

## TERMS AND CONDITIONS OF SALE

### DEFINITIONS

In these Terms and Conditions:

- (a) "The Supplier" means Lightningman Pty Ltd ACN: 104 452 100 Trading as Lightning & Surge Technologies ABN: 25 104 452 100
- (b) "The Customer" means the company, person or persons described as Customer in the Application for Credit Account form attached hereto.
- (c) "The Applicant/s" means the Director or Directors or person or persons described as Applicant/s in the Application for Credit Account form attached hereto.
- (d) "Terms and Conditions" means the Terms and Conditions of Sale contained herein.
- (e) "Goods" means the goods and/or services described in the Quotation/s and invoice/s for goods sold and/or services rendered to the Customer by the Supplier at the Customer's or Applicant's/s' request.
- (f) "Equipment" means all of the items comprising the Goods excluding:
  - (i) all items of a consumable nature (such as tubes and their components, illumination sources, items made wholly or partly of glass silica or ceramic material, transient protection components, thermocouples, batteries, photographic film and materials, electrical elements and microprocessors); and
  - (ii) reconditioned replacement parts (such as exchange circuit boards).
- (g) "Quotation" means the document issued by the Supplier to the Customer outlining its estimate of the cost for the provision of specified Goods and/or services.
- (h) "The Warranty" means the warranty of the manufacturer of the Goods and Equipment referred to herein and in Quotations and invoices of the Supplier.

### 1. GENERAL

These Terms and Conditions of Sale form part of the Application for Credit Account. These Terms and Conditions of Sale also form part of Quotations and tenders issued by the Supplier. If any part of these Terms and Conditions becomes illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Terms and Conditions will not be affected.

## 2. VARIATION

These Terms and Conditions may be amended, replaced or deleted from time to time by the Supplier and those Terms and Conditions so altered shall form the contract between the parties after notice of the altered Terms and Conditions has been forwarded to the Customer in accordance with these Terms and Conditions. Any request by the Customer for variation of these Terms and Conditions shall be made in writing to the Supplier and if the Supplier accepts any such variation, such acceptance shall be made in writing to the Customer in accordance with these Terms and Conditions. Unless expressly accepted in writing by the Supplier prior to delivery of the Goods, any variations of or additions to these Terms and Conditions in a Customer's order or order form shall be deemed to be inapplicable. The Supplier shall have an absolute discretion to refuse to make any amendment to these Terms and Conditions.

## 3. QUOTATIONS

Quotations are valid for a period of thirty (30) days from date of issue by the Supplier or as otherwise specified in the Quotation. Prices given in any Quotation by the Supplier are applicable to that Quotation only and will not apply in any other instance. Any person who accepts the Quotation warrants that he is the Customer or is duly authorized by the Customer to place the order.

## 4. VALIDITY

Unless otherwise stated therein all Quotations and tenders are issued subject to confirmation by the Supplier on receipt of order.

## 5. CHANGE IN ADDRESS AND/OR OWNERSHIP

The Customer and Applicant/s agree to advise the Supplier in writing of any change of ownership of the Customer or of any change of address for forwarding of invoices, statements, accounts and notices, no later than fourteen (14) days prior to any such change of address or proposed changes of ownership and the Customer shall remain liable for payment for all Goods supplied to the Customer until such time as the Supplier receives written notice of such change or changes and releases the Customer on terms satisfactory to it.

## 6. SERVICE OF NOTICES

Any notice given by the Supplier to the Customer shall be deemed to have been properly given if such notice is either posted to the last known trading address of the Customer or to the address to which the Supplier normally renders its accounts to the Customer or by transmitting such notice by facsimile transmission to the last known facsimile number of the Customer or by electronically forwarding such notice by email to the last known email address of the Customer. Receipt of such notices shall be deemed to have occurred TWO working days after posting or the day the facsimile transmission is transmitted or the electronic forwarding is emailed by the Supplier.

