

## PARTICULARS

<b>Agreement Date</b>	The date this Agreement is accepted by an authorised representative of Supply Partners in writing.
<b>A. AGREEMENT</b>	
<b>1 Agreement</b>	<p>(a) The parties agree that the terms of this Agreement (including the General Conditions, these Particulars and any Special Conditions) shall apply to any Products supplied or to be supplied by Supply Partners to the Customer, or any third person on the Customer's behalf.</p> <p>(b) The Customer is deemed to have read, understood, and accepted this Agreement if at any time the Customer places an Order or pays any deposit or any other monies in relation to an Order.</p>
<b>B. CREDIT ACCOUNT &amp; DEFAULT CREDIT TERMS</b>	
A Credit Account can only be authorised after completing a Credit Account Application	
<b>1 Default Credit Terms</b>	<p>Unless stated otherwise, these are the minimum terms that apply to any Credit Account or credit provided to the Customer (even if credit is provided inadvertently or by way of the customer receiving goods it has not paid for):</p> <p>(a) <b>Title.</b> Title is retained in accordance with clause 7 of the General Conditions;</p> <p>(b) <b>Security.</b> Security for payment is registrable in accordance with clause 8 of the General Conditions;</p> <p>(c) <b>Payment.</b> Payment must be received within the Payment Terms or in default within 7 days; and</p> <p>(d) <b>Interest.</b> Interest applies at 1.5% per month accruing daily on any overdue payments.</p>
<b>2 Guarantee</b>	Where so required by Supply Partners the directors and/or shareholders of the Customer must provide a personal guarantee as to the obligations of the Customer to pay for Products obtained from Supply Partners, which shall be set out in a separate Guarantee & Indemnity form.
<b>3 Insurance Required</b>	The Customer is required to hold suitable commercial insurance from a reputable insurance provider to cover the full Order value of goods that it purchases on its Credit Account as a condition of its Credit Account, proof of which must be provided on demand.
<b>C. PRODUCTS &amp; PRICING</b>	
<b>1 Products</b> Clause 1.1(t)	Solar modules, inverters, racking, batteries, LED lighting, assorted components, and any other goods notified by Supply Partners to the Customer from time to time.
<b>2 Pricing</b> Clause 3	Pricing shall be the most current pricing notified in writing to the Customer by Supply Partners. Supply Partners reserves the right to change pricing at any time and no pricing is confirmed until an Order is accepted by Supply Partners.
<b>D. ORDERS, DELIVERY, RETURNS &amp; REBATES/BONUSES</b>	
<b>1 Orders</b> Clause 4	<p>(a) All Orders must be made in writing and specify the:</p> <ul style="list-style-type: none"> <li>(i) Products required;</li> <li>(ii) Price of Products;</li> <li>(iii) GST payable;</li> <li>(iv) Delivery instructions; and</li> <li>(v) Any other relevant timeframes &amp; dates.</li> </ul> <p>Supply Partners reserves the right to reject Orders that do not contain all of the above information.</p> <p>(b) Supply Partners may from time-to-time change the way it requires the Customer to make Orders.</p>
<b>2 Delivery &amp; Risk</b>	<p>(a) Where the Customer arranges for delivery of an Order, all risk passes to the Customer upon collection of the Order by the Customer or whoever they have nominated to collect the Order.</p> <p>(b) Where Supply Partners includes delivery or freight with the Order then risk on the Order shall pass to the Customer immediately upon collection of the Products from Supply Partners.</p>
<b>3 Returns</b>	<p>In accordance with clause 9 of the General Conditions, any damaged Products in an Order must be notified in writing to Supply Partners within 5 business days of delivery. The Customer should take photos of any damage and send through to their account manager at Supply Partners. The Customer must freight the damaged Product back to Supply Partners. Supply Partners will at its discretion either:</p> <ul style="list-style-type: none"> <li>(a) Provide a credit note to the Customer for the value of the damaged Products and return freight;</li> <li>(b) Replace the damaged Products and re-freight at no cost; or</li> <li>(c) Refund the value of the damaged Products to the Customer within 28 days.</li> </ul> <p>The Customer acknowledges that relevant standards may prohibit the installation and certification of solar and energy storage products with out-of-date labels. To the extent permitted by law, Supply Partners may refuse the returns of Products for 'change of mind' or any reason other than a genuine fault.</p>

