



## APPLICATION FOR 30 DAY COMMERCIAL CREDIT ACCOUNT

Strictly Confidential

**ENTITY TYPE** - Please select & complete sections as advised.

- Company (Section 1, 4 & 5)
- Partnership/Sole Trader (Section 3, 4 & 5)
- Trust (Section 2, 4 & 5)

**OFFICE USE ONLY** - Credit Department

Account # : \_\_\_\_\_

Credit Limit : \_\_\_\_\_

Credit Score : \_\_\_\_\_

Area Manager: \_\_\_\_\_

### SECTION 1 - COMPANIES

Trading Name: \_\_\_\_\_

Registered Name of Company: \_\_\_\_\_

Registered address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_

Postal address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_ Mobile: \_\_\_\_\_

ACN \_\_\_\_\_ ABN \_\_\_\_\_

Email Address: \_\_\_\_\_

Web Address: \_\_\_\_\_

Business Premises: Freehold / Leasehold / Rented Number of Employees: \_\_\_\_\_

If Subsidiary, Name of Parent Company: \_\_\_\_\_

### SECTION 2 - TRUSTS

Name of Trust: \_\_\_\_\_

Type of Trust: Discretionary / Family Trust / Unit Trust Other: \_\_\_\_\_

ABN \_\_\_\_\_

Name of Trustee: \_\_\_\_\_

ABN / ACN / BRN of Trustee, (where applicable): \_\_\_\_\_

Registered address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_

Postal address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_ Mobile: \_\_\_\_\_

Email Address: \_\_\_\_\_

Web Address: \_\_\_\_\_

Business Premises: Freehold / Leasehold / Rented Number of Employees: \_\_\_\_\_

### SECTION 3 - SOLE TRADERS & PARTNERSHIPS

Trading Name: \_\_\_\_\_

Registered address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_

Postal address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_ Mobile: \_\_\_\_\_

BRN \_\_\_\_\_ ABN \_\_\_\_\_

Email Address: \_\_\_\_\_ Web Address: \_\_\_\_\_

Business Premises: \_\_\_\_\_ Number of Employees: \_\_\_\_\_

### SECTION 4 - OWNER INFORMATION (fill where applicable)

#### DIRECTORS: (company)

1. Surname: \_\_\_\_\_ Given Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_

2. Surname: \_\_\_\_\_ Given Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_

3. Surname: \_\_\_\_\_ Given Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_

4. Surname: \_\_\_\_\_ Given Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_

#### PROPRIETOR/ PARTNERS (sole trader + partners)

1. Surname: \_\_\_\_\_ Given Name(s): \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Driver Licence No.: \_\_\_\_\_

Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

How long you have lived at this address: \_\_\_\_\_ Home Owned/Rented/Buying \_\_\_\_\_

Previous address if less than 3 years: \_\_\_\_\_

2. Surname: \_\_\_\_\_ Given Name(s): \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Driver Licence No.: \_\_\_\_\_

Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

How long you have lived at this address: \_\_\_\_\_ Home Owned/Rented/Buying \_\_\_\_\_

Previous address if less than 3 years: \_\_\_\_\_

**SECTION 5 - ALL APPLICANTS TO COMPLETE THIS PAGE**

**ACCOUNTS / BILLING INFORMATION:**

Contact Name(s): \_\_\_\_\_

Telephone: (    ) \_\_\_\_\_ Fax: (    ) \_\_\_\_\_ Mobile: \_\_\_\_\_

Statement/Invoice/Credit Email Address: \_\_\_\_\_

Sales Order Confirmation & Email Address: \_\_\_\_\_

**DELIVERY DETAILS:**

Delivery Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_

Forklift Onsite: Yes / No

Delivery Days & Times: (Eg. Monday to Thursday 8am-4pm & Friday 7am-12pm)

\_\_\_\_\_

**FINANCIAL INFORMATION: (Complete below or attach latest balance sheet)**

Current Assets: \_\_\_\_\_ Current Liabilities: \_\_\_\_\_

Fixed Assets: \_\_\_\_\_ Long Term Liabilities: \_\_\_\_\_

Investments: \_\_\_\_\_ Shareholder Funds: \_\_\_\_\_

**BUSINESS DETAILS:**

How Long Established: \_\_\_\_\_ How Long as Current Owner \_\_\_\_\_ Franchisor/Franchisee: \_\_\_\_\_

