

Disclosure of Key Terms relating to the supply of goods or services to consumers

Section 47A Fair Trading Act 1987 (NSW) ("the Act")

Pursuant to section 47A of the Act, a supplier must, before supplying a consumer with goods or services in NSW, take reasonable steps to ensure the consumer is aware of the substance and effect of any term or condition relating to the supply of the goods or services that may substantially prejudice the interests of the consumer.

The following contains a summary of key terms in the attached Terms & Conditions of Trade between Transport Refrigeration Services Pty Ltd ACN 002 086 697 (**Us, We, Our**) and the Customer (**You**), which You should be made aware of as per the requirements of the Act.

Words not defined in this summary have the same meaning as set out in the Terms:

1. Clause 9.9- Exclusion of Warranties

This clause excludes all warranties not set out in the Terms or any other warranty document (to the extent possible) and makes clear, to the extent permitted by Law, in connection with our supply of Goods or Services, We are not liable to compensate you for:

- (a) Any increased costs or expenses you may incur;
- (b) Any loss of profit, revenue, business, contract or anticipated savings;
- (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.

2. Clause 10 – Limitation of Liability

This clause limits the remedies available to You if the Goods or Services provided by Us are faulty. For example we may replace the Goods or provide the Services again, or provide a refund at our election.

This clause also seeks to limit the timeframe for any claim by You relating to the short delivery of Goods.

3. Clause 21 – Indemnity

This clause requires You to indemnify Us against any loss or damage We may suffer as a result of your breach of our Trading Terms, which means You will pay us any loss or damage We suffer.

4. Clause 14- Creation of Charge

As security for the due and punctual payment of any and all monies due by You to Us, You charge in Our favour all of Your right, title and interest in both Your personal property and Your real property that You hold now or may acquire in the future. You consent to a caveat, mortgage, financing statement or other registration being lodged by Us to protect the charge You are granting to Us. This means We are taking a security interest over Your personal property and real property to secure any monies You may owe to us as we trade with you.

Transport Refrigeration Services Pty Ltd
ACN 002 086 697 (Seller)

Terms & Conditions of Trade

These Terms & Conditions of Trade ("**Terms**") apply (unless otherwise previously agreed in writing) to the supply of Goods by the Seller to a Buyer from time to time. Any supply of Goods by the Seller to the Buyer made after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and Conditions and the relevant order accepted by the Seller ("**Agreement**") and any such supply does not give rise to a new or separate agreement.

1. Definitions

- 1.1 "Additional Charges" includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Price, payable by the Buyer to Seller arising out of the sale of the Goods.
- 1.2 "Buyer" shall mean the person to or from whom the Goods and/or Services are to be supplied by the Seller.
- 1.3 "Consequential Loss" shall mean increased costs or expenses; loss of revenue; loss of profit or anticipated profit; loss of business; loss of business reputation; loss of opportunities; loss of anticipated savings; loss of goodwill; loss or expense resulting from a claim by a third party; special or indirect loss or damage of any nature whatsoever caused by the Seller's failure to complete or delay in completing the supply of Goods and / or Services; and any other loss suffered by a party as a result of a breach of this Agreement that cannot reasonably be considered to arise directly and naturally from that breach.
- 1.4 "Force Majeure Event" shall mean any event outside the reasonable control of the Seller including acts of God, war, riots, strikes, lock outs, trade disputes, break downs, mechanical failures, interruptions of transport, government action, pandemic, epidemic or any other cause whatsoever, whether or not of a like nature to those specified herein.
- 1.5 "Goods" shall mean goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services

to the Customer as hereinafter defined, and unless stated otherwise).

