



Unit 3, 310-312 Governor Road, Braeside VIC 3195 T: +61 3 9587 7706

NEW ACCOUNT APPLICATION FORM

REQUEST FOR ACCOUNT WITH:

Ideal Sources Pty Ltd in its capacity as trustee of the Ideal Sources Unit Trust (ABN 30 878 114 626), Unit 3, 310-312 Governor Road, Braeside, Victoria 3195, Australia (the "Supplier")

ONLY FULLY COMPLETED APPLICATIONS WILL BE ACCEPTED

THE APPLICANT

Full legal name of applicant (if a Trust, insert full name of Trustee/s):

..... ("the Applicant")

Business Type: (please tick one) [] Sole Proprietor [] Partnership [] Company [] Trust

Address:

Postcode:

Business Name-ABN:.....

Office No: () Fax No: () Mobile No:()

No. of years trading under present ownership:.....Email:

Bank: BSB: Account No:

Payment Terms: (if nothing specified clause 4.4 of the Terms and Conditions attached to this Application will apply)

Trading Account Limit:

Has any person associated with the applicant ever been declared bankrupt or associated with an insolvent company Yes/No

If Yes-Name..... Year of Bankruptcy/Insolvency.....

OWNERS/DIRECTORS/Trustee

Name: Name:

[] Owner [] Director [] Trustee [] Owner [] Director [] Trustee (Please tick as applicable)

Private Address: Private Address:

..... Postcode:..... Postcode:

Home Phone: ()..... Home Phone: ()

Drivers Lic. No: Drivers Lic. No:..... State:

..... State: Any special instructions (please advise if delivery, account address, etc. is different from above)

.....

STORE CONTACT DETAILS

Franchisees

Name:
Phone:
Email:
Other Stores:

Main Contact

Name:
Phone:
Email:
Other Stores:

Accounts

Name:
Phone:
Email:
Other Stores:

Warranties/Credits

Name:
Phone:
Email:
Other Stores:

Orders

Name:
Phone:
Email:
Other Stores:

CORPORATE TRUSTEE

Where the Applicant makes this application as a trustee, it warrants and declares that it has the power and authority to make and execute this Application and that all rights of indemnity which it now has or may have in the future or may otherwise have against the property of the trust of which it is a trustee and for which it is making the Application on behalf of, have not been modified or excluded as a result of any act, matter or document made or executed by it or as a result of any breach of fiduciary duty or in any other way. It warrants and declares further that it has not released and shall not release in the future and shall not cause or permit to be released, lost or diminished in any manner whatsoever, any such rights of indemnity.

NAME OF TRUST.....

DATE OF TRUST DEED

NAME OF TRUSTEE

NAME OF SETTLOR

ADDRESS OF TRUSTEE

BENEFICIARIES OF TRUST

.....

.....

APPLICANT'S CURRENT TRADING REFERENCES

Please note a minimum of 3 commercial trading references are required

Company Name

Address

.....

Contact Person

Phone Number

E-mail

Company Name

Address

.....

Contact Person

Phone Number

E-mail

Company Name

Address

.....

Contact Person

Phone Number

E-mail

TERMS OF APPLICATION & PERSONAL INFORMATION

This Application must be completed in full with no alterations or deletions. Any such alterations or deletions will void the application and a new form will have to be completed.

By signing this Application, I/we:

apply for a trading account with the Supplier on the terms contained in this Application;

acknowledge and agree that the terms and conditions attached to this Application (which include security provisions) will govern the provision of any products or services by the Supplier to the Applicant;

acknowledge and warrant that I/we have read and understood this document (including the attached terms and conditions) and have been advised, and given a reasonable opportunity, to seek independent legal advice;

acknowledge and warrant that the information given in support of this application is true and correct;

acknowledge that completing and submitting this Application does not infer that a trading account will be granted by the Supplier and that the Supplier reserves the right to refuse an application for a commercial trading account to any applicant without explanation;

acknowledge that the Supplier reserves the right to suspend or withdraw the trading account at any time without reason or notice;

warrant that I/we am/are and each director/partner/proprietor referred to in this Application is solvent and can each pay their respective debts as and when due, and no steps have been taken to place any of them in bankruptcy, voluntary administration, liquidation, receivership or receivership and management and I/we will promptly notify the Supplier of any material changes to the Supplier or my/our financial position; and

acknowledge and warrant that I/we am/are authorised to sign on behalf of the Applicant and to bind the Applicant in contract.

In consideration of the Supplier granting a trading account facility the Applicant undertakes to pay all amounts owing to the Supplier in accordance with the standard terms and conditions attached to this Application.

Notice of use and disclosure of personal information

In providing commercial trading account facilities and/or its products, the Supplier may collect, hold, use and disclose personal information, including credit related personal information and personal information collected from you, the Applicant or a third party, in accordance with the Supplier's Privacy Policy available at www.idealresources.com.au or otherwise on request. The Supplier's Privacy Policy sets out how the Supplier will collect, hold, use, disclose and otherwise manage personal information. The individual(s) about whom the Supplier may need to collect, hold, use and disclose personal information may include an Applicant or an Applicant's director(s) or other individual(s) relevant to the Applicant's application (**Relevant Individuals**). In particular, the Supplier may require personal information about Relevant Individuals for the purposes of assessing an Application or administering any relationship between the Applicant and the Supplier, including in relation to the supply of goods or services or the provision of an account or for the purposes set out in the Supplier's Privacy Policy, including the purposes of assessing applications for a commercial trading account. This may include the Supplier disclosing a Relevant Individual's personal information to, and obtaining personal information from, the trade references provided by the Applicant or for the purpose of assessing an Applicant's application for a trading account and their ability to make payment of all amounts due by the Applicant to the Supplier.