## 7. PRICES

Prices for Goods that are quoted "ex-stock" are firm for thirty (30) days from the date of Quotation subject to existing stock being available. Goods quoted ex-stock are subject to prior sale by the Supplier unless it is otherwise stated in writing in the Quotation or other correspondence. Prices for Goods that are not quoted "ex-stock" are based on prices quoted to the Supplier by its suppliers and the rates of freight, foreign currency exchange, insurance premiums, customs duties, subcontracted labour, taxation, supply or usage known to the Supplier at the time of Quotation. Unless otherwise stated, in the event of any increase in these rates or in the price of components, services, products or goods quoted to the Supplier by its shippers before acceptance of any order or prior to delivery of the Goods to the Customer then the cost to the Supplier entailed in such increase/s shall be added to and form part of the purchase price and be payable by the Customer accordingly. PROVIDED THAT notwithstanding the preceding provisions of this Condition the cost of any increases in labour or labour-related overheads or materials that occur after the time of Quotation or acceptance of the Customer's order by the Supplier but before delivery of the Goods, shall, unless otherwise stated in writing be added to the purchase price of the Goods that are being provided by the Supplier. If any pricing discount is negotiated by the Customer subject to a certain minimum quantity or value of product being purchased in a specified time period and the Customer does not honour the purchase of the quantity or value specified within the period, then the Supplier shall be entitled to invoice the Customer at a higher price per unit than normally charged by the Supplier for sales of similar quantities and delivery conditions.

## 8. SALES TAX, ETC.

All prices quoted are exclusive of the Goods and Services Tax (GST) unless otherwise stated. Prices quoted as "firm" are also subject to increase if there are changes in taxation. All such taxes shall be payable by the Customer and may be added to the purchase price by the Supplier as appropriate. It is the sole responsibility of the Customer to provide written evidence of any exemption claimed for Sales Tax or other taxes or duties, and any error or omission in such documentary evidence shall be to the account of the Customer including penalties or fines levied by any competent Authority in respect to such error or omission.

## 9. STAMP DUTY, ETC.

All legal costs, stamp duty and other expenses incurred by the Supplier in respect of any application for a credit facility any written agreement with the Supplier of whatsoever nature, any guarantee, security document or other documentation required for the trading between the parties and other costs incidental thereto, shall be paid by the Customer upon invoicing by the Supplier to the Customer.

## 10. EXPENSES, ETC.

The Customer shall pay to the Supplier any costs, charges and expenses incurred in its enforcing its rights under the Terms and Conditions contained herein and including but not necessarily limited to any Collection Agency commission, fees, costs and expenses or solicitors' fees, costs and expenses howsoever incurred and due and payable by the Supplier to such agent or solicitor as a consequence of any default by the Customer or Applicants under the provisions

of these Terms and Conditions AND the liability of the Customer to pay such commission, fees, costs or other expenses associated therewith, arises immediately any account of the Customer is placed in the hands of such collection agency or solicitor.

#### 11. PAYMENT TERMS

In the event the Supplier approves a credit account for the Customer, the Customer shall, unless otherwise agreed in writing, pay to the Supplier all monies owing within thirty (30) days of date of invoice for the Goods sold in relation to which the monies are owed. In the event payment is not made in accordance with these Terms and Conditions then all monies owed to the Supplier shall immediately become due and payable and shall be paid by the Customer within seven (7) days of the date of demand and the Supplier shall be entitled to charge and be paid interest on all overdue accounts on the outstanding balance from the date of invoice until the date of actual payment on a daily balance basis at a rate of interest pursuant to Section 142 of the Supreme Court Act 1935.

If the Supplier approves this application, then notwithstanding that the Customer may conduct a credit facility with the Supplier, the Supplier shall not be bound to deliver Goods on behalf of the Customer until all monies owing and overdue to the Supplier by the Customer for prior orders and/or requests, are paid to the Supplier. In the event that the Supplier elects as a result of the Customer's prior indebtedness to the Supplier not to deliver Goods, the delivery or completion date referred to in any request or order shall be replaced by a date to be specified by the Supplier after the date of satisfaction of the Customer's prior indebtedness to the Supplier.

Any failure by the Supplier to insist upon strict performance of any term or condition of any contract including any extenuating agreement for the granting of a temporary extension of time in which to pay, between the parties or any term or condition hereof shall not constitute nor be construed or be taken either directly or by implication as a waiver thereof or a waiver of any similar or subsequent breach and the rights of the Supplier to enforce these Terms and Conditions and those of any other contract shall remain valid and subsisting.