- 1.6 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer on a principal debtor basis under a Guarantee and / or Indemnity.
- 1.7 "Intellectual Property Right" means any patent, registered design, patent, trademark, copy-right, trade secret or any other proprietary right of a third party or parties, registered or unregistered, in any country.
- 1.8 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of these Terms.
- 1.9 "Seller" shall mean Transport Refrigeration Services Pty Ltd ACN 002 086 697 and its successors and assigns.
- 1.10 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

2. Acceptance

- 2.1 An order given to the Seller is binding on the Seller and the Buyer, if:
 - (a) a written acceptance is signed for on behalf of the Buyer; or
 - (b) the Goods are supplied by the Buyer in accordance with the order.
- 2.2 An acceptance of the order by the Seller is then to be an acceptance of these Terms by the Seller and the Buyer and these Terms will override any conditions contained in the Buyer's order. The Buyer reserves the right to accept a part only of any order by notifying the Buyer in writing or by delivering the Goods to the Buyer. No order is binding on the Seller until accepted by it. Where more than one Buyer has entered into this Agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
- 2.3 An order which has been accepted in whole or in part by the Seller cannot be cancelled by the Buyer without obtaining the prior written approval of the Seller, which it may refuse in its absolute discretion.
- 2.4 Upon acceptance of these Terms by the Buyer the Agreement is irrevocable and can only be rescinded in accordance with these Terms or with the written consent of the manager of the Seller.
- 2.5 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager

of the Seller in writing nor is the Seller bound by any such unauthorised statements.

- 2.6 The Buyer undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, email address, telephone number, facsimile number, or business practice).

3. Goods

- 3.1 The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.

4. Price And Payment

- 4.1 The Buyer must pay the Price and the Additional Charges to the Buyer.
- 4.2 At the Seller's sole discretion the Price shall be either:
- as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
 - the Seller's quoted Price (subject to clause 3) which shall be binding upon the Seller provided that the Buyer shall accept in writing the Seller's quotation within thirty (30) days.
- 4.3 The Seller may by giving notice in writing to the Buyer at any time before delivery with respect to an increase the Price of the Goods to reflect any variation from the plan of scheduled works or specifications beyond the reasonable control of the Seller which increases the cost of the Goods/Services by more than 10% of the quoted Price.
- 4.4 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made by the due date of invoice issued by the Seller with respect to any variation.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due either seven (7) or fourteen (14) days following the date of the invoice, whichever is stated on the invoice.
- 4.6 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card (plus any charges that maybe applicable), or by direct credit, or by any

other method as agreed to between the Buyer and the Seller.

The Price shall be increased by the amount of the Additional Charges, except to the extent that such taxes are expressly included in any quotation given by the Seller.

5. Delivery Of Goods

The times quoted for delivery are estimates only and the Seller accepts no liability for failure or delay in delivery of Goods. The Buyer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of the Seller.

5.2 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Seller's address.

5.3 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.

5.4 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this Agreement. The failure of the Seller to deliver shall not entitle either party to treat this Agreement as repudiated.

5.5 The Seller shall not be liable for any consequential loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

Risk

If the Seller retains property in the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.

If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Agreement. The production of these Terms by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Buyer's Disclaimer

- 7.1 The Buyer hereby disclaims any right to rescind, or cancel the Agreement or to sue for damages or to claim restitution arising out of any misrepresentation made to it by any servant or agent of the Seller and the Buyer acknowledges that it buys the Goods relying solely upon his own skill and judgement.

8. Defects / Returns

- 8.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. To the extent permissible at law, if the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the Terms and free from any defect or damage.
- 8.2 To the extent permitted at law, defective Goods in accordance with clause 8.1, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
- (a) the Buyer has complied with the provisions of clause 8.1;
 - (b) the Goods are returned at the Buyer's cost within seven (7) days of the delivery date;
 - (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 8.3 The Seller may (in its discretion) accept the Goods for credit but this may incur a return handling fee not exceeding 15% of the value of the returned Goods plus any freight.

9. Warranty

- 9.1 Subject to the conditions of warranty set out in Clause 9.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within twelve (12) months of the date

of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) repair the defect or remedy the workmanship.