The Supplier may also disclose a Relevant Individual's personal information to the Applicant or the Applicant's or Supplier's related bodies corporate, professional advisors, business partners, contractors, consultants, insurers, third party service providers that assist the Supplier or Applicant with the provision of products and/or administrative requirements, debt collection and recovery service providers, entities that may have an interest in the Supplier, regulatory bodies and any other person or entity set out in the Supplier's Privacy Policy or otherwise authorised by the Relevant Individual or law.

Relevant Individuals are under no obligation to provide their personal information, however, if a Relevant Individual does not provide the personal information as requested, the Supplier may not be able to consider the application for a commercial trading account, provide a trading account facility to the Applicant or otherwise provide products. Relevant Individuals who have any concerns about the Supplier's handling of their personal information can direct those concerns to Tony Pastore at tony@idealresources.com.au and Unit 3, 11-13 Lakewood Boulevard, Braeside, Victoria, 3195. Relevant Individuals can request access to, or correction of, personal information held about them by the Supplier. The Supplier's Privacy Policy sets out information about how Relevant Individuals can seek access to, or correction of, personal information held by the Supplier and/or complain to the Supplier about any breach of the *Privacy Act 1988* (Cth) and the Australian Privacy Principles or any binding APP Code.

The Relevant Individuals acknowledge and give consent to: (a) the Supplier making enquiries with and collecting personal information (including credit information) about the Relevant Individuals from the trade references provided by the Applicant; (b) the Supplier disclosing personal information (including credit information) about the Relevant Individuals to such trade references; and (c) the collection, use, holding and disclosure of personal information for the purposes set out above and in the Supplier's Privacy Policy.

Print Name:		Signature:		Date:	
		Title:			
Print Name:		Signature:		Date:	
		Title:			

GUARANTEE

In consideration of Ideal Sources Pty Ltd in its capacity as trustee of the Ideal Sources Unit Trust (ABN 30 878 114 626) (Supplier) granting a trading account to

.....
 (A.C.N.)

(hereinafter called the Applicant) each person that signs below (Guarantor) has requested that the Supplier accepts the application for a trading account made by the Applicant (Account) and to provide the guarantee set out in this document on the following terms (Guarantee).

(a) In consideration for the Supplier accepting the Applicant's application for an Account, each Guarantor unconditionally and irrevocably guarantees the punctual payment of all money owing to the Supplier by the Applicant under or in connection with the terms and conditions attached to the application for the Account (Terms and Conditions) and the terms of the Account (Guaranteed Money).

(b) Each Guarantor must on demand immediately pay to the Supplier an amount equal to any amount of Guaranteed Money not paid by the Applicant by the due date for payment, even if the Supplier has not made a demand for payment on the Applicant.

(c) Each Guarantor indemnifies the Supplier against any and all loss or damage (including, without limitation, direct, indirect and consequential loss) which the Supplier suffers as a direct or indirect result of:

(i) the Applicant or a Guarantor failing to pay any Guaranteed Money to the Supplier;

(ii) the Applicant breaching any provision of the terms of the Account, the Terms and Conditions or any other agreement with the Supplier; or

(iii) any Insolvency Event (as that term is defined in the Terms and Conditions) occurring in respect of the Applicant or any other Guarantor.

(d) Each Guarantor's obligations under clauses (a), (b) and (c) are that of principal debtor and not merely as surety.

(e) Each Guarantor's obligations under clauses (a), (b) and (c) and its other obligations under this Guarantee:

(i) are continuing obligations, separate and independent from the Guarantor's other obligations under this Guarantee;

(ii) extend to all amounts of Guaranteed Money presently owing or owing at any time in the future; and

(iii) remain in force until the Supplier (in its sole discretion) notifies the Guarantor in writing of the discharge of the obligations.

(f) Each Guarantor's obligations under this Guarantee are not affected by anything which might otherwise operate to release, affect or discharge them in any way (whether at law or equity).

(g) The Supplier may enforce any right under this Guarantee regardless of whether it has made a demand on the Applicant or enforced any other security.

(h) Each Guarantor cannot withdraw from, terminate or revoke this Guarantee.

(i) Each Guarantor must not, without the prior written consent of the Supplier, prove in the insolvency of the Applicant or receive any benefit or distribution in respect of the winding up or liquidation of the Applicant.

(j) Each Guarantor must not, without the prior written consent of the Supplier, exercise any set off or counterclaim right which could reduce or limit the amount of the Guaranteed Money payable to the Supplier.

(k) The Supplier may credit any amounts it receives under this Guarantee towards the satisfaction of the Guaranteed Money in such order or priority as the Supplier, in its sole discretion, considers appropriate.

(l) Where there is more than one Guarantor, the obligations of each Guarantor will be joint and several obligations. A Guarantor will not be released from its obligations under this Guarantee by reason of another Guarantor not signing this Guarantee, being released from liability under this Guarantee by the Supplier or otherwise ceasing to have obligations under this Guarantee.

(m) Each Guarantor acknowledges that it expects to obtain a commercial benefit as a result of providing this Guarantee to the Supplier.

(n) Words and expressions used in clauses (o) to (v) which are not defined in this Guarantee but are defined in the Personal Property Securities Act 2009 (Cth) (PPSA) have the meaning given to them in the PPSA.

