

Terms of trade

1 Definitions and interpretation

1.1 Definitions

Additional Charge means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices; and
- (b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Customer means the Customer applying for credit, as identified on the front page of this Agreement, and includes the Customer's agents and permitted assigns.

Goods means any goods supplied by the Supplier including those supplied in the course of providing Services.

Indent Goods means goods which are produced by third parties which are custom made to order specifically for the Customer.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Loss includes, but is not limited to, costs (including party to party legal costs and the Supplier's legal costs), expenses, lost profits, award of damages, economic loss, personal injury and property damage.

Order means a purchase order for Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.

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 or Services to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work or delivery of the Goods.

Services means the services to be provided by the Supplier to the Customer in accordance with a Quote and these terms of trade.

Supplier means DS Agencies Pty Ltd (ACN 008 749 095) and includes the Supplier's agents and permitted assigns, related companies (within the meaning of the Corporations Act (2001)), sub-contractors, employees and agents.

1.2 Interpretation

In these terms of trade, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;

- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these terms of trade;
- (d) a reference to a party to these terms of trade 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 are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (ii) in all other cases, must be done on the next Business Day.

2 General

- (a) These terms of trade apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services. This includes all quotations, contracts and variations. These terms of trade take precedence over terms of trade contained in any document of the Customer or elsewhere.
- (b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.

3 Quotes

- (a) The Supplier may provide the Customer with a Quote. Subject to clause 3(b), any Quote issued by the Supplier is valid for thirty (30) days from the date of issue.
- (b) Any Quote, or part of a Quote, issued by the Supplier which is for Indent Goods is valid for seven (7) days from the date of issue.
- (c) Unless otherwise expressly agreed in writing, a Quote does not include delivery or installation of the Goods.
- (d) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to the Supplier.
- (e) Following provision of a Quote to the Customer, the Supplier is not obliged to provide the Goods, until the Quote has been accepted by the Customer. This occurs by the Customer signing the Quote and returning the signed Quote to the Supplier.
- (f) The Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these terms of trade.
- (g) The Supplier may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties. Should the Customer wish to cancel an Order issued prior to the amendment, cancellation must be in writing, delivered to the Supplier, within 36 hours from the Customer receiving notice of the Quote being amended.
- (h) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Supplier.

4 Orders

- (a) The Customer, by signing and returning a valid Quote to the Supplier submits an Order to the Supplier for the Goods as per the Quote.
- (b) Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer in submitting an Order may result in the imposition of an Additional Charge, payable by the Customer.
- (c) Orders must be signed by an authorised representative of the Customer and must specify the required date of delivery. Where an Order is submitted to the Supplier from the Customer, bearing a signature, the Customer warrants that the Order has been signed by an authorised representative of the Customer, as required by this clause.
- (d) Where the Customer submits an Order, this signifies acceptance by the Customer of these terms of trade and the most recent Quote provided by the Supplier relating to that Order.
- (e) The Supplier may in its absolute discretion refuse to provide Goods where:
 - (i) Goods are unavailable for any reason whatsoever;
 - (ii) credit limits cannot be agreed upon or have been exceeded; or
 - (iii) payment for Goods previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.
- (f) Subject to the following clause, an Order cannot be cancelled without the prior written consent of the Supplier and provided it is cancelled within 36 hours of being submitted to the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.
- (g) An Order for Indent Goods cannot be cancelled without the prior written consent of the Supplier, where the Order has been submitted to the manufacturer, and the manufacturer has commenced production of the Indent Goods.

5 Variations

- (a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared by the Supplier or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods or Services or both.
- (c) The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

VARIATION TO ORDER FOR INDENT GOODS

- (d) An Order for Indent Goods, may be varied, provided that it can be varied by the manufacturer. Any additional costs of the variations are to be borne by the Customer. The Customer shall bear all additional costs of the variation to the Order and will indemnify the Supplier for any costs incurred, of any kind incurred as a result of the Customer's variation. The Supplier makes no representation or warranty as to the time that the Indent Goods will be complete and delivered to the Customer.