4	<b>Warranties</b>	<p>To the extent permitted by law, Supply Partners does not offer any warranty on the Products as this provided for by the manufacturer, and Supply Partners shall not be responsible or liable to the Customer or its customers with respect to the enforcement of any warranty.</p> <p>If the Customer is a consumer under the Australian Consumer Law, there may be consumer warranties which can not be excluded by law.</p>
5	<b>Rebates and Bonuses</b> Clause 4.8	<p>(a) From time-to-time Supply Partners may offer rebates and/or bonuses for volumes of purchases of Products from Supply Partners on such terms &amp; conditions as it sees fit.</p> <p>(b) Unless stated otherwise, any rebates and/or bonuses shall be treated as a reduction in the balance owing on a current invoice and are not redeemable for cash or any other credit, nor are they transferrable or assignable in any way.</p> <p>(c) Any rebates and/or bonuses are only provided where the Customer is not in breach of this Agreement or any other agreement it has with Supply Partners.</p>

**E. PAYMENT**

1	<b>Invoicing</b>	Upon dispatch of an Order, Supply Partners shall raise a tax invoice for that Order.
2	<b>Payment Terms</b>	<p>(a) If the Customer does not hold a Credit Account, the Customer must pay all orders in full prior to dispatch of the Products specified in the Order. If the Customer does not make full payment prior to dispatch then that Order and the Customer are subject to the Default Credit Terms.</p> <p>(b) If the Customer holds a Credit Account then payment is as per the terms offered to the Customer.</p>
3	<b>GST</b>	The Customer is responsible for all GST due on any tax invoice issued to the Customer by Supply Partners.

**F. COMPANY POLICIES**

1	<b>Company Policies</b>	Supply Partners may from time-to-time set policies to do with marketing, systems, standards, ordering, deliveries and freight which the Customer must reasonably comply with upon notice in writing.
2	<b>Default &amp; Breach</b>	Where the Customer is in default or breach under any agreement with Supply Partners clause 15 of the General Conditions shall apply, and no rights of Supply Partners shall be prejudiced as a result of any action or inaction of Supply Partners.

**G. INTELLECTUAL PROPERTY**

1	<b>Brand Owner's IP</b>	<p>The Customer acknowledges and agrees that:</p> <p>(a) The owner of Intellectual Property rights (IP) with respect to the Products (such as the manufacturer) may require that the Customer obtain their approval for any use of their IP and their brand;</p> <p>(b) The Customer will abide by all directions of the IP owner with respect to usage of their brand; and</p> <p>(c) The IP owner may prohibit or restrict the use of the brand by the Customer and that Supply Partners cannot override the decision of the IP owner.</p>
2	<b>Supply Partners IP</b> Clause 11	<p>(a) The Customer may receive documentation, marketing material and other intellectual property during the relationship with Supply Partners. Any such Intellectual Property shall be given to the Customer on a revocable, non-exclusive license by Supply Partners, without any derogation of its rights.</p> <p>(b) All Intellectual Property, including logos, documents, spreadsheets, the wording of brochures, textual &amp; photographic information, contracts, websites and other information remains the property of Supply Partners, and nothing should be copied or made to look as the Customer's own work without the express written permission of Supply Partners.</p> <p>(c) Unauthorised use of Intellectual Property will be treated seriously and the Customer agrees to indemnify Supply Partners for any losses caused or costs incurred as a result of unauthorised use of Intellectual Property.</p>

**H. CONFIDENTIAL INFORMATION**

1	<b>Confidential Information</b> Clause 12	<p>In accordance with clause 12 of the General Conditions the Customer agrees to keep confidential all Confidential Information, including but not limited to information related to:</p> <ul style="list-style-type: none"> <li>- Pricing;</li> <li>- Credit Accounts; and</li> <li>- Intellectual Property.</li> </ul>
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**I. GENERAL**

1	<b>Governing Law</b>	Queensland
2	<b>Reference City</b>	Brisbane

SPECIAL CONDITIONS - NIL

## GENERAL CONDITIONS

### RECITALS

- A. Supply Partners distributes Products to Customers to sell to End Users.
- B. The Customer wishes to purchase Products from Supply Partners.
- C. Any purchase of Products by the Customer from Supply Partners will be in accordance with this Agreement.