Est. Purchase: \$ \_\_\_\_\_ Monthly (if not monthly, how often): \_\_\_\_\_

Trading Bank: \_\_\_\_\_ Branch: \_\_\_\_\_

**TRADE REFERENCE: (Trading accounts Only-Landlords or Accountants not Acceptable)**

1. Trading Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Telephone: (    ) \_\_\_\_\_ Email Address: \_\_\_\_\_

2. Trading Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Telephone: (    ) \_\_\_\_\_ Email Address: \_\_\_\_\_

3. Trading Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Telephone: (    ) \_\_\_\_\_ Email Address: \_\_\_\_\_

Please detach and retain

## DIRECTORS / PROPRIETORS / PARTNERS

We are committed to your privacy. Our policy on the handling of personal information is to comply with the National Privacy Principles for the fair handling of personal information as set out in the Privacy Act, 1988 (as amended). In accordance with those principles and the Company's Privacy Policy, persons will be given access to their personal information on request. We use the types of personal information collected for the purpose of enabling us to supply you with our products and/or services and for assessing Applications for Commercial Credit, managing accounts and, if necessary, insuring our risk in collecting debts. This information may be disclosed to our related or associated companies, contractors, other credit providers whether or not your account is overdue and, if necessary, our risk Insurers, Debt Collectors and Credit Reporting Agencies. If all or part of the information requested is not provided we may not be able to supply you with our goods and/or services and we may not be able to process any Application for Commercial Credit. If you have any questions or concerns about our Privacy Policy, please direct your requests to the Privacy Officer at our National Head Office address.

1. Applicant acknowledges that he or she has received a copy of the ALSPEC Terms of Trade prior to signing this credit application.
2. The person(s) signing this credit application hereby warrants that he or she has read and fully understands the nature and effect of the ALSPEC Terms of Trade and
  - a) He or she has the authority to sign on behalf of and to bind the applicant,
  - b) The information provided is true and correct in every detail,
  - c) He or she agree(s) to provide such updated and regular financial and trading information that ALSPEC may reasonably require from time to time.
  - d) He or she irrevocably grant permission to ALSPEC before, during or after the provision of credit facilities, to give and receive information about the applicant to and from any credit reporting agency, credit provider, bank or financial institution, or any other corporation, association or person in accordance with the Privacy Act 1988, (as amended), or otherwise. This information may concern the applicant's consumer credit and/or commercial credit arrangements, and may consist of credit reports and other credit and trading information concerning the applicant and its business, and may be used to assist or review at any time this credit application, or to collect any overdue debts, and/or to provide credit references in accordance with the provisions of the Privacy Act 1988, (as amended), or otherwise.
  - e) He or she hereby indemnifies ALSPEC in respect of any claims or actions arising out of the obtaining or providing of information concerning the applicant.

Print Name: \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# TERMS OF TRADE

## ALSPEC SOLAR PRODUCTS PTY LTD

### SUMMARY OF IMPORTANT TERMS

The following is a summary of important terms affecting your (the 'Buyer', 'you') rights as a consumer, that we ('Seller', 'we', 'us') particularly draw your attention to:

#### Clause 3(f) – Cancellation

This clause provides that you cannot cancel or vary the Order once accepted by the Seller unless the Seller agrees. It sets any compensation that may be payable to the Seller if it suffers loss because you seek to cancel after commencement of production or manufacture of the Goods has occurred.

#### Clauses 4(e) and 4(l) – Consequences of your failure to take delivery

These clauses set out the consequences if you fail to take delivery of the Goods you have ordered, including what is payable to the Seller for this default.

#### Clause 10 – Limitation of Seller's Liability

Our obligations to you are set out in this clause. This clause limits the remedies available to you, to the extent the law allows, if the Goods provided by Us are faulty. For example, we may replace the Goods or provide a refund at our election.

#### Clauses 8 and 17(e) – Default consequences

These clauses set out what rights we may exercise if you are the subject of a Default Event. This includes suspending further deliveries and withdrawing any credit facilities. It requires all amounts that are owed to us, regardless of when due, to be paid. You are also liable for our costs and expenses of having to enforce our rights.