The conditions applicable to the warranty given by Clause 9.1 are:

- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - i) failure on the part of the Buyer to properly maintain any Goods;
 - ii) failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller;
 - iii) any use of any Goods otherwise than for any application specified on a quote or order form;
 - iv) damage or defects to the Goods that ought reasonably to have been revealed to the Buyer by an examination of the Goods, where you conducted such an examination before acquiring the Goods;
 - v) any Goods with a serial number removed;
 - vi) the Goods are used for a contrary purpose than what it was engineered and designed for;
 - vii) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - viii) normal wear and tear due to the course of normal use;
 - ix) Accidental damage or damage caused by an extra-ordinary event or circumstance beyond your or anyone else's control including but not limited to damage caused by environmental factors or an act of God.

The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.

In respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Buyer's claim.

The warranty extends only to:

- (a) defects arising solely from faulty design, materials or workmanship under proper use of the Goods;

- (b) Goods installed by a suitably qualified and experienced person;
- (c) Goods sold by the Seller and only where the Goods are used and serviced within Australia; and
- (d) where the defects appear in the Goods within the warranty period set out in clause 9.1.
- 9.6 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.
- 9.7 In the case of repaired Goods, subject to the conditions of warranty set out in Clause 9.2, the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within three (3) months of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) repair the defect or remedy the workmanship.
- 9.8 If the Buyer is deemed to be a consumer pursuant to the Australian Consumer Law, then:
- (a) For Goods:
- (b) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (c) For Services:
- (d) Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
- (e) to cancel your service contract with us; and
- (f) to a refund for the unused portion, or to compensation for its reduced value
- (g) You are also entitled to be compensated for any other reasonably foreseeable loss or damage.
- (h) If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.
- 9.9 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms or in another warranty document given by the Seller are excluded and the Seller is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Buyer for:
- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (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 Seller's failure to complete or delay in completing the order to deliver the Goods.
- 10. Limitation of Liability**
- 10.1 The Seller's liability is limited, to the extent permissible by law and at the Seller's option, to:
- (a) in relation to the Goods:
- i) the replacement of the products or the supply of equivalent products;
- ii) the repair of the products;
- iii) the payment of the cost of replacing the products or of acquiring equivalent products; or
- iv) The payment of the cost of having the products repaired
- (b) In relation to services:
- i) the supply of service again; or
- ii) the payment of the cost of having the services supplied again.
- 11. Intellectual Property**
- 11.1 All branding and artwork provided by the Buyer is the intellectual property of the Buyer. Artwork and branding supplied will only be used for the purposes of satisfying these Terms.
- 11.2 The Buyer warrant that the use by the Seller of any intellectual property provided by the Buyer to the Seller so that the Seller may provide the Goods under these Terms does not infringe any Intellectual Property Rights.
- 11.3 The Buyer must indemnify and keep indemnified the Seller against any and all liabilities, expenses, losses and/or damages including attorney's fees whether direct, indirect or consequential, arising from a third party, alleging that the Goods infringe the Intellectual Property Rights of the third party due to the Seller's use in the production of the Goods of any branding, artwork or other

intellectual property provided to the Seller by the Buyer.

12. Default & Consequences Of Default

- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 15% per annum and shall accrue, if permitted at law, at such a rate after as well as before any judgement.
- 12.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection, being Additional Charges which will be payable to the Seller as a liquidated debt.
- 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 12.4 In the event that:
 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer, then without prejudice to the Seller's other remedies at law:
 - (i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 12.1 hereof.

13. Retention of Title

- 13.1 Ownership, title and property in the Goods and in the proceeds of sale of those Goods remains with the Seller and shall not pass until:
 - (a) The Buyer has paid all amounts owing for the particular Goods and all sums due and owing by the Buyer to the Seller on any account have been made, and
 - (b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of the Agreement between the Seller and the Buyer, and that where practicable the Goods shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
 - (c) Notwithstanding, the Buyer has the right to sell the Goods in the ordinary course of business but must account to the Seller for the Proceeds arising from such dealing with the Goods in respect of any monies owing to the Seller.
- 13.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.
- 13.3 It is further agreed that:
 - (a) until such time as ownership of the Goods shall pass from the Seller to the Buyer and without prejudice to any other rights which the Buyer may have at law or under this Agreement:
 - (i) the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease;
 - (ii) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made;
 - (iii) if the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods;
 - (iv) the Seller may recover and resell the Goods;
 - (v) if the Goods cannot be distinguished from similar Goods

which the Buyer has or claims to have paid for in full, Seller may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of the Seller and the Buyer may be ascertained. The Seller must promptly return to the Buyer any goods the property of the Buyer and the Seller is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Buyer's business howsoever arising from the seizure of the Goods; and