### 1 INTERPRETATION

1.1 The following definitions apply in this document:

- (a) **ABN** means Australian Business Number.
- (b) **ACN** means Australian Company Number.
- (c) **Agreement** means this agreement, including these General Conditions, the Particulars, and any Special Conditions.
- (d) **Agreement Date** has the meaning given in the Particulars.
- (e) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the Reference City set out in item I(2) of the Particulars.
- (f) **Claim** means a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against a person, however arising and whether:
  - i. ascertained or unascertained;
  - ii. immediate, future or contingent; or
  - iii. subject of a dispute, litigation, arbitration, mediation, conciliation or administrative proceedings.
- (g) **Confidential Information** means any written or verbal information, that is not Excluded Information, that:
  - i. is connected with Supply Partners (including but not limited to its business operations, customers and Intellectual Property rights) and is obtained from Supply Partners or one of Supply Partners' Representatives;
  - ii. Supply Partners informs the Customer that Supply Partners considers it confidential and proprietary; or
  - iii. is personal information within the meaning of the *Privacy Act 1988* (Cth).
- (h) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (i) **End Users** means retail customers who purchase the Products for installation and operation in a place of residence or business.
- (j) **Excluded Information** means information that the Customer can establish:
  - i. was in the public domain at the time it was given to the Customer;
  - ii. became part of the public domain, without the Customer's involvement in any way, after being given to the Customer;
  - iii. was in the Customer's possession when it was given to the Customer, without having been acquired (directly or indirectly) from Supply Partners; or
  - iv. was received from another person who had the unrestricted legal right to disclose that information free from any confidentiality obligation.
- (k) **Force Majeure Event** means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, pandemic or epidemic, action or inaction by a government agency or body, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a virus or other malicious code, or any other matter not caused by the acts or omissions of the party seeking relief.
- (l) **General Conditions** means the terms and conditions set out in the section of this Agreement entitled "General Conditions".
- (m) **Insolvency Event** means an event that occurs when a party:
  - i. is in liquidation or provisional liquidation or under administration;
  - ii. has a controller as defined in the Corporations Act, or an analogous person appointed to it or to any of its property;
  - iii. is taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
  - iv. is unable to pay its debts or is insolvent;
  - v. dies, ceases to be of full legal capacity or becomes incapable of managing its own affairs for any reason;
  - vi. takes any step that could result in the party becoming an insolvent under administration as defined in section 9 of the Corporations Act;
  - vii. enters into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
  - viii. is affected by any analogous event.
- (n) **Intellectual Property** means all rights (present and future) conferred by common law, equity or statute (and all moral rights) connected with business names, computer software, confidential information, copyright, designs, domain names, formulas, inventions, knowhow, business processes, patents, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.
- (o) **Orders** means orders for the Products by the Customer in accordance with this Agreement.
- (p) **Particulars** means this Agreement's details and variables set out in the section of this Agreement entitled "Particulars".
- (q) **Payment Terms** means the payment terms specified in Item E of the Particulars.
- (r) **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- (s) **Privacy Law** means the *Privacy Act 1988* (Cth) and any other law that governs the use, disclosure or management of data or information relating to persons.
- (t) **Products** means the goods described in item C(1) of the Particulars.
- (u) **Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).
- (v) **Representative** includes an employee, agent, officer, director, auditor, advisor, researcher, partner, consultant, contractor, sub-contractor, Related Body Corporate, or other related entity of a person.

- (w) **Security Interest** has the meaning given in the PPSA.
- (x) **Service** means the delivery and installation of the Products by the Customer at the residence or business location of the End User.
- (y) **Special Conditions** means the terms and conditions set out in the section of this Agreement entitled "Special Conditions" (if any).
- (z) **Wholesale Activities** means activities that involve the Customer selling Product on a commercial scale to customers that are not End Users.

**1.2** Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural and the opposite also applies.
- (b) A reference to one gender includes all other genders and no gender.
- (c) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (d) A reference to a clause refers to clauses in this Agreement.
- (e) A reference to legislation is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it.
- (f) Mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included.
- (g) A reference to a *party* to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (i) A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (j) A reference to dollars or \$ is to an amount in Australian currency.

## **2 TERM**

2.1 This Agreement will commence on the Agreement Date and shall continue until terminated in accordance with this Agreement.

## **3 PRICING**

3.1 Supply Partners shall issue price lists to the Customer from time-to-time for the Products.

3.2 Any prices for Products are subject to change without notice, and products will be invoiced according to the price current on the day of the Customer's order.

## **4 ORDERS**

4.1 The Customer will make orders using the in the manner set out in item D of the Particulars.

4.2 The process for Orders is subject to change without notice by the Supply Partners.

4.3 Supply Partners may accept or reject Orders in its sole discretion.

4.4 Each accepted Order shall constitute a separate agreement, incorporating the terms of the Order and those of this Agreement.

4.5 Any additional or other terms contained in any document (including hand amendments) provided by the Customer will not form part of the Order unless specifically agreed by Supply Partners in writing.

4.6 All drawings, descriptive matter, specifications, and advertising issued by Supply Partners, and any descriptions or instructions contained on Supply Partners' website, catalogues, brochures or other media are issued or published for the sole purpose of giving an approximate idea of the Products described in them. Unless expressly agreed by Supply Partners, they do not form part of any agreement.