(o) As security for the due and punctual payment to the Supplier of all present and future amounts payable by each Guarantor under or in connection with this Guarantee, each Guarantor grants to the Supplier:

(i) a general security interest over all of their present and after acquired personal property; and

(ii) a charge over all their other property, including any real property they own.

(p) Each Guarantor agrees that the Supplier may at any time:

(i) perfect its security interest under clause (o) by effecting a registration on the PPSR against the Guarantor; and/or

(ii) register a caveat or other security interest over any Other Property or real property owned by the Guarantor.

(q) Each Guarantor agrees to promptly do all things necessary to ensure that any security interest created under this Guarantee is perfected and remains continuously perfected, the Supplier's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.

(r) Each Guarantor must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by the Supplier for that purpose). Without limiting the foregoing, each Guarantor must:

(i) create and implement appropriate policies and systems to register its own security interests; and

(ii) where appropriate, take reasonable steps to identify security interests in its favour and to perfect and protect them, with the highest priority reasonably available.

(s) Each Guarantor must indemnify, and on demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPSR, registering or stamping any security interest or caveat and for the enforcement of any rights arising out of any of the Supplier's security interests.

(t) Each Guarantor must not change its name, address or contact details without providing prior written notice to the Supplier and must not register a financing change statement or a change demand without the Supplier's prior written consent.

(u) To the extent that the PPSA permits, each Guarantor waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.

(v) Each Guarantor may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if the Supplier has given prior written consent.

(w) This Guarantee is governed by the laws in force in Victoria and each Guarantor and the Supplier submit to the non exclusive jurisdiction of the courts of Victoria.

(x) If any provision of this Guarantee is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from this Guarantee without affecting the validity or enforceability of the remaining provisions.

Date:

Signed by: In the presence of:

Signature of Guarantor Signature of Witness

Name of Guarantor *(please print)*

Name of witness *(please print)*

Signed by: In the presence of:

Signature of Guarantor Signature of Witness

Name of Guarantor *(please print)*

Name of witness *(please print)*

Signed by: In the presence of:

Signature of Guarantor Signature of Witness

Name of Guarantor *(please print)*

Name of witness *(please print)*

Signed by: In the presence of:

Signature of Guarantor Signature of Witness

Name of Guarantor *(please print)*

Name of witness *(please print)*

STANDARD TERMS AND CONDITIONS

1 Dictionary

In these Terms and Conditions, the words below have the following meanings:

Account Application Form means the form (if any) completed by the Customer for an account for the provision of Goods or Services which has been approved by the Company.

Agreement means each Offer which is accepted by the Company under clause 3.2.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Business Day means any day except a Saturday, Sunday or public holiday in Victoria.

Cancellation Fee means an amount equal to 5% of the Purchase Price.

Change in Control means, in relation to a party:

(a) the person who Controls the party at the date that party first became bound by these Terms subsequently ceases to have Control of the party;

(b) a person who does not Control the party at the date that the party first became bound by these Terms subsequently obtains Control of the party; or

(c) if the party is Controlled by a group or consortium of persons, or if the group or consortium could Control the party were they to act collectively, any material change in the composition of that group or consortium.

Claim means a claim, action, proceeding, judgment or demand made or brought by or against a party, however arising and whether present, unascertained, future or contingent.

Company means Ideal Sources Pty Ltd in its capacity as trustee of the Ideal Sources Unit Trust (ABN 30 878 114 626).

Confidential Information means all information disclosed by the Company to the Customer and includes these Terms and the prices of the Goods or Services but excludes information that:

(a) is public knowledge or becomes available to the Customer from a source other than the Company (otherwise than as a result of a breach of confidentiality by the Customer or any person to whom it has disclosed the information); or

(b) is rightfully known to, or in the possession or control of the Customer and not subject to an obligation of confidentiality in accordance with the terms of an Agreement.

Consequential Loss means loss beyond the normal measure of damages and includes indirect loss, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss opportunities.

Consumer has the meaning provided to it in section 3 of the Australian Consumer Law.

Consumer Guarantee means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

Container Order means an Order for a full container load (FCL) or less container load (LCL) of Goods.

Control has the meaning given in section 50AA of the *Corporations Act 2001* (Cth).

Customer means the entity or person requesting that Goods or Services be supplied to it by the Company.

Default Rate means 3% per month.

Delivery Fee means:

(a) the delivery fee set out in a Quote or agreed in writing between the parties; or

(b) if no delivery fee is set out in a Quote or agreed in writing between the parties, the costs of the Company reasonably incurred in delivering the Goods to the Customer.

Force Majeure Event means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party including any fire, failure or shortage of power supplies or raw ingredients, abnormally inclement climate or weather conditions, flood, lightning, storm, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, riot, disease, civil commotion, insurrection, political instability, armed conflict, war, terrorist action, strike or other labour difficulty or shortage, unavailability of transport providers, failure or inability to obtain any licence or the threat of any of the foregoing.

Forward Order means an Order to top up Goods.

Goods means the goods to be supplied by the Company to the Customer under an Agreement.

GST has the meaning given to it by the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended, varied or replaced from time to time.

Insolvency Event means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; or in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; or the occurrence of any event that has substantially the same effect to any of the above events.

Invoice has the meaning provided to it in clause 4.3.

Loss means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

Non PDH Goods or Services means goods or services which, for the purposes of the Australian Consumer Law, are not of a kind ordinarily acquired for personal, domestic or household use or consumption.

Offer has the meaning provided to it in clause 3.1.