- (vi) in the event that the Buyer uses the Goods in some manufacturing or construction process of its own or some third party, then the Buyer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for the Seller. Such part will be an amount equal in dollar terms to the amount owing by the Buyer to the Seller at the time of the receipt of such proceeds. The Buyer will pay the Seller such funds held in trust upon the demand of the Seller.
- (b) The Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller.
- (c) The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.
- (d) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
- (e) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these Terms, and the Seller may take any lawful steps to require payment of the amounts due and the Price;
- (f) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer; and

(g) until such time that ownership in the Goods passes to the Buyer, if the Goods are so converted, the parties agree that the Seller will be the owner of the end products;

13.4 Separately, the Buyer hereby charges all its right, title and interest to and in the proceeds of sale of the Collateral (as defined in the PPSA) as original collateral, or any of it, in favour of the Seller.

14. Security And Charge

14.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- (a) Where the Buyer and/or the (if any) is the owner of land, realty, present or after acquired personal property or any other asset capable of being charged, the Buyer agrees to mortgage and/or charge all of its joint and/or several right, title and interest in the said land, realty, present or after acquired personal property or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the Agreement. The Buyer acknowledges and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, mortgage, financing statement or other registration instrument being lodged by the Seller to register or perfect such charge.
- (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of clause 14.1(a) and (b) inclusive hereof the Buyer does hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer in any land, realty or asset in favour of the Seller and in the Buyer's name as may be necessary to secure the said Buyer's obligations and

indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

- (d) For the purposes of section 20(1) and (2) PPSA, the Buyer states that the charge is in all of the Buyer's present and after acquired property (whether owned beneficially or otherwise) from time to time.

15. PPSA

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

15.2 The Seller and the Buyer acknowledge that these Terms constitute a Security Agreement and entitle the Seller to claim:

- a Purchase Money Security Interest ("PMSI") in favour of Seller over the Collateral supplied or to be supplied to the Buyer as Grantor pursuant to these Terms; and
- a security interest over the proceeds of sale of the Collateral referred to in 15.2(a) as original Collateral; and
- an all present and after acquired property (ALLPAP) security interest over the Buyer's personal property pursuant to clause 14.

15.3 The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" and / or "Motor Vehicles" acquired by the Buyer pursuant to these Terms

15.4 The Proceeds of sale of the Collateral referred to in clause 15.2(b) falls within the PPSA classification of "Account".

15.5 Seller and the Buyer acknowledge that Seller, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to Buyer pursuant to these Terms and in the relevant Proceeds.

15.6 To the extent permissible at law, 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 to Seller.
- agrees to indemnify Seller on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;

- registration or amendment or discharge of any Financing Statement registered by or on behalf of Seller; and
- enforcement or attempted enforcement of any Security Interest granted to Seller by the Buyer;
- agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;
- agrees to waive its right to do any of the following under the PPSA:
- receive notice of removal of an Accession under section 95;
- receive notice of an intention to seize Collateral under section 123;
- object to the purchase of the Collateral by the Secured Party under section 129;
- receive notice of disposal of Collateral under section 130;
- receive a Statement of Account if there is no disposal under section 132(4);
- receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- receive notice of retention of Collateral under section 135;
- redeem the Collateral under section 142; and
- reinstate the Security Agreement under section 143.
- All payments received from the Buyer must be applied in accordance with section 14(6)(c) of the PPSA.

16. Cancellation

16.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

16.2 An order which has been accepted in whole or in part by the Seller cannot be cancelled by the Buyer without obtaining the prior written approval of the Seller, which it may refuse in its absolute discretion. In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any costs incurred

by the Seller up to the time of cancellation such as administrative, freight and costs incurred in the preparation of the Goods.

file containing information about the Buyer.