4.7 An Order may only be cancelled in accordance with the terms of this Agreement.

4.8 Rebates and bonuses will be applied in respect of the Products as set out in item D(5) of the Particulars.

## **5 PAYMENT, GST & DUTIES**

5.1 Supply Partners will invoice the Customer for the Products provided before the date for payment in accordance with item E of the Particulars.

5.2 Payments made by the Customer must be made in accordance with the Payment Terms outlined in item E of the Particulars.

5.3 Supply Partners will not supply Product to the Customer on credit unless:

- (a) the Customer has completed a Supply Partners Credit Application Form, and this has been approved in writing by an authorised representative of Supply Partners; or
- (b) an authorised Representative of Supply Partners agrees in writing for an ad-hoc credit arrangement with the Customer.

5.4 Payment must be made in a manner approved by Supply Partners. Where payment is made by credit card, Supply Partners may charge a credit card surcharge on the total price of the Products.

5.5 The words in this clause 5 that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning.

5.6 All prices referred to in this Agreement are exclusive of GST, unless expressly stated to be inclusive of GST.

5.7 For each taxable supply or in connection with any Order:

- (a) Supply Partners will be entitled to charge the Customer for any GST payable by Supply Partners in respect of the taxable supply;
- (b) The Customer must pay Supply Partners the amount of the GST at the same time as the relevant charge applicable to the supply becomes payable under the Order; and
- (c)  Supply Partners will provide a valid tax invoice or adjustment note to the Customer in respect of the taxable supply.

5.8 The Customer is responsible for paying all government charges, taxes or duties of any kind incurred in or in connection with this Agreement.

## **6 DELIVERY OF THE PRODUCTS & RISK**

6.1 Risk of the Products passes to the Customer at the time specified in Item D(2) of the Particulars.

6.2 To the extent permitted by law, Supply Partners excludes liability for any Claim relating to damage or loss of Products during transport.

6.3 The Customer must maintain its own insurances for holding and transport risk.

6.4 Any freight charges incurred by the Customer will be added to the Customer's invoice and must be paid prior to dispatch, unless otherwise arranged on an ad-hoc basis by an authorised representative of Supply Partners.

6.5 If the Customer and Company agree to any delivery period, that period is merely an estimate and Supply Partners is not obligated to deliver in accordance with it.

6.6 The timing of delivery is not a term of this Agreement, and no failure to deliver the Product in an agreed timeframe will give rise to any claim for compensation, or be a breach under this Agreement.

## **7 RETENTION OF TITLE**

7.1 This clause 7 applies if Products are delivered to the Customer before the Customer pays Supply Partners for those products in full.

7.2 Title to the Products remains with Supply Partners and does not pass to the Customer until Supply Partners receives full payment, even if those goods have been installed, affixed, altered or mixed in anyway with any other equipment.

7.3 Until title in the Products passes to the Customer in accordance with clause 7.2:

- (a) the Customer must hold the Products on a fiduciary basis as bailee for Supply Partners;
- (b) the Customer must not, except in the ordinary course of its business supplying the Products to End Users, or with Supply Partners' prior written consent:
  - i. assign, sub-let, charge, mortgage, pledge or create any form of Security Interest over, or otherwise deal with the Products in any way;
  - ii. alter, modify, tamper with, damage or repair the Products; or
  - iii. deface, remove, vary or erase any identifying marks, plate, number, notices or safety information on the Products;
- (c) until the Products are supplied to End Users, the Customer must keep the Products in their exclusive possession, in a safe and secure location, separately from the property of any other person and in a manner which leaves them readily identifiable as Supply Partners' Products; and
- (d) if the Customer sells the Product or uses them to create a product which prevents the Products from being identifiable to Supply Partners, the Customer is taken to hold the proceeds of sale of the Products or any product containing them on trust for Supply Partners and is liable to account to Supply Partners for those proceeds.

## **8 PERSONAL PROPERTY SECURITIES**

8.1 Defined terms in this clause have the same meaning as given to them in the PPSA.

8.2 The Customer acknowledges that this Agreement constitutes a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in favour of Supply Partners over the Products (Goods) supplied or to be supplied to the Customer (Grantor) pursuant to this Agreement.

8.3 The Customer agrees that the security interest over Goods established by clause 8, will be a registrable interest pursuant to the PPSA.

8.4 The Goods supplied or to be supplied under this Agreement fall within the PPSA classifications of Commercial property and "Other Goods" acquired by the Customer pursuant to these Terms. Supply Partners and the Customer acknowledge that Supply Partners, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer, as Grantor, under this Agreement on the PPSA Register as Collateral. The Customer waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to Supply Partners. Registration of security interests that are created pursuant to this Agreement is at the sole discretion of Supply Partners.