## 1 TERMS OF TRADE

- (a) Except as otherwise expressly agreed in writing between a duly authorised officer of each of the Seller and the Buyer:
- these Terms apply to all sales and other supplies of Goods by the Seller to the Buyer; and
  - the terms and conditions, if any, contained in an Order or other document issued by the Buyer to the Seller are rejected and do not apply.
- (b) Any supply of Goods by the Seller to the Buyer made after the date of acceptance of these Terms, is a supply pursuant to this master supply agreement constituted by these Terms and the relevant Order accepted by the Seller ('**Agreement**'), and any such supply does not give rise to a new or separate agreement.

## 2 DEFINITIONS

Unless the context requires otherwise:

'**Australian Standards**' means documents that set out the specifications, procedures and guidelines with respect to products with respect to their safety, consistency and reliability in Australia.

'**Buyer**' means the party placing an Order or purchasing Goods from the Seller.

'**Default Event**' means any of the following:

- the Buyer does not make a payment due to the Seller under this or any other contract;
- the Buyer is unable to pay its debts as and when they fall due;
- the Buyer ceases or suspends conduct of its business, or threatens to;
- a resolution is passed or proposed, or a summons is presented, to wind up the Buyer;
- a receiver and/or manager or other form of insolvency administrator is appointed over the Buyer or all or part of Buyer's assets;
- the Buyer makes or proposes to make any arrangement with its creditors;
- the Buyer commits an act of bankruptcy or is deemed to be insolvent; or
- execution is levied on any of the Buyer's assets.

'**Force Majeure Event**' has the meaning set out in clause 13.

'**Goods**' means supplies of goods to the Buyer provided that:

- unless the context provides otherwise, any reference to 'Goods' where it relates to goods provided by the Seller to the Buyer includes all proceeds of such Goods; and
- for the purposes of the PPSA, where Goods are supplied to the Buyer as inventory, then all references to the Goods will be to them as inventory only while they are held as inventory by the Buyer.

'**GST**' means the tax imposed or assessed by the GST Act and its related legislation and includes any similar or substitute impost introduced in the future.

'**GST Act**' means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

'**Order**' means any purchase order, request, instructions, direction to proceed in any form used by the Buyer for ordering the Goods which is an offer made to the Seller.

'**PPSA**' means the Personal Property Securities Act 2009 (Cth).

'**PPSR**' refers to the Personal Property Securities Register established under the PPSA.

'**Product Data**' means, to the extent there are any, includes product drawings, loadings, test results, disclaimer and care and maintenance information, as updated by the Seller from time to time that may relate to the Goods or any part of the Goods.

'**Seller**' means Alspec Solar Products Pty Ltd ACN 670 770 993.

'**Terms**' means these Terms of Trade, and as amended in writing from time to time.

## 3 ORDER AND ACCEPTANCE

- (a) All Orders are subject to such limits as to minimum quantity or cash value of order as the Seller determines from time to time.
- (b) An order submitted to the Seller will be deemed to incorporate these Terms.
- (c) Orders received by the Seller will be deemed accepted by, or binding on, the Seller when the Seller accepts the Order in whole or in part by oral or written notice to the Customer.
- (d) The Seller may reject an Order in its reasonable discretion including for reasons such as the unavailability of the Goods, an error in the description of the Goods on the Seller's website or in its catalogue or proposal, or an error in the Order. The Seller may require additional verification or information from the Buyer before accepting any Order.
- (e) The Seller will not accept alterations to Orders which are in production or completed.
- (f) To the extent permitted by law, if the Buyer cancels all or part of an Order:
- before the Seller procures production or manufacture of the Goods, the Buyer must pay the Seller at the Seller's sole discretion as liquidated damages an amount up to 10% of the price of the cancelled Goods for the costs of the Seller with respect to processing and later cancellation of the Order; or
  - after the Seller has procured commencement of production or manufacture of the Goods, the Buyer must pay to the Seller as liquidated damages either the full price of the goods cancelled, where those Goods cannot be resold for the same price or the difference between the amount the Goods were able to be resold and the amount the Seller would have received from the Buyer had the Buyer not cancelled the Order.