Order means any order or other request by or for the Customer to the Company for it to sell to the Customer any Goods or Services, whether such order or request is written, verbal or implied in the circumstances and which may have been given in response to a Quote.

Ordinary Order means an Order which is not a Container Order or a Forward Order.

Payment Facility means any direct debit facility or other similar payment facility, details for which are provided by the Customer to the Company in connection with the payment of amounts incurred under these Terms.

Price List means any price list or catalogue of the Company's goods published and distributed by the Company in hard copy or electronically (including by making available for viewing through its official website) to its actual and prospective customers, as updated and replaced by the Company from time to time in its discretion and includes any prices for the Goods or Services provided by the Company to the Customer prior to entry into the relevant Agreement.

Purchase Price has the meaning provided to it in clause 4.1.

Quotation or **Quote** means a quote, if any, provided by the Company to the Customer in respect of the Goods or Services.

Services means any services provided by the Company to the Customer as listed in the accepted Order.

Tax or **Taxes** means any tax, levy, charge, impost, fee, deduction, compulsory loan or withholding (including corporate tax, personal income tax, fringe benefits tax, payroll tax, withholding tax, excise and import duties, GST, consumption tax, value added tax or any other taxes, levies or charges), which is assessed, levied, imposed or collected by any government agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any such amounts.

Trading Limit means the value of any trading account facility granted by the Company to the Customer under the Account Application Form.

Terms means these Terms and Conditions.

1 Application of Terms and Conditions

These Terms apply to and govern the supply by the Company of Goods or Services to the Customer which are to be provided under an Offer accepted by the Company.

2 Formation of Agreement

2.1 The Customer acknowledges and agrees that by submitting an Order the Customer makes an offer to the Company for the Company to supply it with the Goods or Services on the terms of:

- (a) these Terms;
 - (b) the Order; and
 - (c) the Quote (if any),
- (Offer).

2.2 A contract will be formed between the Company and the Customer in respect of each Offer upon the earlier of the Company:

- (a) notifying the Customer, either verbally or in writing, that it accepts the Customer's Offer;
- (b) notifying the Customer that it accepts, in full or part, payment from the Customer for the Goods or Services;
- (c) making delivery of the Goods to the Customer; or
- (d) performing the Services.

2.3 An Agreement formed under clause 3.2 will comprise these Terms, any Account Application Form, the Order, any Quote and the Invoice.

2.4 The Customer agrees to comply with each Agreement and any terms provided to the Customer relating to the Payment Facility.

2.5 The Company is not bound to accept any Offer and may not accept any Offer for any reason and in the sole discretion of the Company.

3 Price and payment

3.1 Unless otherwise agreed by the parties, the price the Customer must pay for the Goods or Services under each Agreement will be:

- (a) the price for the Goods or Services specified in the Quote or, if there is no Quote, the Price List; and
- (b) the Delivery Fee,
(Purchase Price).

3.2 Unless otherwise expressly specified by the Company or in these Terms, all prices stated are exclusive of Taxes and the Customer is solely responsible for the payment of all Taxes levied or payable in respect of the Goods or Services and must immediately upon request by the Company provide the Company with evidence of payment of any Taxes.

3.3 The Company may invoice the Customer for the Purchase Price at any time following formation of the relevant Agreement (Invoice).

3.4 Subject to clause 4.5 and 4.7, the due date for payment by the Customer to the Company of the Purchase Price for the Goods or Services supplied pursuant to an Agreement (Due Date) will be:

- (a) if not set out in any account application form;
 - (i) 30 days from the date of invoice
 Payment Facility, 30 days from the date of the Invoice;
- (b) if set out in an Account Application Form, as set out in the Account Application Form.

3.5 If the Customer has agreed to pay amounts incurred under these Terms using a Payment Facility, the Company will debit the amount shown in the Invoice from the Payment Facility on the Due Dates (or at such other time as authorised under any agreement between the Customer and the Company in respect of the Payment Facility).

3.6 When the Customer pays the Company for an amount due under an Invoice, the Customer must provide to the Company the invoice number set out on the relevant Invoice and, if the Customer fails to provide the invoice number when making payment to the Company, the Company may, in its absolute discretion, apply the payment received from the Customer towards the satisfaction of any outstanding amounts due to the Company by the Customer.

3.7 If:

- (a) the Customer has previously failed to make any payment to the Company by the due date for that payment (whether under these Terms or otherwise); or
 - (b) the creditworthiness of the Customer is, in the Company's sole opinion, unsatisfactory,
- the Company may require payment of all or part of the Purchase Price 60 days prior to the shipment of the relevant Goods to the Company.

3.8 If the Customer fails to make any payment by the Due Date or is the subject of an Insolvency Event, then, without prejudice to any other right or remedy available to the Company, the Company may, in its sole discretion, elect to:

- (a) suspend any further deliveries to the Customer arising from any Agreement;
- (b) cancel any Agreement in respect of any Goods or Services not yet supplied to the Customer in whole or in part by the Company and charge the Customer the Cancellation Fee for the Goods or Services not yet supplied, such Cancellation Fee will be due and payable upon demand by the Company;
- (c) terminate any Agreement in accordance with clause 17.1;
- (d) enter the property of the Customer in order to repossess the Goods;
- (e) charge the Customer interest (both before and after any judgement) on the unpaid amount at the Default Rate, which interest will accrue and be chargeable from the first day on which such amounts become overdue until the Company receives payment of all such amounts (including all interest) by way of cleared funds;
- (f) cancel any Trading Limits or account facilities previously granted to the Customer by the Company; and
- (g) cancel any trade discounts or rebates provided, or otherwise offered, to the Customer under any Agreement or other arrangement.