8.5 The Customer agrees to indemnify Supply Partners on demand for all costs and expenses, including legal costs and expenses on a solicitor / Customer basis, associated with the enforcement or attempted enforcement of any Security Interest granted to Supply Partners by the Customer.

8.6 The Customer agrees:

- (a) That nothing in sections 130 to 143 of the PPSA will apply to this Agreement or the Security under the terms of this agreement; and
- (b) To waive its right to do any of the following under the PPSA:
  - i. receive notice of removal of an Accession under section 95;
  - ii. receive notice of an intention to seize Collateral under section 123;
  - iii. receive notice of disposal of Collateral under section 130;
  - iv. receive a Statement of Account if there is no disposal under section 130(4);
  - v. receive notice of retention of Collateral under section 135;
  - vi. redeem the Collateral under section 142;
  - vii. reinstate the Security Agreement under section 143;
  - viii. object to the purchase of the Collateral by the Secured Party under section 129; and
  - ix. receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- (c) to do all things reasonably necessary or required by Supply Partners to perfect the registration of the Security Interest on the PPSR, including signing any documents.

8.7 The Customer agrees to reimburse Supply Partners for any fees and charges connected with the registration, administration and communication in respect of security interests that are created pursuant to this Agreement.

## **9 RETURNS AND WARRANTIES**

9.1 To the extent permitted by law and subject to this clause 9, Supply Partners does not offer any warranty on the Products as this provided for by the manufacturer, and Supply Partners shall not be responsible or liable to the Customer or its customers with respect to the enforcement of any warranty.

9.2 The Customer must:

- (a) inspect the Products upon receipt to ensure quality; and
- (b) notify Supply Partners of any Products that it receives that are damaged or faulty within 5 Business Days.

9.3 If a Product is damaged or faulty and Supply Partners is notified in accordance with item D of the Particulars, Supply Partners will compensate the customer as set out in item D(3) of the Particulars, subject to this clause 9.

9.4 Supply Partners may inspect and test the Products for the purpose of determining the extent of any defect and the validity of any claim made by the Customer under this clause 9.

9.5 Notwithstanding any other provision of this Agreement, Supply Partners will not provide compensation under clause 9.3 where, in Supply Partner's opinion:

- (a) the Products have been subject to secondary transportation or handling by an End User or the Customer's Representatives; or

- (b) the damage to the Products has arisen due to:
  - i. use of the Products for any purpose other than that for which they were designed;
  - ii. improper adjustment, calibration or installation of the Products;
  - iii. failure to follow instructions from Supply Partners or the manufacturer of the Products;
  - iv. contamination or leakage caused by the Customer, End User or their Representatives; or
  - v. any modification or alteration to the Products.

9.6 To the extent permitted by law, Supply Partners may refuse to accept returns of Products due to the Customer's 'change of mind' or any reason other than a genuine fault.

## 10 STANDARD OF SERVICES

10.1 The parties agree that they shall conduct business in relation to the Products:

- (a) ethically;
- (b) responsibly; and
- (c) providing reasonable support for each other,

so that the Products and any associated services are marketed, sold, installed & supported to the highest possible standards, and that any action which compromises these values shall constitute a breach of this Agreement.

10.2 The Customer represents and warrants as follows:

- (a) **Ethics.** The Customer will act honestly, ethically & responsibly when marketing and selling the Products and shall uphold the best interests of the End User in its dealings.
- (b) **Promptly.** The Customer will provide the Services promptly, without unnecessary or unreasonable delay.
- (c) **Fit for purpose.** Any services provided by the Customer will be fit for the purpose required by the End User.
- (d) **Dispute Resolution.** The Customer shall first attempt to resolve any disputes in accordance with clause 17;
- (e) **Policies.** The Customer will comply with all applicable policies, procedures, rules, regulations, standards of conduct and requirements that Supply Partners notifies it of in Item F of the Particulars;
- (f) **Law and Standards.** The Customer will comply with all the relevant laws and industry best practice standards in respect of providing the Services.
- (g) **Personnel.** The Customer will only engage or appoint suitably competent skilled and qualified personnel to work on providing any services to End Users;
- (h) **Reputation.** The Customer will provide the Services in a manner that will not adversely affect or bring into disrepute the reputation of Supply Partners.
- (i) **Appropriate tools.** The Customer will use equipment of a high standard that is fit for the purposes of carrying out any services.