6 Invoicing and payment

6.1 Terms applicable to all transactions

The following provisions apply where the Customer does not have an approved Credit Account with the Supplier:

- (a) The Supplier may in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
 - (i) prior to commencing the provision of the Goods or Services, for an amount equal to the Quote and Additional Charges where the Supplier has not previously carried out work for the Customer or where the Supplier chooses to do so;
 - (ii) at the end of each week before the Order is completed, the Supplier may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at the Supplier's discretion either for work done to that point, work in the future or both) and require that proportion of the Quote be paid in advance of any further Goods or Services being provided; or
 - (iii) upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Order and for any Additional Charges.
- (b) The amount payable by the Customer will be the amount set out in the invoice. This will be calculated as:
 - (i) the amount for the Goods or Services (or both) as set out in the Quote and any Additional Charges, or
 - (ii) where no Quote has been provided by the Supplier, the Supplier's usual charges for the goods or services (or both) as described in the Order.
- (c) Notwithstanding clause 4 above, the Customer shall make payment for any Goods or Services supplied by the Supplier to the Customer, regardless of whether an Order was submitted by the Customer in accordance with clause 4, and irrespective of the manner in which the Order for Goods or Services was made to the Supplier.
- (d) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (e) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- (f) The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these terms of trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- (g) The Customer is to pay the Supplier on demand interest at the rate of 16% per annum on all overdue amounts owed by the Customer to the Supplier, calculated daily.
- (h) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under these terms of trade.
- (i) The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (**GST**) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

- (j) All money payable by the Customer under this Agreement are to be paid free and clear of any and all deductions, set-offs or counterclaims.

6.2 Where the Customer does not have an approved Credit Account with the Supplier

6.2.1 Payment for Goods

- (a) The Customer must pay an invoice issued by the Supplier to the Supplier, prior to delivery of the Goods to the Customer.

6.2.2 Deposit to be paid by Customer

- (a) The Customer shall be required to pay to the Supplier a deposit, prior to the Supplier submitting an Order for the manufacture or production of the Goods, as follows:
 - (i) For Standard Orders a deposit of 25% of the cost of the Order is required;
 - (ii) For Custom Orders or Indent Orders, a deposit of 50% of the Order is required, unless another amount is stated by the Supplier.

6.3 Where the Customer has an approved Credit Account with the Supplier

- (a) The Customer shall make payment in full of all invoices, within 30 days from the last day of the month, in which the Supplier's invoice was issued.
- (b) The Supplier may, at its discretion, vary the time for payment of invoices upon providing written notice of the variation to the Customer, identifying the varied time for payment of the invoice.
- (c) Should the Supplier give notice to the Customer that it is varying time for payment of its invoices, pursuant to this clause 6.3, then the new time as stated in the notice, shall apply to any invoices issued by the Supplier to the Customer, from the date of the notice and thereafter.

6.4 Method of payment applicable to all Quotes and Orders

- (a) Payment of Invoices must be made by either cash, bank cheque, or electronic funds transfer to the Supplier's nominated bank account as may be varied from time to time, unless expressly agreed by the Supplier in writing.
- (b) Where an alternative method of payment is agreed by the Supplier, in accordance with clause 6.4(a) above, then the Supplier shall be entitled to charge an additional administration fee which is to be the liquidated cost to the Supplier of processing the abnormal payment, and is due and payable by the Customer, at the same time as the Invoice or Invoices to which the administration fee is charged.
- (c) Payments to the Supplier by credit card will incur a regulated processing fee.

7 Additional Charges

- (a) The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).
- (b) The imposition of Additional Charges may also occur as a result of:
 - (i) cancellation by the Customer of an Order where cancellation results in Loss to the Supplier;
 - (ii) storage costs for Goods not collected from the Supplier within two (2) weeks of the date on which the Goods are manufactured, fabricated, created or formed;
 - (iii) photocopying, courier, packing or handling charges not included in the Quote;

- (iv) Government or council taxes or charges not included in the Quote; or
- (v) additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.