## 4 DELIVERY

- (a) Unless otherwise agreed in writing, the Seller will deliver the Goods to the address the Buyer specifies at the cost agreed with the Buyer for such delivery. The Buyer is responsible for unloading the Goods from the delivery vehicle and for ensuring that delivery can take place.
- (b) If specifically agreed that the Goods are sold ex Seller's store, then the Buyer must at its cost and risk collect the Goods from the Seller's premises within the time agreed or, if no time is agreed,

within a reasonable time.

- (c) The Goods will be taken to be delivered when they are either, as applicable:
- unloaded from the delivery vehicle at the Buyer's nominated delivery destination, nominated transport company, nominated agent, or the address appearing on the invoice; or
  - collected by the Buyer or its nominated transport company or agent, from the Seller.
- (d) A delivery advice signed by the Buyer or any person appearing to act on its behalf will be deemed to be confirmation by the Buyer that the delivery of the Goods is in accordance with the Buyer's Order.
- (e) Subject to clause 13(b), if the Buyer is unable or unwilling to accept physical delivery of the Goods when the Goods are ready for delivery, the Seller shall be entitled to charge a fee for any delay experienced or arrange for the storage of the Goods at the risk of and at reasonable cost to the Buyer.
- (f) Delivery dates are estimates only, based on facts reasonably known to the Seller at the time an estimated delivery date is given.
- (g) The Seller may make and invoice partial or instalment deliveries of the Goods and each partial delivery shall be an ongoing supply pursuant to these Terms.
- (h) If the Seller fails to deliver an instalment by the estimated date, the Buyer is not entitled to terminate the Agreement as to further instalment deliveries.
- (i) Notwithstanding clause 4(h), the Buyer may terminate the Agreement as to any further instalment deliveries if the Seller fails to deliver the Goods within 7 days after written notice from the Buyer to do so, given on or after the estimated delivery date.
- (j) If the Seller fails to deliver any Goods to the Buyer on time or at all under clause 4(i), the Seller's obligation is to refund to the Buyer any amount received from the Buyer for the Goods not delivered.
- (k) The Seller will not be liable for any costs, damage or other loss the Buyer or any other party suffers arising directly or indirectly from the Seller's failure to deliver the Goods by the estimated date or at all.
- (l) If the Buyer does not request delivery of the Goods within 60 days of the Goods becoming available for delivery the Seller may, at its option:
- deliver the Goods to the Buyer, in which case the delivery will be taken to be a delivery pursuant to these Terms; or
  - treat the Buyer as having cancelled the Agreement and invoice the Buyer for an amount determined in accordance with paragraph 3(f).
- (m) The Buyer is aware that while aluminium goods will not rust, there are some aluminium goods that if incorrectly stored may result in moisture being trapped between articles which may lead to staining or soiling which is not easily removed.
- (n) The Seller will not be liable for any loss or damage the Buyer sustains arising from generally incorrect or careless storage by the Buyer and the Seller will not be required to remove any stains or soiling to the Goods.

## 5 PRICE

- (a) Unless agreed in writing, the price for the Goods will be the price in effect at the date an Order is accepted by the Seller.
- (b) Delivery fees
- The Seller may charge, in addition to the price of the Goods, an amount for delivery.
  - The amount charged for delivery will be the amount in effect at the time an Order is accepted by the Seller.
  - If no rates for delivery are agreed at the time of Order placement by the Buyer because the Seller is awaiting updated pricing from its delivery contractors, the rates to be applied will be the reasonable rates for services of that kind.

## 6 PAYMENT

- (a) The Seller may require the Buyer to pay for the Goods in full or by instalments.
- (b) The Seller may require payment of a deposit or progress payments as agreed between the parties or in accordance with any applicable law.
- (c) All payments to the Seller must be made without set-off or deductions.
- (d) All payments must be paid by the Buyer to the Seller as follows:
- on or before the last working day of the calendar month following the month in which the Seller supplies the Goods; or
  - in accordance with such other terms as agreed between the parties.
- (e) The Seller may charge the Buyer interest at the rate of 15% per annum on any unpaid monies payable to the Seller calculated daily and commencing from the date after the due date for payment and accruing until payment has been received.