## 11 INTELLECTUAL PROPERTY

- 11.1 Unless otherwise agreed, each party retains ownership of all Intellectual Property rights in material owned or created by that party independently of this Agreement. None of that Intellectual Property is assigned or transferred by way of these Terms.
- 11.2 The Customer acknowledges and agrees that Intellectual Property rights in the Products may be held by third parties pursuant to Item G(1).
- 11.3 Except to the extent that Item G(1) applies, all Intellectual Property rights in the products and any other material, designs, methods or content developed by Supply Partners, including modifications, improvements and enhancements (Work IP), will vest in and are owned by Supply Partners upon creation, even if based on the customer's request or feedback.
- 11.4 Supply Partners grants the customer a revocable and non-exclusive licence to use the Work IP (IP Licence) for the term of this agreement, subject to this clause 11.
- 11.5 The IP Licence is non-transferable, royalty free, and is restricted for use for the purposes of the Services and the Customer's day-to-day business within Australia.
- 11.6 The IP Licence applies severally to each category of Intellectual Property included in the Work IP.
- 11.7 The Licensee agrees that its use of Supply Partners' Intellectual Property pursuant to the IP Licence is at its own risk.
- 11.8 Except to the extent authorised by the IP Licence, or otherwise authorised by Supply Partners in writing, the Customer must, and must ensure that its Representatives do not:
  - (a) sell, sublicense, rent, lease, lend, modify, alter, translate, reproduce, transmit, distribute, publicly display, publicly perform, publish, adapt, or edit any part of the Work IP;
  - (b) combine or incorporate the Work IP in any aspect of the Customer's business;
  - (c) copy the Work IP, in whole or in part, except to incorporate the Work IP into hard or soft copy documents for training or internal communication purposes;
  - (d) use the Work IP in any way which is not in accordance with the specifications and this Agreement;
  - (e) use the Work IP for any unlawful purpose; or
  - (f) authorise any other party to do any of the acts listed above.
- 11.9 The Customer agrees to indemnify Supply Partners for any Claim that it suffers or incur as a result of or in connection with the Customer's use of, or conduct in connection with, the Work IP, including any breach by the Customer of this Agreement or the law.

## 12 CONFIDENTIALITY

12.1 The Customer acknowledges and agrees that:

- (a) the Confidential Information is secret, confidential and valuable to Supply Partners and/or its Representatives (Discloser);
- (b) it owes an obligation of confidence to the Discloser concerning the Confidential Information;
- (c) it must not disclose the Confidential Information to a third party except as permitted in this Agreement;
- (d) all Intellectual Property rights remain vested in the Discloser by disclosure of Confidential Information does not in any way transfer or assign any rights or interests in the Intellectual Property to the Customer; and

- (e) any breach or threatened breach by the receiving party of an obligation under this Agreement may cause the Discloser immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently, the Discloser has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the Customer and its Representatives, or to compel specific performance of this clause.

12.2 The Customer may disclose Confidential Information where such disclosure:

- (a) is required by law or the rules of a stock exchange;
- (b) is made to their Representatives who have a need for the Confidential Information, and agree to be bound by confidentiality obligations no less onerous than this clause 12; or
- (c) is authorised by Supply Partners in writing, and then only on the terms (if any) specified by Supply Partners.

12.3 The Customer must notify the Discloser in writing giving full details known to it immediately it becomes aware of:

- (a) any actual, suspected, likely or threatened breach by it of clause 12;
- (b) any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information; or
- (c) any actual, suspected, likely or threatened theft, loss, damage, or unauthorised access, use or disclosure of or to any Confidential Information.

12.4 The Customer must promptly take all steps that the Discloser may reasonably require and must co-operate with any investigation, litigation or other action of the Discloser or of a related body corporate if there is:

- (a) any actual, suspected, likely or threatened breach of a term of this Agreement; or
- (b) any theft, loss, damage or unauthorised access, use or disclosure of or to any Confidential Information that is or was in its possession or control.

### 13 INDEMNITY

13.1 To the extent permitted by law, the Customer releases and indemnifies Supply Partners against any liability arising from Claims for:

- (a) negligence on the part of the Customer or its Representatives in connection with the Products or Services;
- (b) any damage or injury an End User or other third party arising directly or indirectly from the actions or omissions of the Customer, End User, or their Representatives;
- (c) any personal injury or death arising directly or indirectly out of the conduct of the Customers or its Representatives;
- (d) the Customer or its Representatives breaching their obligations under this Agreement;
- (e) the Customer or its Representatives acting outside the scope of its authority under this Agreement;
- (f) any infringement or alleged infringement of the Intellectual Property rights or other rights of Supply Partners or any third party;
- (g) fraud, misrepresentation or wilful misconduct by the Customer or its Representatives; or
- (h) Supply Partners being required under Privacy Law to correct any data, respond to any complaint, or address any other matter raised by a person.