8 Delivery & Acceptance of Goods

8.1 Delivery of Goods

- (a) Delivery of the Goods will be deemed to have been effected, upon delivery of the Goods to the place of delivery nominated by the Customer. If no such address is nominated by the Customer, delivery will be deemed to have been effected, at the time the Goods are made available for collection at the Supplier's premises.
- (b) The Customer:
 - (i) Shall pay the Supplier such packing, crating and delivery charges as may be applicable, in accordance with the Supplier's current rates, as effective and in force on the date the Goods are dispatched. In the event of there being no current rate, the Customer shall pay to the Supplier a reasonable delivery charge.
 - (ii) Authorises the Supplier to deliver Goods to the place nominated by the Customer, and to leave the Goods at such place, whether or not the Customer is present to accept delivery.
 - (iii) Understands, acknowledges and accepts that delivery times quoted by the Supplier represent estimates only.
- (c) The Supplier:
 - (i) shall be entitled to charge the Customer reasonable charges for storage, in the event the Customer does not provide delivery instructions to the Supplier, within fourteen (14) days of the Supplier requesting delivery instructions from the Customer.
 - (ii) shall in no way be liable for loss suffered by the Customer after the Goods are delivered to the Customer's nominated place for delivery.
 - (iii) shall be under no obligation to obtain a signed receipt or acknowledgment from the Customer or any other person at the nominated place for delivery, however, if a signed receipt or acknowledgment is obtained from someone the Supplier reasonably believes or understands to be authorised by the Customer to accept or take delivery of the Goods, then such signed receipt or acknowledgment shall be conclusive evidence of the Customer's acceptance of the Goods delivered.
 - (iv) reserves the right to deliver the Goods in instalments. Each instalment is to be deemed to have been sold pursuant to a separate purchase order or contract for sale. Failure to deliver any instalment or to deliver any instalment on time, shall not entitle the Customer to repudiate the purchase order or contract for sale, in whole or in part.

8.2 Acceptance of Goods & Claims on Supplier

- (a) If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within twenty four (24) hours of delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order.
- (b) Any claim by the Customer in respect of any alleged failure by the Supplier to comply with the Customer's Order, due to shortfall, incorrect delivery or other, must be in writing and given to the Supplier within five (5) days of acceptance of the Goods in accordance with clause 8.2(a). If the Customer fails to provide notice, in accordance with this clause then the Customer shall be deemed to have accepted the Goods and waived any rights to make a claim against the Supplier in respect of any alleged failure by the Supplier to comply with the Customer's Order due to shortfall, incorrect delivery, or other reason.

- (c) Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

9 Title and risk

- (a) Risk in Goods passes to the Customer immediately upon the earlier of:
- (i) Actual or constructive delivery of the goods;
 - (ii) Collection from the Supplier, bailee, agent, carrier or courier of the Supplier.
- (b) Property and title in Goods supplied to the Customer under these terms of trade does not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.
- (c) Where Goods are supplied by the Supplier to the Customer without payment in full, the Customer:
- (i) is a bailee of the Goods until property in them passes to the Customer;
 - (ii) irrevocably appoints the Supplier to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
 - (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;
 - (iv) must not allow any person to have or acquire any security interest in the Goods;
 - (v) agrees that the Supplier may repossess the Goods if payment is not made within seven (7) days of receiving demand from the Supplier for payment, (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and
 - (vi) the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies the Supplier for any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises.
- (d) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and:
- (i) the Customer makes a new object from the Goods, whether finished or not;
 - (ii) the Customer mixes the Goods with other goods; or
 - (iii) the Goods become part of other goods (**New Goods**),
- the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these terms of trade or any other contract have been made. The Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.
- (e) For the avoidance of doubt, under paragraph 9(d), the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Despite paragraph 9(c), the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business. This is provided that:

- (i) where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale, less any GST, on trust for the Supplier in a separate account, until all amounts owned by the Customer to the Supplier have been paid; or
 - (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.
- (g) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer acknowledges that the Supplier has a right to register and perfect a personal property security interest.
- (h) If:
- (i) a PPS Law applies or commences to apply to these terms of trade or any transaction contemplated by them, or the Supplier determines (based on legal advice) that this is the case; and
 - (ii) in the Supplier's opinion, the PPS Law:
 - (A) does or will adversely affect the Supplier's security position or obligations; or
 - (B) enables or would enable the Supplier's security position to be improved without adversely affecting the Customer,

the Supplier may give notice to the Customer requiring the Customer to do anything (including amending these terms of trade or execute any new Terms and Conditions) that in the Supplier's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph 9(h)(ii)(A) or improve the security position as contemplated in paragraph 9(h)(ii)(B). The Customer must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in the Supplier's opinion the Supplier's security position or obligations under or in connection with these terms of trade have been or will be materially adversely affected, the Supplier may by further notice to the Customer cancel these terms of trade. If this occurs, the Customer must pay to the Supplier any money owed to the Supplier by the Customer immediately.

10 Return of Goods

- (a) Goods will not be accepted for return without the Supplier's prior consent.
- (b) Acceptance of Goods for return will not necessarily entitle the Customer to a credit. The Supplier may accept the return of Goods and provide a credit refund to the Customer, upon return of the Goods, to the extent that the Goods do not comply with the quantity or description of the applicable purchase order, provided that:
 - (i) the Customer has promptly inspected the Goods upon delivery; and
 - (ii) within seven (7) days of the Customer receiving the Goods, the Customer provides to the Supplier a written claims against short delivery or damaged Goods. The written request must specify the original invoice number applicable to the Goods, as proof of purchase and proof of delivery; and
 - (iii) the Supplier must be satisfied as to the accuracy of the written claim.
- (c) All Goods returned will not be considered for warranty replacement or credit refund until they are processed and accepted by the Supplier. The Supplier may accept the return of Goods and grant a credit in the following instances of error on the part of the Customer in:
 - (i) ordering the type/style/model of the Goods; or
 - (ii) selection of the Goods on the basis of the suitability of the Goods for applications; or

- (iii) quantity of Goods ordered;

provided the Goods are returned within 14 days of the delivery date.

- (d) Goods returned after delivery to the Customer attract a restocking fee of 25%.
- (e) Goods which have been:
 - (i) custom made, custom cut, custom processed or custom acquired for the Customer; or
 - (ii) used, opened, unpackaged, damaged in any way whatsoever, whether the damage pertains to the Good/s and/or the packaging;

will not be accepted for return.
- (f) Goods which are determined by the Supplier to be defective will be accepted for return by the Supplier. The Supplier will arrange for the repair or the replacement of the defective Goods in accordance with the applicable manufacturer's conditions of warranty.

11 Charge & Security for Payment

- (a) The Customer agrees to charge any land now owned, or acquired in the future, by the Customer and/or the Guarantors to secure payment of all outstanding accounts and the Customer agrees to enter into a Mortgage over such land upon being required to do so by the Supplier.
- (b) Any such security is to be prepared by the Supplier's lawyer on the terms and conditions that the Supplier's lawyer sees fit.
- (c) The Customer further authorises the Supplier to register an absolute Caveat over any land now owned by the Customer or by the Guarantors, or in the future acquired by the Customer or the Guarantors, to secure any sum due under this Agreement, at any time during the continuance of this agreement.
- (d) The terms and conditions of this Agreement shall relate to any charge or security imposed by the Supplier on the Customer.
- (e) The Customer agrees, on request to charge in favour of the Supplier:
 - (i) By a fixed charge, all books of account, financial records, goodwill, documents, documents of title, and current and future real property and intellectual property; and
 - (ii) By a floating charge the whole of the Customer's other undertakings, property, and assets; and the customer agrees to do all things necessary to stamp and register such charges.
- (f) To secure monies owing by the Customer to the Supplier:
 - (i) The Supplier shall be entitled at any stage during this Agreement, to request such security or additional security from the Customer, as the Supplier shall think reasonable to secure the due performance of the terms and conditions of this Agreement.
 - (ii) The Supplier shall be entitled to suspend supply of any Goods or Services, or suspend any credit arrangements until security, as required in accordance with this provision is provided.