#### 12. FORCE MAJEURE

Should the Supplier be prevented from providing Goods on any order at any time by reason of an Act of God or strikes, lockouts, riots, fires, inclement weather, war, insurrection or civil disturbance, failure of information technology systems, accident, non-delivery of materials or parts to the manufacturers by their suppliers, delays loss or damage in transit, the unavailability of shipping or air cargo space, government action or any other causes or contingencies beyond the Supplier's control or the control of the Supplier's suppliers, the time for providing of such Goods shall be extended until the cause or causes preventing such delivery, provision and/or services has ceased or the order or request has at the Supplier's option been annulled without any penalty or expenses to or claims against the Supplier AND FURTHER should the Supplier be prevented from providing Goods requested by the Customer by reason of any of the causes aforementioned, the Supplier shall be entitled to provide or deliver such part of the Goods as it is able and the Customer shall accept those Goods and the Supplier shall be entitled to charge the Customer for those Goods pursuant to the request of the Customer and the Customer shall pay progress invoices for partial supply of Goods.

### 13. SALES AND TECHNICAL LITERATURE

Illustrations and descriptive literature supplied by the Supplier to the Customer represent generally the goods specified therein but may not comply in all respects with the Goods that are the subject of this Quotation or supply. Due to a policy of continued product and services improvement, technical specifications are subject to change without notice by the Supplier at its sole discretion.

### 14. GOODS MANUFACTURED (by the Supplier's suppliers) SPECIFICALLY FOR CUSTOMER TO CUSTOMER'S DESIGN

Where the Goods are provided by the Supplier and/or manufactured by the Supplier's suppliers on the basis of information provided to the Supplier by the Customer, the Supplier shall not be liable for and the Customer releases the Supplier from any claims in respect of faulty or defective design to the extent that the fault or defect is attributable to the information or lack of information provided by the Customer to the Supplier. In such case, the Customer shall unconditionally indemnify the Supplier and hold it harmless against product liability and any other direct claims, demands, actions or proceedings made, brought or maintained against the Supplier by a third party arising out of defects in the design of the Goods to the extent that such defects are attributable to information provided by the Customer to the Supplier or the failure by the Customer to provide all material information to the Supplier.

### 15. GOODS MANUFACTURED WITH LABEL OTHER THAN THAT OF MANUFACTURER

The Supplier may, in its absolute discretion, accept orders and have its suppliers manufacture Goods of the manufacturer's proprietary design that are named, badged or labelled with a name or logo other than that of the Supplier's suppliers. In such cases, the Customer covenants that the Customer shall not:

- (a) Market or use the Goods otherwise than in strict accordance with the manufacturer's specifications provided to the Customer by the Supplier; and/or
- (b) Misrepresent the Goods to third parties as being designed or manufactured by the Customer.

The Customer covenants that the Customer shall indemnify and keep indemnified the Supplier against product liability and any other claims, demands, actions or proceedings made, brought or maintained against the Supplier by a third party attributable to the Customer giving a warranty or making a representation in respect of the Goods extending beyond the terms of the manufacturer's Warranty in these Terms and Conditions.

### 16. SECURITY

The liability of the Customer and/or Applicants shall not be abrogated, prejudiced or affected by the granting of time or credit or any indulgence or other concession or by any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any security or any of the rights of the Supplier or by any neglect or omission to enforce any such rights. In the event of bankruptcy, liquidation or any scheme of arrangement with any creditors of the Customer or Applicant/s THEN the Customer and/or Applicant/s will not prove any claim in competition with the Supplier.

## 17. INSTALLATION

The Customer acknowledges that the Equipment must be installed and earthed (where applicable) in strict accordance with the manufacturer's specifications and all relevant Australian electricity and safety standards.