13.2 Supply Partners may make a claim under indemnities in this Agreement in relation to a cost before having incurred the cost, or before making a payment in relation to the cost.

13.3 The indemnities in this Agreement shall be in addition to any damages for breach of contract to which Supply Partners may be entitled. Nothing in the indemnities prevents Supply Partners from claiming damages if the Customer breaches this Agreement.

13.4 Each indemnity in these Terms is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of these Terms for whatever reason.

### 14 LIMITATION OF LIABILITY

14.1 The Customer acknowledges and agrees that it is acquiring the Products for commercial purposes and not for domestic, personal or household use. Accordingly, the Customer acknowledges and agrees that credit is not sought or obtained under this Agreement for any purposes contemplated by the National Credit Code contained within Schedule 1 of the National Consumer Credit Protection Act 2009 (Cth).

14.2 If the Customer is a consumer within the meaning of the Competition and Consumer Act 2010 (Cth), there are certain rights and guarantees which cannot by law be excluded (Non-Excludable Condition).

14.3 Subject to the applicable Non-Excludable Conditions, and to the maximum extent permitted by law, Supply Partners:

- (a) excludes from this Agreement all guarantees, conditions and warranties that are not expressly stated in this Agreement;
- (b) will not be liable for any direct, incidental, consequential or indirect damages, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss connected with the Products or Services, or use of, or inability to use the Products, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, except to the extent that the Claim arises due to Supply Partners' negligence or default; and
- (c) excludes all liability to the Customer for any Claim suffered or incurred directly or indirectly by the Customer in connection with this Agreement, whether that liability arises under common law, equity or statute, except to the extent that Claim arises due to Supply Partners' negligence or default.

14.4 The liability of the Customer to Supply Partners or vice versa will not be limited or affected in any way by any insurance policy procured by the Customer.

14.5 If Supply Partners' liability under this Agreement cannot be lawfully excluded, to the maximum extent permitted by law, Supply Partners' liability for breach of any Non-Excludable Condition is limited, at Supply Partners' option, to the replacement of the Products or the supply of equivalent goods, the repair of the Products, the payment of the cost of replacing the Products or of acquiring equivalent goods, or the payment of the cost of having the Products repaired.

### 15 DEFAULT

15.1 The Customer will be in default if they:

- (a) fail to comply with the payment terms in Item B of the Particulars (or has not paid 7 days after the invoice in an ad-hoc arrangement);
- (b) fails to pay any other amount to Supply Partners by its due date;
- (c) provides Supply Partners with information which it knows or has reasonable grounds to suspect is false, incomplete or misleading;

- (d) undergo an Insolvency Event; or
  - (e) breach any provision of this Agreement and fail to remedy that breach within 10 Business Days.
- 15.2 If the Customer is in default, then subject to any law (including requirements as to notice), Supply Partners may:
- (a) demand immediate payment of all moneys owed by the Customer to Supply Partners, whether due for payment or not;
  - (b) recover from the Customer all Products it has supplied to the Customer whether paid for or not. The Customer grants Supply Partners a perpetual, irrevocable licence to enter any property owned or occupied by the Customer for the purpose of recovering such Products, and the Customer shall indemnify Supply Partners against any Claim arising from such entry;
  - (c) re-sell or otherwise dispose of the Products recovered without reference to the Customer and apply the net proceeds to the Customer's debt with Supply Partners;
  - (d) withhold further performance of any obligations under any Order or other agreement between the parties;
  - (e) immediately cancel any Order in effect with the Customer without any obligation to refund the Customer any money in respect of the cancellation;
  - (f) terminate the Customer's credit facility;
  - (g) issue a statutory demand for the debt; and/or
  - (h) enforce any Security Interest.
- 15.3 Supply Partners will not be liable for any loss or damage resulting from any action authorised by clause 15.2.
- 15.4 If the Customer does not pay in accordance with the Payment Terms, Supply Partners may charge interest at the rate set out in Item B(1)(d) of the Particulars.
- 15.5 Any costs (including legal costs on an indemnity basis) in connection with the collection of money unpaid from the Customer in accordance with payment terms will be added to the debt due from the Customer to Supply Partners.
- 16 TERMINATION**
- 16.1 Supply Partners may terminate this Agreement at any time at its sole discretion, by providing 20 Business Days' written notice.
- 16.2 Supply Partners may terminate this Agreement or any Order immediately by written notice to the Customer if the Customer is in default pursuant to clause 15.1.
- 16.3 Either party may terminate this Agreement immediately with notice to the other party if an Insolvency Event occurs with respect to that party.
- 16.4 Termination of this Agreement or any Order shall not affect the Customer's obligation to pay any outstanding amounts or other amounts in relation to Products.
- 17 DISPUTE RESOLUTION**
- 17.1 If any dispute arises between the Customer and Supply Partners in connection with this Agreement (Dispute), then either party may notify the other of the Dispute with a notice (Dispute Notice) which:
- (a) includes or is accompanied by full and detailed particulars of the Dispute; and
  - (b) is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.
- 17.2 Within 10 Business Days after a Dispute Notice is given, a Representative (with the authority to resolve the dispute) of the Customer and Company must meet and seek to resolve the Dispute.
- 17.3 A party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.
- 17.4 Nothing in this clause prevents:
- (a) Supply Partners from instituting court proceedings with respect to any outstanding amounts under this Agreement; or
  - (b) either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
- 17.5 Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement and any related agreements.
- 18 FORCE MAJEURE**
- 18.1 If a party to this document is affected, or likely to be affected, by a Force Majeure Event, that party must immediately give the other prompt notice of that fact including:
- (a) full and detailed particulars of the Force Majeure Event;
  - (b) an estimate of its likely duration;
  - (c) the obligations affected by it and the extent of its effect on those obligations; and
  - (d) the steps taken to rectify it.
- 18.2 The obligations under this document of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.
- 18.3 A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible.
- 18.4 During any period in which a party to this document is not performing obligations because of a claimed Force Majeure Event, the other party may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the party claiming the Force Majeure Event is not performing without incurring any liability to that party.
- 19 ELECTRONIC COMMUNICATION & NOTICES**
- 19.1 The words in this clause that are defined in the Electronic Transactions Act 1999 (Cth) have the same meaning.
- 19.2 Each party to this Agreement agrees to the clauses in the Particulars and the Special Conditions. The Particulars, Special Conditions and the General Conditions form a single legal agreement. To the extent that the Particulars or the Special Conditions are inconsistent with the General Conditions, the terms of the Particulars will prevail. To the extent that the Special Conditions are inconsistent with the Particulars, the Special Conditions will prevail.
- 19.3 A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.