## 7 CREDIT

- (a) The credit provided to the Buyer by the Seller under these Terms is to be applied wholly or predominantly for commercial purposes.
- (b) The Seller may, at any time, withdraw any credit or limit the amount of credit extended to the Buyer if the Buyer fails to adhere to payment conditions under these Terms.
- (c) If the Buyer becomes insolvent, the Buyer remains liable to the Seller for payment of all liabilities incurred under these Terms (less any amounts received in reduction), even if the Seller receives a dividend or payment as a result of the Buyer becoming insolvent.
- (d) A certificate signed by a director, secretary, financial controller or credit manager of the Seller shall be prima facie evidence (in the absence of obvious error) of the amount of indebtedness of the Buyer to the Seller at that time.

## 8 DEFAULT EVENT

- (a) If a Default Event occurs, the Seller may at its option in relation to the Goods:
- withhold further deliveries of Goods from the Buyer; and/or
  - withdraw any credit facilities extended to the Buyer.
- (b) If the Seller exercises a right under clause 8(a):
- the Seller is not liable for any loss or damage to the Buyer as a result of exercising that right;
  - all amounts owed by the Buyer to the Seller become immediately payable after the Seller provides 7 days' written notice to the Buyer (unless it is otherwise impracticable for the Seller to give such notice); and
  - the Buyer is liable for any reasonable debt costs and expenses (including legal fees and court costs) incurred by the Seller as a result of the Buyer's default.

## 9 TOLERANCES

- (a) Unless otherwise stated on the quotation or product drawing, certain Goods such as aluminium extrusions and clamps and racking will be supplied within the tolerances as to quantity, weight, dimensions, gauge, chemical composition, physical properties, finish, shearing and degree of flatness specified for those particular Goods:
- by the Aluminium Development Council of Australia Limited; and
  - in the Seller's published Product Data current at the date the Order is accepted by the Supplier (and if none are specified, those tolerances normally regarded as being commercially

acceptable).

## 10 LIMITATION OF LIABILITY

- (a) Nothing in these Terms modifies, limits, or excludes any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representations, implied or imposed by legislation which cannot be modified, limited, or excluded ('Non-Excludable Provision').
- (b) To the extent permitted by law, Goods supplied are not a sale by sample, even if a sample was inspected by the Buyer or exhibited.
- (c) The Seller warrants that the Goods will be free from defects in material and workmanship except such defects that are within the normal tolerances set out in the relevant Australian Standards.
- (d) To the extent permitted by law, this document excludes all other guarantees, terms, conditions, warranties, undertakings, inducements, or representations whether express or implied, statutory or otherwise, which would otherwise be implied into these Terms concerning the Goods.
- (e) The liability of the Seller in respect of a breach of a consumer guarantee or any warranty made under these Terms for any Goods not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permissible by law at the option of Seller in relation to the Goods, to:
  - (i) replacing 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.
- (f) To the extent permitted by law:
  - (i) all other warranties whether implied or otherwise, not set out in these Terms are excluded; and
  - (ii) neither party is liable to the other in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the other for:
    - (A) any increased costs or expenses;
    - (B) any loss of profit, revenue, business, contracts or anticipated savings, loss of business opportunity;
    - (C) any loss or expense resulting from a claim by a third party; or
    - (D) any special, indirect or consequential loss or damage of any nature whatsoever caused by another's party's failure to comply with these Terms.
- (g) To the extent permitted by law, the Buyer will be taken to have waived any claim which it may have against the Seller unless:
  - (i) the Buyer gives the Seller written notice of the claim within 14 days after delivery of the Goods; and
  - (ii) the Seller is given a reasonable opportunity to investigate the claim.
- (h) The Buyer will be liable to the Seller if the Buyer:
  - (i) wrongfully terminates the Agreement; or
  - (ii) refuses to accept all or part of the Goods which have been supplied in accordance with the Order,

and to the extent permitted by law, the Buyer must in those circumstances pay to the Seller as liquidated damages the full contract price of the Goods and any costs incurred by the Seller less the current scrap value of the Goods as determined by the Seller.

- (i) The Seller is not liable for any loss or damage caused as a result of the Goods being used for purposes other than those for which the Goods are commonly supplied.