## 18. NOTIFICATION OF NONCONFORMITY OF GOODS

Subject to the rights, if any, conferred on the Customer by the Trade Practices Act 1974, the Customer shall inspect all Goods provided by the Supplier to the Customer immediately upon receipt thereof for defect or any shortage or other nonconformity to an order for Goods and in the event of any alleged defect or shortage or other nonconformity to any order, the Customer shall notify the Supplier no later than seven (7) days from date of delivery. The Customer shall be deemed to have accepted the condition and conformity of the Goods to the order unless the Supplier receives such notification within the specified period. Any claim in relation to a defect or other nonconformity within the specified period, must be accompanied by the article showing the alleged defect.

## 19. CANCELLATION OR RETURNS

Subject to the rights, if any, conferred on the Customer by the Trade Practices Act 1974:

- (a) The Customer shall not return Goods for credit without prior written approval of the Supplier;
- (b) if Goods are returned for any reason other than not meeting the manufacturer's specifications or an order is cancelled for any reason, a re-stocking fee may apply;
- (c) should Goods being returned not be in an as-new condition or should Goods be missing any items such as, but not limited to, manuals, cables and packaging, the Customer will be invoiced for the cost to bring the Goods to an as-new condition;
- (d) The Customer shall pay all freight, customs duty, taxation, transaction costs, import/export costs, finance costs, labour costs, penalties or fines, transport costs, and insurance charges relating to returned Goods.

## 20. REPAIRS AND SERVICE

Subject to any conditions or implied warranties that may be conferred on the Customer by the Trade Practices Act 1974:

- (a) The Supplier gives no express warranty of any type in respect of any repair services that are performed by the Supplier's suppliers for the Customer,
- (b) The Customer shall pay all freight, customs duty, transaction costs, import/export costs, transport costs, and insurance charges, materials, consumables and labour costs relating to Goods returned for repair services.

## 21. LOSS OR DAMAGE IN TRANSIT OR STORAGE

Any liability of the Supplier for loss or damage during transit or storage by the Supplier to any Goods or part thereof purchased by the Customer is limited at the sole option of the Supplier either to the replacement or part thereof of such Goods or to credit the account of the Customer with the value of such Goods or part thereof damaged.

## 22. PROCESS FOR CLAIM UNDER MANUFACTURER'S WARRANTY

In order to affect any claim under the manufacturer's Warranty the Customer and Applicant/s acknowledge that the Customer or Applicant/s must firstly contact the Supplier to obtain a Product Repair Authorisation Number and instructions on the inspection and/or shipping of the Equipment back to the Supplier. The Customer and Applicant/s acknowledge that the Supplier reserves the sole right to determine whether any repair and/or replacement of Equipment under the terms of the Warranty be carried out in situ or at a repair depot nominated by the Supplier or at the Supplier's premises. The Customer and Applicant/s further acknowledge that the Customer is responsible for all freight, insurance, and export/import costs, transaction costs, and duties for the delivery and return of the Equipment returned to and or from the Supplier and for all travel costs of representatives of the Supplier to and from the site at which the Equipment is located and accommodation costs involved when inspecting and/or repairing the Equipment and the Customer and Applicant/s agree that the Supplier is entitled to refuse to comply with its obligations under the manufacturer's Warranty until the Customer pays all such costs.

## 23. MANUFACTURER'S WARRANTY

23.1 With regard to lightning transient and surge protection Equipment the Customer and Applicant/s acknowledge that since the atmospheric lightning discharge is a natural process that can occasionally be totally unpredictable and also subject to the statistical laws of nature with respect to ground density peak current, discharge mechanism, multipulse, wave shape and polarity, a guarantee cannot be made about the precise operation of the lightning transient and surge protection Equipment. The Customer and Applicant/s further acknowledge and recognise that lightning transient and surge protection Equipment can only be provided to a certain statistical level and 100 per cent (100%) protection is not offered and cannot be provided for. Whatever level of statistical risk chosen or recommended, the Customer and Applicant/s acknowledge that lightning may miss or bypass direct strike air terminals or systems or it may exceed the capacity of any direct strike protection system or earthing system or transient or surge protection device. The manufacturer and the Supplier accept no responsibility for rare or abnormal events.

23.2 The manufacturer warrants that for the period of the term of the manufacturer's Warranty from the date of original dispatch of the Equipment to the Customer, the Equipment will be, as based on the manufacturer's Warranty, free from defects in materials and workmanship and will perform the functions specified in the manufacturer's specifications.