11.2 Personal Properties and Securities Act

- (a) If the Goods may be subject to the PPSA, then the Supplier may effect and maintain registration of a "security interest" as that term is defined in the PPSA, in the Goods and the proceeds arising respect of any dealing in the Goods.

- (b) The Customer must do all things, such as obtaining consents and signing documents, as required by the Supplier, for the purpose of:
 - (i) Creating and registering the Supplier's security interest including, providing details of any item of collateral sufficient to complete registration of the security interest in accordance with the PPSA;
 - (ii) Ensuring that the Supplier's security interest is, and remains enforceable, perfected and otherwise effective under the PPSA;
 - (iii) Enabling the Supplier to gain first priority, or other priority as may be agreed by the Supplier in writing, for its security interest; or
 - (iv) Enabling the Supplier to exercise its rights in connection with the security interest or the PPSA.
- (c) The Supplier's rights under this Agreement are in addition to those under any other law, including the PPSA, and the Supplier may elect whether to exercise its rights under any other applicable law, or this Agreement, in its absolute discretion.
- (d) For the avoidance of any doubt, any security interest that the Supplier may have in the Goods will attach to "proceeds" in accordance with the PPSA.
- (e) In addition to any rights conferred on the Supplier under the PPSA, the Customer agrees and acknowledges that in addition to those rights, the Supplier has the right to seize, purchase, repossess, retain, deal with or dispose of any goods (including the Goods), not only pursuant to the PPSA, but as additional and independent rights under this Agreement.
- (f) The Customer agrees that the Supplier may exercise any of its rights under this clause, in any way it considers appropriate, including, when undertaking to deal or dispose of goods, by private or public sale, lease or license.
- (g) the Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property pursuant to section 157(1) of the PPSA, pursuant to section 157(3) of the PPSA.
- (h) The Supplier and the Customer agree not to disclose information of the kind that can be requested under section 257(1) of the PPSA.
- (i) The Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' in the Goods without the express written consent of the Supplier, first obtained on each occasion.
- (j) The Customer must take all steps, including registration under the PPSA, as may be required, to:
 - (i) ensure that any security interest arising under or in respect of the Sub-hire is enforceable, perfected and otherwise effective under the PPSA;
 - (ii) enable the Customer to gain (subject always to the rights of the Supplier) first priority (or any other priority agreed by the Supplier in writing) for the security interest; and/or
 - (iii) enable the Supplier and the Customer to exercise their respective rights in connection with the security interest.
- (k) To assure the Customer's performance of its obligations under this clause and this Agreement, the Customer hereby gives the Supplier an irrevocable power of attorney to do anything the Supplier considers the Customer should do, under this Agreement, and the Supplier may recover from the Customer the costs of doing anything under this clause, including any registration fees.

12 Intellectual Property Rights

- (a) The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise the Supplier to reproduce or use all

copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the Supplier for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified the Supplier against all Losses incurred by the Supplier in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.

- (b) Unless specifically agreed in writing between the Supplier and the Customer, all Intellectual Property Rights in any works created by the Supplier on behalf of the Customer vest in and remain the property of the Supplier.
- (c) Subject to payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods or Services under these terms of trade for the purposes contemplated by the Order.

13 Agency and assignment

- (a) The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these terms of trade.
- (b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these terms of trade provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under these terms of trade.
- (c) The Customer is not to assign, or purport to assign, any of its obligations or rights under these terms of trade without the prior written consent of the Supplier.