17. Privacy Act 1988

- 17.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 17.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
 - (a) to assess an application by Buyer;
 - (b) to notify other credit providers of a default by the Buyer;
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
 - (d) to assess the credit worthiness of Buyer and/or Guarantor/s.
- 17.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.
- 17.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
 - (a) provision of Goods;
 - (b) marketing of Goods by the Seller, its agents or distributors in relation to the Services and Goods;
 - (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Goods;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
 - (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods.
- 17.5 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Buyer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information

18. Liens

- 18.1 The Buyer acknowledges that the Seller may have a common law or statutory lien over the Goods and nothing in the Terms derogates from, reduces or otherwise affects such common law or statutory lien.
- 18.2 In the event that the Seller has no common law or statutory lien, then Buyer agrees that the Seller has a general lien over all the Goods including the right to sell the Goods where the Buyer is in default under these Terms.
- 18.3 Where the Buyer has left any item with Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
 - (a) a lien on the item;
 - (b) the right to retain the item for the Price while the Seller is in possession of them;
 - (c) a right of resale,
 - (d) the foregoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the Price having been obtained.
 - (e) The Seller has the right to charge the Buyer reasonable storage costs for any Goods stored for and behalf of the Buyer or arising from necessity, including where the Buyer fails to make payment for the Goods or any of them.

19. On-Sale

- 19.1 The Buyer agrees that upon the on-sale of any Goods to third parties, it will:
- 19.2 inform any third party involved of these Terms;
- 19.3 inform any third party of Seller's product warranties if any; and
- 19.4 not make any misrepresentations to third parties about the Goods.

20. Trustee Capacity

- 20.1 If the Buyer is the trustee of a trust (whether disclosed to the Seller or not), the Buyer warrants to the Seller that:
- 20.2 the Buyer enters into this Agreement in both its capacity as trustee and in its personal capacity;
- 20.3 the Buyer has the right to be indemnified out of trust assets;

- 20.4 the Buyer has the power under the trust deed to enter into this Agreement; and
- 20.5 the Buyer will not retire as trustee of the trust or appoint any new or additional trustee without first advising the Seller.
- 21. Indemnity**
- 21.1 To the full extent permitted by law, the Buyer will indemnify the Seller and keep the Seller indemnified from and against any liability and any loss or damage the Seller may sustain, arising directly or indirectly from or in connection with any breach of any of these Terms by the Buyer or its representatives.
- 22. Force Majeure**
- 22.1 The Seller will not be liable for the consequences of any failure or delay in performing any of its obligations under these Terms to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.
- 22.2 If a Force Majeure Event arises, the Seller will notify the Buyer in writing of the Force Majeure Event and the likely impact it will have on the Seller's performance under these Terms. If the Force Majeure Event affects the capacity of the Seller to complete its material obligations under these terms in a timely manner, the Seller may by notice to the Buyer terminate this Agreement without any liability whatsoever on its part arising from that termination.
- 23. General**
- 23.1 Neither party excludes or limits the application of any statute (including but not limited to the *Competition and Consumer Act 2010 (Cth)* (**CCA**) as amended from time to time and its schedule 2, the Australian Consumer Law), where to do so would contravene that statute or cause a provision of these Terms to be void. Any stated exclusion or limitation in this Terms is only to the full extent permitted at law.
- 23.2 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.3 These Terms are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia. The parties submit to the exclusive jurisdiction of the Courts of New South Wales, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.
- 23.4 To the extent permitted at law, in the event of any breach of this Agreement by the Seller the remedies of the Buyer shall be limited to damages and the liability of the Seller shall not exceed the Price of the Goods.
- 23.5 The Buyer shall not set off against the Price amounts due from the Seller.
- 23.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 23.7 The Seller reserves the right to review these Terms at any time and from time to time. If, following any such review, there is to be any change in such Terms, that change will take effect from the date on which the Seller notifies the Buyer in writing of such change.
- 23.8 These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
- 23.9 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
- 23.10 No waiver of any of these Terms or failure to exercise a right or remedy by the Seller will be considered to imply or constitute a further waiver by the Seller of the same or any other term, condition, right or remedy.