19.4 Notices must be sent to the parties' contact details as specified in Item A of the Credit Application. Any notice that is not sent by email must also be sent by email.

19.5 A notice will be taken to be received by the addressee:

- (a) if delivered by hand before 5:00pm on a Business Day, then on the day of delivery;
- (b) if posted to an address, then on the third Business Day after the day of posting; or
- (c) if emailed and the sender has no reason to suspect the email was not delivered, at the time of sending.

**20 GENERAL**

20.1 **Assignment.** The Customer may not assign any of its rights or obligations under this Agreement or any Order without the prior written consent of Supply Partners. Supply Partners may assign any of its rights or obligations under this Agreement without notice to, or the prior consent of the Customer. The Customer must sign any documents to give effect to the assignment which Supply Partners requires.

20.2 **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.

20.3 **Relationship.** The relationship of the parties to this Agreement does not form a joint venture or partnership.

20.4 **Waiver.** No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.

20.5 **Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.

20.6 **Governing Law.** This Agreement is governed by the laws of the state set out in Item I(1) of the Particulars. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.

20.7 **Liability for Expenses.** Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this Agreement.

20.8 **Inconsistency.** If this Agreement is inconsistent with any other document or Agreement between the parties, this document prevails to the extent of the inconsistency.

20.9 **Counterparts.** This Agreement may be executed in any number of counterparts, including counterparts exchanged electronically. All counterparts together will be taken to constitute one instrument.

20.10 **Time.** Time is of the essence in this Agreement.

20.11 **Severability.** Any clause of this Agreement, which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.

20.12 **Privacy.**

- (a) The Customer hereby authorises Supply Partners to collect, retain, record, use and disclose commercial and consumer information about the Customer, in accordance with Privacy Law, to persons and/or legal entities, including a solicitor or any other professional consultant engaged by Supply Partners, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.
- (b) Supply Partners may give information about the Customer to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Customer's credit file. This information may be given before, during or after the provision of credit to the Customer and will be in accordance with Privacy Law.

20.13 **Trust Representations.**

If the Customer is the trustee of a trust, the Customer represents and warrants to Supply Partners that:

- (a) it has the power to enter into this Agreement in its capacity as trustee of that trust;
- (b) the trust was validly created and exists as at the date of this Agreement;
- (c) it was validly appointed as trustee of the trust and is the sole trustee of the trust;
- (d) a date has not been declared under the trust as the date on which the trust will be vested or come to an end;
- (e) the transaction contemplated by this Agreement is to the commercial benefit of the Trust; and
- (f) the Customer as trustee of the trust has valid rights of indemnity and exoneration against the assets of the trust, which rights are available for