## 11 PATENTS AND DESIGNS

- (a) The Buyer will not infringe, or permit infringement by any third party to whom the Goods have been on supplied by the Buyer, any industrial or intellectual property rights that the Seller holds by way of ownership, licence or otherwise in the Goods, including where such rights relate to the design or method of manufacture of the Goods.
- (b) The Buyer must indemnify and keep the Seller indemnified against all damages, losses and expenses which may be suffered by the Seller from a breach of this clause by the Buyer.

## 12 THIRD PARTY SERVICES PROCURED AT THE BUYER'S REQUEST

- (a) If, at the Buyer's request, the Seller arranges for the Goods to be provided by or to a third party in relation to an agreement between Buyer and the third party:
  - (i) the Buyer must indemnify and keep indemnified the Seller in respect of any claims, actions, suits, demands, orders for costs or damages relating to or arising out of the arrangement; and
  - (ii) the Goods the subject of the arrangement will be taken to be delivered by the Seller when the Seller delivers them to the third party.

## 13 FORCE MAJEURE

- (a) The Seller shall not be liable for any failure or delay in supply or delivery of the Goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of the Seller including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, pandemic, epidemic, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind ('**Force Majeure Event**').
- (b) The Seller is not entitled to charge a fee of the kind described in clause 4(e) if the Buyer is unable to accept physical delivery of the Goods when the Goods are ready for delivery due to a Force Majeure Event, provided the Buyer has taken all reasonable steps to mitigate the effect of the Force Majeure.

## 14 RETENTION OF TITLE

- (a) The Buyer agrees that until payment in full has been made for the Goods purchased from the Seller in accordance with these Terms and for any other sums whatsoever outstanding from the Buyer to the Seller on any other account from time to time, property and title in the Goods shall not pass to the Buyer and the Seller retains the legal and equitable title in those Goods supplied.
- (b) Until payment in full has been made to the Seller, the Buyer will hold the Goods in a fiduciary capacity for the Seller and agrees to store the Goods in such a manner that they can be identified as the property of the Seller, and shall not mix the Goods with other similar goods.
- (c) The Buyer shall be entitled to sell the Goods only in the ordinary course of its business, but until full payment for the Goods has been made to the Seller, the Buyer shall sell as agent and bailee for the Seller and the Proceeds of sale of the Goods shall be held by the Buyer on trust for the Seller absolutely.
- (d) Pending receipt of payment in full for the Goods, the Buyer must not supply any of the Goods to any person outside of its usual course of business.
- (e) Despite clause 14(d), if the Buyer supplies any of the Goods to any person before all monies payable by the Buyer have been paid to the Seller, the Buyer agrees:
  - (i) the Seller retains title in any proceeds, including but not limited to sale monies or an account for such monies and insurance monies; and
  - (ii) to either pay the amount of the proceeds of re-supply to the Seller immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit taking institution as trustee for the Seller.
- (f) The Buyer's indebtedness to the Seller, whether in full or in part, shall not be discharged unless and until the funds held on trust under clause 14(c) are remitted to the Seller.
- (g) The Buyer agrees that whilst property and title in the Goods remains with the Seller, the Seller has

the right, with or without prior notice to the Buyer, to enter upon any premises occupied by the Buyer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Buyer) to inspect the Goods of the Seller and to repossess the Goods which may be in the Buyer's possession, custody or control when payment is overdue.

- (h) The Buyer will be responsible for the reasonable Seller's costs and expenses in exercising its rights under clause 14(g). Where the Seller exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Buyer against the Seller, its employees, servants or agents.
- (i) The Buyer agrees that where the Goods have been retaken into the possession of the Seller, the Seller has the absolute right to sell or deal with the Goods.