The manufacturer's Warranty does not and will not cover:

- (a) Any defects if the Equipment is not installed strictly in accordance with the manufacturer's recommendations including proper earthing;
- (b) Any defects arising from any cause other than faulty materials or workmanship;
- (c) Any defect notified to the manufacturer after the Equipment has been abused, misused or operated under conditions exceeding the manufacturer's specifications;
- (d) Any defect notified to the manufacturer after the Equipment has been overhauled, altered, modified, repaired or interfered with by any person not authorised by the manufacturer;
- (e) Any defect resulting from the negligence or maltreatment, inattention or interference of the Customer, its servants, employees or any other third party;
- (f) The repair or replacement of component parts within the Equipment that is designed for surge and transient protection or lightning protection or power conditioning where those parts have been subjected to conditions beyond the manufacturer's written specifications or ratings;
- (g) Gradual or sudden degradation of component parts within the Equipment that are designed for surge and transient protection or lightning protection or power conditioning arising from the number and/or severity of pulses diverted whether cumulative, gradual or sudden; and
- (h) Any defect in the Equipment notified to the manufacturer later than the applicable term of the manufacturer's Warranty from the original despatch of the Equipment to the Customer;
- (i) With regard to products using batteries, the Customer and Applicant/s acknowledge that batteries are consumable items, which have an undetermined product life that depends upon conditions beyond the manufacturer's control including but not limited to environmental conditions of use and storage, technical application, and operational history of discharge and recharge. Batteries will require replacement at the Customer's cost at regular intervals.

23.3 Except as provided in these Terms and Conditions and except to the extent that the Trade Practices Act 1974 or any other applicable legislation implies conditions and warranties into the contract between the manufacturer and the Customer and prohibits their exclusion, all express and implied warranties, guarantees and conditions under common law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded and the manufacturer shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the manufacturer's negligence or in any way whatsoever.

23.4 Where the Goods are other than those of a kind ordinarily acquired for personal, domestic or household use or consumption the manufacturer's liability for breach of a condition or warranty implied by Division 2 of Part V of the Trade Practices Act 1974 (other than Section 69) is hereby limited to:

In the case of Goods, any one or more of the following at the discretion of the manufacturer and/or Supplier:

- (a) Replacement of the Goods or supply of equivalent Goods;



- (b) Repair of the Goods
- (c) Payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (d) Payment of the cost of having the Goods repaired.

23.5 Where the Goods are other than goods of a kind ordinarily acquired for personal, domestic, or household use or consumption the manufacturer's liability to the Customer under Section 74H of the Trade Practices Act 1974 is limited to a liability to pay to the Customer an amount equal to:

- (a) The cost of replacing the Goods;
- (b) The cost of obtaining equivalent Goods; or
- (c) The cost of having the Goods repaired, whichever is the lowest amount.

23.6 (a) If the manufacturer has either replaced or repaired the Goods in response to a claim under the manufacturer's Warranty then the Warranty shall only continue to apply to the replaced or repaired Goods until the expiration of the original warranty period.

- (b) The exclusion of liability contained in Clause 23.3 shall also apply to all Goods supplied by the manufacturer in connection with the repair or replacement of the Goods again.
- (c) The limitation of liability contained in Clauses 23.4 and 23.5 shall also apply to all Goods (other than those of a kind ordinarily acquired for personal, domestic or household use or consumption) that are supplied or provided by the manufacturer in connection with the repair or replacement of the Goods again.