4 Delivery of Goods

4.1 The Company will deliver the Goods to the Customer in the manner:

- (a) determined by the Company; or
- (b) as otherwise agreed between the Company and the Customer (including collection by the Customer).

4.2 The Company will not be required to deliver the Goods to the Customer if the Customer has not paid for the Goods in accordance with clause 4.7.

4.3 In the event of the Customer returning or failing to accept any delivery of the Goods, the Company shall be entitled to payment for those Goods and to treat the obligation to supply the remainder of the goods (if any) as cancelled by the Customer and the Customer indemnifies the Company against any Loss suffered by the Company as a result of the Customer's failure to accept delivery of the goods.

4.4 The Company will be entitled to store at the risk and cost of the Customer any Goods which the Customer refuses or fails to take delivery of, without limiting any other rights the Company may have.

4.5 The Company will use its reasonable endeavours to deliver the Goods on any delivery date specified or estimated by the Company or set out in an Order however delivery and dispatch dates are estimates only and the Company will not, in any circumstances or for any reason (including the occurrence of a Force Majeure Event), be liable for late or part delivery of the Goods and later delivery of Goods does not entitle the Customer to cancel any order for the Goods.

4.6 Without limiting clause 5.5, the Company may deliver a portion of the Goods and may invoice or otherwise charge the Customer for that portion. The Customer may not refuse to accept delivery of the Goods or to pay for the Goods because only a portion of the quantity ordered was delivered and the Customer agrees that the Company will not be liable for any Loss that the Customer suffers as a result of any delay or cancellation.

4.7 There must be a representative of the Customer present at the delivery location at the time delivery is made of the Goods and, if no such representative is present, a redelivery fee may be charged by the Company.

4.8 The Customer acknowledges and agrees that:

- (a) the Company may, but will not be required to, provide proof of delivery or other similar documentation (whether at the time of delivery or after);
- (b) any proof of delivery or other similar documentation provided by the Company will be conclusive evidence of the delivery of the relevant Goods;
- (c) it will not request proof of delivery or other similar documentation from the Company; and
- (d) it will not dispute any Invoice based on (in whole or in part) proof of delivery or other similar documentation not having been provided by the Company.

5 Return of Goods

5.1 If the Customer is not a Consumer, the Customer shall only be entitled to return the Goods to the Company if it believes the Goods are not supplied in accordance with the description, quality or quantity set out in the Agreement and has provided the Company with a written notice of its claim.

5.3 If the Company, at its sole discretion, determines that the Goods specified in a written notice under clause 6.1 do not meet the description, quality or quantity set out in the Agreement the Company may, at its sole discretion, supply replacement Goods to the Customer.

5.4 Minor deviations or variations in the Goods shall not give rise to any claim under clause

6 Title and risk of Goods

6.1 Title to, and property in, any Goods supplied under an Agreement remain with the Company and will only pass to the Customer once all moneys owing by the Customer to the Company in respect of the Agreement or any other

paid in full.

6.2 Risk in:

(a) the Goods ordered by the Customer under a Container Order passes to the Customer on the date the Goods are removed from the premises of the Company's supplier for shipment to the Customer; and

(b) the Goods ordered by the Customer under a Forward Order or a Container Order passes to the Customer upon the Goods being removed from the Company's third party warehouse facility for delivery to the Customer or collection by the Customer, and:

(c) the Customer is responsible for arranging, and taking out in its own name and own its own cost, any insurance in respect of the Goods from the time risk passes to the Customer under this clause; and

(d) the Customer indemnifies the Company against any Loss or damage to the Goods, however caused, occurring after the Goods have been removed from and left the Company's premises (or the premises of

6.3 In the event that the Customer is required to return any Goods to the Company, risk in the Goods passes to the Company on confirmation of receipt of the Goods by the Company.

6.4 Until such time as full title, property and ownership of the Goods passes to the Customer in accordance with clause 7.1, and while the Goods remain in the Customer's full control and possession:

(a) the Customer must hold the Goods as the Company's fiduciary agent and bailee;

(b) the Customer must insure the Goods for their full replacement value and must store the relevant Goods separately from any other goods and in a way that enables the Goods to be clearly identified as the Company's and referable to a particular Invoice;

(c) the Company may enter the premises of the Customer or any third party where the Goods are stored during the hours of 9.00am to 5.00pm (local time) to inspect the Goods and:

(i) the Customer authorises and grants the Company an express, irrevocable licence to enter the premises of the Customer or relevant third party to inspect the Goods; and

(ii) the Customer indemnifies the Company against any Loss that may be incurred or sustained by the Company, its employees or agents, as a result of the entry of those premises where the Goods are stored; and

(d) the Company may at any time after payment is overdue require the Customer to deliver up the Goods to the Company and, if the Customer fails to deliver up the Goods immediately, the Company may enter the premises of the Customer or any third party where the Goods are stored and repossess them and:

(i) the Customer authorises and grants the Company an express, irrevocable licence to enter the premises of the Customer or relevant third party as attorney of the Customer to remove or arrange for the removal of the Goods; and

(ii) the Customer indemnifies the Company against any Loss that may be incurred or sustained by the

Company, its employees or agents, as a result of the entry of those premises where the Goods are stored; and

(e) the Customer must not pledge or grant a security interest in or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Company. If the Customer does pledge or in any way charge by way of security, for any indebtedness, any of the Goods for which property and ownership has not passed to the Customer, the Customer must remove the pledge, charge or security interest immediately and all moneys owing by the Customer to the Company will (without prejudice to any other right or remedy of the Company) immediately become due and payable to the Company.