## 15 PPSA

- (a) Capitalised terms used in this clause 15 that have a particular meaning in the PPSA have the same meaning in this clause.
- (b) The Seller and the Buyer acknowledge that this Agreement constitutes a Security Agreement.
- (c) The Security Interest granted to the Seller is a Purchase Money Security Interest ('PMSI') to the extent that it can be under section 14 of the PPSA.
- (d) The Buyer agrees, to the extent possible under the PPSA, that all Collateral which is at any time subject to the Seller's Security Interest secures as a PMSI the purchase price of all other Collateral supplied to the Buyer and also secures all other amounts owed at any present or future time or contingently to the Seller.
- (e) The Goods supplied or to be supplied under this Agreement fall within the PPSA classification of 'Other Goods'.
- (f) The Seller is entitled to register its Security Interest in the Goods supplied or to be supplied to Buyer on the PPSA Register, including as relevant, as a PMSI.
- (g) The parties agree that payments will be applied in the following order:
  - (i) to obligations that are not secured, in the order in which those obligations were incurred;
  - (ii) to obligations that are secured, but not by PMSIs, in the order in which those obligations were incurred; and
  - (iii) to obligations that are secured by PMSIs, in the order in which those obligations were incurred.
- (h) To the extent such waiver is permitted under the PPSA, the Buyer 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 Buyer, as Grantor, to the Seller.
- (i) The Buyer will reimburse the Seller on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis, associated with the:
  - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of the Seller; and
  - (ii) enforcement or attempted enforcement of any Security Interest granted to the Seller by the Buyer.
- (j) To the extent that:
  - (i) the PPSA (currently section 115) permits the parties to contract out of any provisions of Chapter 4 of the PPSA; and
  - (ii) such a provision requires the Seller to give a notice (for example, notice for removal of an accession, intention to size Collateral, disposal of Collateral, retention of Collateral), allow time, give an account, or allow reinstatement or similar rights to the Buyer in connection with enforcement,the parties agree that the Seller need not comply with those provisions.

## 16 GST

- (a) If a term used in this clause 16 has a particular meaning in the GST Act, it has the same meaning in this clause. Any reference to GST payable by a party, or to an input tax credit entitlement of a party, includes any corresponding GST payable by, or input credit entitlement of the representative member of any GST group of which that party is a member.
- (b) All consideration for any taxable supply provided for by these Terms is exclusive of GST unless the contrary is clear. The amount of that consideration must be increased by an additional amount equal to the GST on that taxable supply. The party who has to pay the additional amount must pay it at the same time as the consideration in respect of that taxable supply becomes due or, if the supplier has to pay (or allow credit against) the relevant GST before then, the additional amount must be paid at that earlier time.
- (c) If an amount of consideration under these Terms is calculated as specific compensation or reimbursement for an expense, loss or liability of a party, the consideration must be calculated after excluding any amount for which the party is entitled to an input tax credit as recipient of the item to which the expense, loss or liability relates.
- (d) A party is not obliged to make any payment for GST unless it is provided with a tax invoice which complies with the GST Act.
- (e) If at any time an adjustment is made or required to be made between a party and the relevant taxing authority on account of any amount paid as GST under this agreement:
  - (i) a corresponding adjustment must be made;
  - (ii) adjustment notes must be issued; and
  - (iii) any payment must be made,between the parties as may be necessary to give effect to the adjustment.

## 17 MISCELLANEOUS

- (a) A party's waiver of any clause, or breach of any clause, of the Agreement and these Terms must not be construed as a waiver of any other clause, or a breach of any other clauses, or subsequent breach of the same or any other clause of the Agreement.
- (b) Where a term of this document conflicts with anything set out in the Seller's current published Product Data as at the date of the Agreement, the Terms prevail to the extent of the conflict.
- (c) The Buyer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of the Buyer.
- (d) Variation
  - (i) These Terms may be amended from time to time by the Seller by notice to the Buyer.
  - (ii) The amended Terms will apply to any new Order accepted by the Seller from the date on which the change comes into effect.
- (e) Costs
  - (i) The Buyer must pay for its own legal, accounting and business costs and all costs incurred by the Seller relating to any default by the Buyer under these Terms. The Buyer must also pay for all duties and other taxes payable (if any) on the sale of Goods to it by the Seller.
  - (ii) The Buyer will pay the Seller's costs and disbursements incurred in pursuing any recovery demands or action, or any other claim or remedy sought by the Seller against the Buyer, including legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Buyer to the Seller irrespective of whether pursuit of the recovery action, claim or remedy is successful.
- (f) Jurisdiction
  - (i) The Agreement shall be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
  - (ii) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.