## 24. OWNERSHIP

Unless otherwise agreed, risk shall pass to the Customer upon delivery of the Goods. Notwithstanding that risk may have passed to the Customer and/or the Applicant/s, title in and ownership to any Goods sold to the Customer by the Supplier shall not pass to the Customer but shall remain with the Supplier until receipt by the Supplier of the full purchase price of the Goods as invoiced by the Supplier. The Customer and Applicant/s shall not sell, offer for sale or encumber or in any other way deal with or part with possession thereof except in the normal course of business. If the Customer or Applicant/s on-sells the Goods to a third party prior to paying the Supplier the purchase price thereof, the Supplier shall be entitled to and be paid within the Supplier's Terms and Conditions as specified herein, the full purchase price as invoiced by the Supplier of those Goods so on-sold. The Customer and Applicant/s shall at all times keep the Goods insured and maintain the Goods in a safe and marketable condition. In the event that the Customer defaults in payment of any monies owing to the Supplier or any term hereof or of any contract between the Customer and/or the Applicant/s and the Supplier or if any credit facility is terminated by the Supplier, the Supplier shall have the right at its election (without giving notice) to the immediate return of the Goods and shall be entitled, and is hereby expressly authorised by the Customer and the Applicant/s to enter upon the premises of the Customer or Applicant/s or any other premises at which the Goods are stored to retake possession of the Goods sold to the Customer AND the Customer and Applicant/s hereby expressly authorise and allow the Supplier or its representative, servant, agent or employee to enter any premises upon which the Goods are housed or stored for the purpose of

retaking possession thereof. The Supplier retains the right of resale of the Goods in the event that it or its agent retakes possession of the Goods and to be paid by the Customer any and all shortfall between that sale price and the debt owing to the Supplier AND for the cost of repair where damage to the Goods has occurred AND together with the damages suffered by the Supplier as a result of the default by the Customer and/or Applicant/s such damages to include but not be limited to the legal costs and other expenses incurred in retaking possession of the Goods. The Customer and Applicant/s shall have no claim against the Supplier for any costs, losses, damages, expenses or any other monies or loss of whatsoever nature suffered by the Customer and/or Applicant/s resulting from such repossession or attempted repossession.

## 25. PRIVACY ACT, 1988

(i) The Customer and Applicant/s acknowledge that the Supplier has informed him her or them in accordance with 8.1 BE (8) (c) of the Privacy Act, 1988 that certain items of personal information about the Customer and Applicant/s, contained in this application and permitted to be kept on a credit information file might be disclosed to a Credit Reporting Agency.

(ii) The Customer and Applicant/s agree that in accordance with the provisions of 8.18K (1) (b) (e) (h) and/or S.18L (4) of the Privacy Act, 1988 that disclosure by a Credit Reporting Agency and/or use by the Supplier of the relevant information referred to in those sections may occur for the purposes of assessing this application and the Customer and Applicant/s acknowledge that this agreement shall continue to have effect to the duration of this contract in the event that the Supplier approves this application under the Terms and Conditions contained herein.

(iii) The Customer and Applicant/s HEREBY unconditionally agree that the Supplier shall be entitled to use the services of Credit Reporting Agency from time to time to obtain information concerning the Customer and/or the Applicants (and, with the consent of its Directors where the Customer is a company, its Directors) in order to assess the Customer's credit worthiness.

(iv) The Customer and Applicant/s acknowledge and agree and: (a) where the Applicant is a partnership, each of its Partners acknowledge and agree; (b) where the Applicant is a company, each of its Directors acknowledge and agree that:

1. The Supplier may at any time, in relation to either the Applicant/s, a Partner or a Director, (a) disclose information contained in this Application for Credit Account concerning that person to: (i) a Credit Reporting Agency in accordance with Section 18E(8)c of the Privacy Act, 1988; (ii) another credit provider; (b) obtain a credit report from another credit provider about that person's commercial credit worthiness: (c) disclose information to another credit provider about that person's credit worthiness: (d) use information that concerns that person's commercial activities or credit worthiness pursuant to Section 18L(4) of The Privacy Act, 1988, following the receipt of a credit report for the purpose of assessing the Commercial Credit Application (e) disclose a report concerning that person, or any information derived from such a report, to another credit provider who requests the report or information for the purpose of assessing an application by that person for credit.

2. A credit reporting agency in possession or control of a credit information file relating to either the Applicant/s or a partner or a director of the Customer may disclose personal information contained in the file to the Supplier (a) pursuant to Section 18K (b) of The Privacy Act, 1988, (b) pursuant to Section 18K (1) c of The Privacy Act, 1988.