6.5 Notwithstanding that title to the Goods has not passed to the Customer under clause 7.1, the Customer may resell the Goods or any part thereof in the name of the Customer but only as agent for the Company and may deliver any such Goods to the buyer of those Goods but only on terms which will not prejudice the Company's ability to obtain the sale

proceeds thereof and:

(a) any amount paid by the buyer of such Goods to the Customer (Sale Proceeds) must be held by the Customer on trust for the Company and banked in a separate bank account relating only to the sale proceeds of any Goods and shall be forwarded as soon as possible (and in event within 2 Business Days) to the Company in satisfaction of any amount owed by the Customer in respect of the Goods; and

(b) if and when the full amount due to the Company in respect of the Goods has been received by the Company, any further Sale Proceeds may be retained by the Customer.

6.6 In the event that the Customer incorporates or transforms the Goods (or any portion of them) into any other goods manufactured or produced by the Customer or a third party, then the Customer must hold a proportion of any payment (Relevant Proportion) received by the Customer for such Goods on trust for the Company and the Customer acknowledges that the Relevant Proportion must be not less than the dollar value of the portion of the Goods incorporated or transformed.

6.7 If an Insolvency Event occurs in respect of the Customer then, without the need for notice or demand by the Company, the Customer acknowledges any sale or purported sale of the Goods will not be in the ordinary course of the Customer's business and the proceeds of any Goods sold in such circumstances will, to the extent of any money owing by the Customer to the Company, be held on trust for the Company by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.

7 PPSA

7.1 Words and expressions used in this clause 8 which are not defined in these Terms but are defined in the *Personal Property Securities Act 2009 (Cth)* (PPSA) have the meaning given to them in the PPSA.

7.2 Unless a Customer has paid for Goods in respect of an Agreement before they are delivered to the Customer, each Customer acknowledges that:

(a) the Agreement for the supply of Goods created under these Terms is a security agreement for the purposes of the PPSA, under which the Customer grants the Company a purchase money security interest in the Goods to secure the purchase price of the Goods;

(b) where the Company has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply; and

(c) the Company is not obliged to act in any way to seized by the Company or any person nominated by dispose of or to retain any Goods which have been the Company under its rights under the PPSA.

7.3 Without limiting anything else in these Terms, the Customer consents to the Company effecting a registration on the Personal Property Securities Register (PPSR) in relation to any security interest created by or arising in connection with, or contemplated by, these Terms, including in relation to the Goods. The Customer agrees to promptly do all things necessary to ensure that any security interest created under these Terms is perfected and remains continuously perfected, the Company's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.

7.4 The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by the Company for that purpose in relation to the Goods). Without limiting the foregoing, the Customer must:

(a) create and implement appropriate policies and systems to register a security interest in relation to the Goods where the Customer on sells the Goods to a third party; and

(b) where appropriate, take reasonable steps to identify security interests in relation to the Goods in the Customer's favour and to perfect and protect them, with the highest priority reasonably available.

7.5 The Customer must indemnify, and on demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the PPSR, and for the enforcement of any rights arising out of any of the Company's security interests.

7.6 The Customer must not change its name, address or contact details without providing prior written notice to the Company and must not register a financing change statement or a change demand without the Company's prior written consent.

7.7 To the extent that the PPSA permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.

7.8 The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if the Company has given prior written consent.

8 Warranties and liability

8.1 Nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of any applicable provisions of the Australian Consumer Law or the Customer's rights to make a claim in respect of any Consumer Guarantees or other provision of the Australian Consumer Law.

8.2 Subject to clause 9.4, if the Customer is not a Consumer for the purposes of the Australian Consumer Law then, to the extent permitted by law, the Company excludes all liability for any Loss incurred by the Customer as a result of an Agreement. This clause applies even if the Company knew or ought to have known that it was possible or foreseeable that the Customer would incur such Loss.

8.3 Notwithstanding clause 9.2, if the Customer is a Consumer and the Goods or Services are Non PDH Goods or Services, the Company's liability to the Customer is limited at the Company's option to:

(a) in the case of the Goods:

(i) the replacement of the Goods or the supply of equivalent goods;

(ii) the repair of the Goods;

(iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or

(iv) the payment of the cost of having the Goods repaired; and

(b) in the case of the Services:

(i) the supplying of the Services again; or

(ii) the payment of the cost of having the Services supplied again.

8.4 Notwithstanding clause 9.2, if the Customer is a Consumer and Goods or Services supplied under these Terms are goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption, the Company excludes all liability for any Loss incurred by the Customer as a result of an Agreement to the extent such Loss is not the result of a breach of a Consumer Guarantee.

8.5 If the Customer is liable to pay damages to a Consumer under the Australian Consumer Law in relation to the supply

of Goods which are Non PDH Goods or Services, the Company's liability to the Customer is limited to an amount equal to the lower of:

(a) the cost of replacing the Goods;

(b) the cost of obtaining equivalent Goods; or

(c) the cost of having the Goods repaired.

8.6 Without limiting any other provision in these Terms, the Company is not liable for any Loss the Customer suffers as a result of:

(a) improper use or consumption of the Goods; or

(b) misuse or neglect of the Goods or any other use or consumption of the Goods which is outside of the ordinary commercial application of the Goods or is otherwise inconsistent with the Company's instructions in relation to the use or consumption of the Goods.