14 Default by Customer

- (a) Each of the following occurrences constitutes an event of default:
 - (i) the Customer breaches or is alleged to have breached these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fails to remedy that breach within 14 days of being given notice by the Supplier to do so;
 - (ii) the Customer, being a natural person, commits an act of bankruptcy;
 - (iii) the Customer, being a corporation, is subject to:
 - (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
 - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring); and
 - (D) any assignment for the benefit of creditors;
 - (iv) the Customer purports to assign its rights under these terms of trade without the Supplier's prior written consent; or
 - (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
 - (i) terminate these terms of trade;

- (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
 - (iii) refuse to deliver Goods or provide further Services;
 - (iv) pursuant to clause 9(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
 - (v) retain (where applicable) all money paid by the Customer on account of Goods or Services or otherwise.
- (c) In addition to any action permitted to be taken by the Supplier under paragraph 14(b), on the occurrence of an event of default all invoices will become immediately due and payable.

15 Termination

In addition to the express rights of termination provided in these terms of trade, a party may terminate these terms of trade by giving fourteen (14) days written notice to the other party.

16 Exclusions and limitation of liability

- (a) The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these terms of trade by any law is excluded.
- (b) All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- (c) The Supplier gives no warranty in relation to the Services provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
 - (i) any Goods or Services supplied to the Customer;
 - (ii) any delay in supply of the Goods or Services; or
 - (iii) any failure to supply the Goods or Services.
- (d) Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (e) To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on terms of trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- (f) The Customer acknowledges that the Goods or Services are not for personal, domestic or household purpose use by the Customer, unless expressly noted by the Parties.
- (g) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the

replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

17 Indemnity

- (a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these terms of trade, including.
- (b) This includes, but is not limited to, any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand.
- (c) This provision remains in force after the termination of these terms of trade.

18 Warranties, Representations, Conditions and Liabilities

18.1 Exclusion of Liabilities, Warranties and Conditions

- (a) To the extent permitted by the laws of the Commonwealth, and the State of Western Australia;
 - (i) All express and implied conditions, terms, warranties, and representations not expressly included in this Agreement, are hereby excluded;
 - (ii) Any warranty, condition, description or representation, whether express or implied, as to the description, state, quality, merchantability or fitness of the Goods for the purpose for which it is purchased, is hereby excluded;
 - (iii) The Supplier shall not be responsible, or liable to the Customer, for any loss or damage suffered by the Customer, on any grounds, either directly or indirectly arising from, or in connection with:
 - (A) The termination of this Agreement by the Supplier; or
 - (B) Any miscalculation, defects in, or breakdown or failure of performance of the Goods, and the Customer hereby releases the Supplier from all claims and demands in respect thereof.

18.2 Customer's Representations

- (a) The Customer warrants and represents that:
 - (i) The Customer has full power and authority to execute this Agreement, and to perform and observe all its terms and conditions;
 - (ii) This Agreement has been duly executed by the Customer, or a representative or agent of the Customer, who has authority to bind the Customer, and is a legal and binding agreement, enforceable against the Customer, in accordance with the terms and conditions contained herein;
 - (iii) The Customer has disclosed to the Supplier all facts, circumstances, and other information of which the Customer knows, or should reasonably know, which are material to, or may have an effect on the Supplier's decision, to enter into this Agreement or provide a Credit Account to the Customer;

18.3 Customer assumes liability

- (a) The Customer acknowledges and agrees that the Supplier is not responsible for any loss or damage to any Goods once the Goods are delivered, and the Customer waives all and any rights to claim from the Supplier any loss or damage of whatsoever kind, however

occasioned, and at any time, whether caused by any acts of default by the Supplier, or otherwise.

18.4 Rectification & Other costs

- (a) For the avoidance of any doubt, the Customer acknowledges and agrees, that the Supplier will not be responsible or liable to the Customer or any third party, for any expenses, fees, or costs of any kind, including but not limited to, costs for rectification works, incurred by the Customer, following delivery of the Goods, unless expressly agreed in writing between the Customer and two Directors of the Supplier, first obtained on each occasion.

