate Your Credit Account; and/or
- Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired; and/or
- Register a default with any credit reporting agency, where applicable; and/or
- Enforce Our rights under any Security Interest; and/or
- Suspend or terminate the contract created by these Terms

(b) When We can exercise Our termination rights:

### When We can do those things

- When You have not paid for Goods by the Due Date; and/or
- You exceed the limit of Your Credit Account; and/or
- You breach a material term of these Terms; and/or
- Either of the parties suffer a Force Majeure Event which delays or prevents performance of the whole or any part of these Terms; and/or
- You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA;
- You engage in illegal activity related to the sale of Goods;
- You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation; and/or
- An Insolvency Event occurs.

(c) Otherwise, either party may terminate these Terms:

- i) Immediately by written notice if the other party is in breach of a material term of these Terms and the breach is not rectified within 7 days of the termination notice; or
- ii) In all other circumstances, by giving the other party 21 days' written notice.

(d) If a termination notice is given to a party for breach of these Terms, the terminating party may also:

- i) recover any of its property and all related data, documentation and records in the possession, custody or control of the party at fault;
- ii) recover any sums paid to the party at fault on any account or for services which have not been fulfilled or performed;
- iii) subject to any limitation on liability applicable to the party at fault, recover from the party at fault the amount of any loss or damage sustained as a consequence of the termination, including loss of the benefits which the performance of these Terms would have conferred on the terminating party;
- iv) be regarded as discharged from any further obligations under these Terms; and
- v) pursue any additional or alternative remedies provided by law.

### Clause 16 outlines general information applicable to the Terms

## 16. GENERAL

(a) Any clauses which are expressed to or are, by their nature, intended to

survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.

- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) If any part of these Terms becomes void or unenforceable for any reason, then that part will be severed and, to the extent possible, all remaining parts continue with full force and effect without being affected by the severance of any other parts.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.
- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.