8.7 Subject to clause 9.1 and the rest of this clause 9, the aggregate liability of the Company to the Customer for any Loss arising out of or in connection with an Agreement (including, without limitation, for breach of the Agreement or negligence) will in no event exceed an amount equal to the amount of the Purchase Price under that Agreement.

8.8 The parties acknowledge that the Company enters into each Agreement in its capacity as trustee of a trust and not in its own capacity and that the Company's liability under each Agreement shall be limited to the assets of the trust.

9 Indemnity

The Customer indemnifies the Company and holds the Company harmless from and against all Losses (including all legal costs on a solicitor/client basis, and any other associated fees and costs) for which the Company incurs as a direct or indirect result of:

(a) recovering any amounts the Customer owes to the Company (including any fees paid to a debt collector or similar);

(b) any breach of an Agreement by the Customer (including any breach of the warranties provided by the Customer); and

(c) any negligent or wilful act or omission by the Customer, the Customer's employees, agents, servants, contractors or others for whom the Customer is legally responsible.

10 Claims

10.1 The Customer shall notify the Company immediately if it becomes aware of:

(a) any Claim; or

(b) any death, serious injury or serious illness,

in respect of, or caused by, the Goods or other goods of which the Goods are a component of, or incorporated in, and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the Claim, death, serious injury or serious illness.

10.2 If Goods are sold by the Customer to a third party for commercial use by that third party (Third Party), the Customer must impose on the Third Party an obligation to notify the Customer immediately if the third party becomes aware of:

(a) any Claim; or

(b) any death, serious injury or serious illness,

in respect of the Goods or other goods of which the Goods are a component of, or incorporated in, and to take all reasonable steps to mitigate Loss arising as a consequence of the Claim, death, serious injury or serious illness.

10.3 The Customer must, and must impose on any Third Party an obligation to:

(a) not, without the Company's express written consent, make any representation to any Consumer regarding the purpose, performance or durability of the Products, which is in breach of the Australian Consumer Law;

(b) take all steps and do all things necessary to promptly pass on to the Company any Claim made by a Consumer arising out of or in connection with the Australian Consumer Law and must, at the Customer's expense, assist the Company to comply with its obligations under the Australian Consumer Law; and

(c) not agree to settle any Claim made by a Consumer without the prior written consent of the Company.

10.4 Subject to the provisions of these Terms and the Australian Consumer Law, if a Consumer seeks to make a Claim against the Customer for which the Customer wishes to make a Claim against the Company, the Claim must be received by the Company within 30 days of the date the Consumer initiates the Claim with the Customer and the Customer must provide the Company with all information in relation to the Claim, including the original receipt for the Goods issued to the Consumer and any claim form prescribed by the

Company. Failure to comply with this clause 11.4 will entitle the Company to reject the Customer's Claim and the Customer indemnifies the Company against any Loss incurred or suffered by the Company as a result of the Customer's failure to comply with this clause 11.4.

11 No representations

The Customer acknowledges and agrees that it has not relied on any representations, inducements or statements made to Services and it has satisfied itself that the Goods and it by the Company regarding the supply of the Goods or Services are fit for the purpose it requires them for.

12 Confidentiality

12.1 The Customer:

- (a) may use Confidential Information solely for the purposes of the relevant Agreement;
- (b) must keep confidential all Confidential Information; and
- (c) may disclose Confidential Information only to (i) employees and contractors who (A) are aware and agree that the Confidential Information of the other party must be kept confidential and (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by the other party, or (ii) as required by law or any securities exchange regulation.

12.2 The Customer must notify the Company immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

13 Privacy

The Customer acknowledges and agrees that personal information (as that term is defined in the *Privacy Act 1988* (Cth)) regarding the Customer may be collected, held, used and disclosed by the Company for the purposes set out in the Company's privacy policy (which privacy policy is available on the Company's website or on request from the Company), any privacy notice including in the Account Application Form or any other privacy notice provided by the Company from time to time. The Customer consents to the Company collecting, holding, using and disclosing any such personal information for all purposes specified in the Company's privacy policy or any applicable privacy notice.

14 GST

All amounts payable by the Customer in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by the Company under these Terms, the Customer must pay to the Company, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by these Terms to reimburse or indemnify the Company for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that the Company will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by the Company in respect of the reimbursement or payment. This clause does not merge on completion or termination of the relevant Agreement or contract. In this clause, words and expressions which are defined in the GST Act have the same meaning given to them by the GST Act.

15 Force Majeure

15.1 The Company will not be liable for any failure to perform or delay in performing its obligations under an Agreement if that failure or delay is due to a Force Majeure Event.

15.2 If a Force Majeure Event exceeds 20 Business Days, the Company may immediately terminate the Agreement by written notice to the Customer.

16 Termination

16.1 Without limiting the Company's other rights under these Terms, the Company may terminate any and all Agreements and any account facility under an Account Application Form with immediate effect by written notice to the Customer if:

- (a) the Customer is the subject of an Insolvency Event;
- (b) the Customer has breached any term of the relevant Agreement (including these Terms); or
- (c) in accordance with clause 16.2.

16.2 On termination of an Agreement, the Customer must, at its cost and within 10 Business Days of the date of termination, return to the Company all Goods the subject of the

Agreement (other than any Goods which have been paid for) and any displays and other promotional materials in relation to the Goods and if the Customer fails to deliver up the Goods within 10 Business Day of the date of termination, the Company may enter the premises of the Customer or any third party where the Goods are stored and repossess them and:

(a) the Customer authorises and grants the Company an the Customer or relevant third party as attorney of the express, irrevocable licence to enter the premises of Customer to remove or arrange for the removal of the Goods; and

(b) the Customer indemnifies the Company against any Loss that may be incurred or sustained by the Company, its employees or agents, as a result of the entry of those premises where the Goods are stored.