19 Force majeure

- (a) If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods or Services, the Supplier is free from any obligation to provide the Goods or Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond the Supplier's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

20 Dispute resolution

- (a) If a dispute arises between the Customer and the Supplier, the following procedure applies:
- (i) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
- (ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.
- (iii) A 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.
- (b) 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 and in any event within seven (7) Business Days (or other period as agreed).
- (c) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Law Society of Western Australia. This paragraph survives termination of these terms of trade.
- (d) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms of trade.
- (e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. 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.

21 Miscellaneous

- (a) These terms of trade are governed by the laws of the state where the Supplier's registered office is situated and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.

- (b) These terms of trade and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these terms of trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these terms of trade.
- (e) If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by fax to the fax number of the addressee specified in the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee specified in the relevant Quote with acknowledgement of delivery.
- (h) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (i) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.

22 Severability

- (a) In the event that any of the provisions or conditions of this Agreement or any clause or subclause of this Agreement cannot be given full force or effect, by reason of statutory invalidity, uncertainty or otherwise, then those provisions, conditions, clauses, or subclauses, as the case may be, shall if possible, be read down for the purposes of that jurisdiction so as to be valid and enforceable.
- (b) If however, the whole or any part of a provision, condition, clause or subclause, as the case may be, of this Agreement is not capable of being read down, it is severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

DIRECTOR'S PERSONAL GUARANTEE AND INDEMNITY

1. In consideration of the Supplier entering into this agreement with the Customer, the persons described below ("the Guarantor") acknowledge the terms and conditions of this agreement
2. The Guarantor jointly and severally agrees to guarantee the due and punctual performance by the Customer of the terms and conditions above and guarantees:
 - (i) the payment of any moneys advanced by way of credit to the Customer; and
 - (ii) any other moneys due to the Supplier by the Customer including any fees, costs, disbursements, collection agents fees and solicitors costs calculated on a solicitor and client basis.
3. This Deed shall be a continuing guarantee to the Supplier for all debts whatsoever and whensoever contracted by the Customer with the Supplier.
4. The Supplier shall be entitled, without notice, at any time, and without in any way discharging the Guarantor from any liability under this agreement to:
 - (iii) grant time or other indulgence to the Customer;
 - (iv) to accept payment in cash, or by other means of negotiable instrument; and
 - (v) to treat the Guarantor in all respects as though the Guarantor was jointly and severally liable with the Customer to the Supplier, instead of being surety for it.
5. The Guarantor undertakes, as a separate and additional obligation, and as a principal debtor, to indemnify and keep the Supplier indemnified against any loss that the Supplier incurs as a consequence of the failure, for whatever reason, of the due and punctual payment by the Customer of any sum of money. Losses include:
 - (i) costs;
 - (ii) disbursements;
 - (iii) collection agents' fees;
 - (iv) costs calculated on a solicitor/client basis.
6. The Guarantor agrees to charge any land now owned, or acquired in the future, by the Guarantor, to secure payment of all outstanding moneys, and the Guarantor agrees to enter into a mortgage over such land upon being required to do so by the Supplier.
7. The Supplier shall be entitled at any stage during the agreement, to request security or additional security, including but not limited to a bill of sale or debenture over any or all of the Guarantor's property. The Guarantor shall provide the security and complete any documentation necessary to validate and/or to validly register that security as soon as practicable, and the Supplier shall be entitled to withhold supply of any goods, or suspend credit arrangements, until the security is provided.
8. Any such charge is to be prepared by the Supplier's solicitor on the terms and conditions as the Supplier's solicitor sees fit.
9. The Guarantor further authorises the Supplier to register an absolute Caveat over any land now owned by the Guarantor or in the future acquired by the Guarantor, to secure any sum due at any time during the continuance of the agreement.
10. The terms and conditions of this agreement shall relate to any charge or security imposed by the Supplier on the Guarantor.