(v) The Customer and Applicant/s HEREBY unconditionally agree and authorise the Supplier for the duration of this agreement and from time to time as the Supplier shall require, to seek information from a Credit Reporting Agency such consumer Information about the Customer and/or Applicant/s as shall be permitted to be kept by a Credit Reporting Agency, if this application is for commercial credit AND to seek information about the Customer and/or, Applicant/s as shall be permitted to be kept by a Credit Reporting Agency from time to time as the Supplier shall require, such commercial information if this application is for consumer credit.

(vi) The Customer and Applicant/s HEREBY agree and authorise the Supplier to undertake any credit checking of trade references it requires now and from time to time to assess the Customer's and/or the Applicant/s' ability to fully meet its and/or their obligations to pay the Supplier.

(vii) If this application is approved by the Supplier and the Customer or Applicants name the Supplier as a reference to another party, the Customer and Applicant/s hereby warrant that such other party shall be a credit provider as defined by the Privacy Act, 1988 and the Customer and Applicant/s hereby authorise the Supplier to release to any such party any information in relation to the Customer's account with the Supplier.

(viii) The Customer and Applicant/s hereby indemnify the Supplier against all losses or damages suffered by the Supplier in supplying that information to another credit provider and the Customer and Applicant/s shall release the Supplier from all claims, demands, proceedings, suits, damages and losses of whatsoever nature suffered by the Customer and/or Applicant/s arising therefrom.

(ix) Access to information: The Customer and Applicant/s may access any personal information that the Supplier holds about it or them by contacting the Supplier's office on (08) 9316 1902.

## 26. JURISDICTION

All contracts between the Supplier and the Customer and/or Applicant/s for the sale of Goods shall be construed according to the laws of the State of Western Australia and the jurisdiction for the hearing of any dispute arising out of any contract between the Supplier and the Customer and/or the Applicant/s for the sale of Goods shall be in the State of Western Australia.

## 27. ACCEPTANCE OF THIS APPLICATION FOR CREDIT

If this application is accepted by the Supplier and a credit account is opened in the name of the Customer, the Supplier shall notify the Customer in writing within fourteen (14) days of the date of this Application. The Customer and/or the Applicant/s shall not have a trading account on a credit account basis with the Supplier until and unless the Customer receives that written notification of acceptance from the Supplier.

## 28. TERMINATION

This agreement may be terminated if:

- (a) The Customer or Applicant/s fails to observe or perform any of these Terms and Conditions, which it or they have agreed to observe and perform;
- (b) Any representations, warranties or undertakings made by the Customer or Applicant/s are found to be incorrect or misleading when made;
- (c) Either the Customer or Applicant/s enters into any arrangement of whatsoever nature, whether formal or informal, with its or their creditors;
- (d) An encumbrance or security interest given by the Customer or Applicant/s in favour of a third party other than the Supplier becomes enforceable;
- (e) There occurs in the opinion of the Supplier any change in the activities, financial standing or credit worthiness of the Customer or Applicant/s which adversely affects its or their ability to perform or observe its or their obligations under these Terms and Conditions;
- (f) The Supplier decides for any reason to cease to supply Goods to a Customer or the Applicant/s at anytime, with or without reason;

Then the Supplier shall be entitled to terminate this agreement forthwith and in such event, all monies owing by the Customer to the Supplier shall become immediately due and payable and the Supplier shall have no obligation under this or any other contract to supply Goods to the Customer.

## 29. INTERPRETATION

Where the context so admits:-

- (a) Words importing the singular shall be deemed to include the plural and vice versa,
- (b) Words importing the masculine gender include all other genders and any obligation by two or more persons shall bind them jointly and severally AND any reference to any party shall include the administrators, executors and successors of that party (as the case may be),
- (c) Words importing persons include corporations,
- (d) the expression 'the Customer' shall include any nominee of the Customer as well as the persons signing these Terms and Conditions on behalf of the Customer to whom credit may be given by the Supplier, alone, jointly or additionally to the Customer specified herein,
- (e) The expressions 'Credit Reporting Agency', 'Commercial Credit' and 'Consumer' have the same meanings as given these expressions in The Privacy Act, 1988.
- (f) Where there is any inconsistency between the Terms and Conditions of this application and any subsequent agreement between the parties for the supply of Goods by the Supplier, any such subsequent agreement shall be read down to the extent necessary to give full force and effect to the Terms and Conditions of this application.

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