16.3 Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.

17 Acknowledgements and representations

17.1 If an Offer has been accepted by the Company, the Customer acknowledges that the Offer was accepted by the Company on the basis of, and in reliance upon, any information, specifications, data, representations, statements and documents provided by the Customer.

17.2 By making an Offer, the Customer warrants and represents to the Company that it has read and understood these Terms prior to making the Offer, and agrees to be bound by them in full.

17.3 The Price List, goods lists and other similar documents or catalogues do not constitute an offer by the Company to supply Goods appearing in those lists or catalogues or an offer by the Company to supply Goods at the prices set out in those lists or catalogues. The Company's price lists and catalogues may be changed by the Company at any time without notice.

18 Inconsistency

18.1 Unless otherwise specified in these Terms, in the event of an inconsistency between any of the documents listed in clause 3.3, the following order of precedence shall apply to the extent of the inconsistency:

- (a) the prices and quantity of Goods set out in a Quote (if any);
- (b) these Terms;
- (c) the Account Application Form;
- (d) any other terms of the Quote (if applicable);
- (e) the Invoice; and
- (f) without limiting clause 19.2, any terms in the Order.

18.2 These Terms shall prevail over any Customer terms and conditions, except to the extent specifically agreed by the Company in writing and any terms or conditions included in an order or other document provided or issued by the Customer will only be binding on the Company if expressly agreed by the Company in writing.

19 Cancellation

19.1 Without limiting clause 4.8(b), the Company may cancel or suspend any Agreement effective immediately upon providing the Customer with written notice of cancellation or suspension where the Company believes (for any reason) that it will be unable to supply the relevant Goods to the Customer, provided that if the Company cancels an Agreement under this clause 20.1 it will refund to the Customer any amounts already paid by the Customer for the Goods subject to the cancellation. The refund of any such amounts will be the Customer's sole remedy against the Company in respect of any cancellation pursuant to this clause 20.1.

19.2 Neither an Agreement nor any Offer that has been submitted can be cancelled by the Customer except:

- (a) with the prior written consent of the Company; and
- (b) no less than 60 days before the Goods the subject of the Agreement are due to be shipped to the Company, and without prejudice to any other rights the Company may have, the Customer indemnifies the Company for any Loss incurred by the Company in connection with such cancellation.

19.3 If the Customer cancels an Agreement under clause 20.2, the Company may charge the Customer the Cancellation Fee for the Goods or Services which were to be supplied under the Agreement and such Cancellation Fee will be due and payable upon demand by the Company.

20 Miscellaneous

20.1 In these Terms:

- (a) the singular includes the plural and vice versa;
- (b) the word person includes a firm, a body corporate, an unincorporated association, body or organisation established pursuant to international treaty, intergovernmental body, or government authority and other official authority;
- (c) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (e) headings are inserted for convenience and do not affect the interpretation of these Terms;
- (f) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms; and
- (g) unless otherwise specified by the Company, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.

20.2 The Customer must maintain and keep current and complete records of the Goods which the Company has supplied to the Customer, including the Goods which are sold by the Customer to a third party and must, immediately upon written request from the Company, provide the Company with access to, or copies of, those records.

20.3 The Customer must not assign or otherwise deal with any of its rights or obligations under these Terms without the Company's prior written consent. The Company may assign, subcontract or deal with any of its rights or obligations under these Terms (including any right to be paid or chose in action) at any time and without any requirement to notify the Customer.

20.4 For the purposes of clause 21.3, a Change in Control of the Customer shall be considered an assignment of the Customers rights or obligations under these Terms.

20.5 The Company may vary these Terms from time to time, and a variation is effective as soon as the Company provides the Customer notice of the variation.

20.6 A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future. Waiver of any of these Terms must be in writing and is only effective to the extent set out in that written waiver.

20.7 If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.

20.8 These Terms and the accepted Agreement constitute the entire agreement between the Customer and the Company in respect of the supply of the Goods or Services and supersede all previous communications, representations, understandings or agreements.

20.9 These Terms are governed by the laws in force in Victoria, and the Customer and the Company submit to the non-exclusive jurisdiction of the courts of Victoria.

20.10 The provisions of clauses 1, 6, 8, 9, 10, 11, 13, 17, 19 and 21 of these Terms survive the expiry or termination of the Agreement.

20.11 Each party must:

- (a) do all acts necessary or desirable to give full effect to an Agreement; and

(b) refrain from doing anything which might prevent full effect being given to an Agreement.

21.12 The relationship between the parties is and will remain that of independent contractors, and nothing in the Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.

21.13 Notices by a party must be delivered by hand, prepaid post, facsimile or email and sent to the address of the receiving party specified in the Agreement. Notices shall be deemed to have been received by hand upon delivery, by post within two (2) Business Days of sending, by facsimile upon receipt of a successful transmission report and by email one hour after the email (unless the sender knows that email has failed to send).

The Customer hereby agrees to be bound by the Terms:

Signed by:

[signature of director]

[name of director]

[signature of director]

[name of director]

for and on behalf of:

[name of Customer]

Date: //

Accepted by the Company

Signed by:

[signature of director]

[name of director]

[signature of director]

[name of director]

Date: //

NOTES