

TRADING TERMS AND CONDITIONS

LPA Energy A.C.N. 647 167 986 trading as Lighting Partners Australia

1. APPLICATION OF TERMS

Subject to law:

- (a) each offer or request made by the Customer to the Company for the sale or supply of any Goods shall be deemed to be made subject to these Terms; and
- (b) each sale or supply of Goods by the Company to the Customer shall be deemed to be made in accordance with these Terms, despite any contrary provision in any offer or request made by the Customer to the Company, or otherwise.

2. DEFINITIONS AND INTERPRETATION

(1) In these Terms:

"Accepted Quotation" means any quotation provided by the Company to the Customer in relation to an Order, setting out the costs of particular Goods the subject of that Order, and accepted by the Customer;

"CC Act" means *Competition and Consumer Act 2010* (Cth);

"CC Act Implied Term" means, in respect of any sale or supply of Goods by the Company to the Customer, any term, condition, consumer guarantee or warranty, for the benefit of the Customer, implied by or arising under the CC Act in relation to that sale or supply of those Goods, or otherwise implied by any similar written or unwritten law of any State or Territory of Australia;

"Claims" includes actions, suits, causes of action, arbitration, debts, dues, costs, claims, demands, interest, verdicts and judgments at law or in equity or arising under the provisions of statute;

"Company" means LPA Energy A.C.N. 647 167 986 trading as Lighting Partners Australia;

"Customer" means the person or entity identified in the schedule to these Terms and if there is more than one person or entity, means each of them;

"Due Date" means, in respect of a sale of Goods by the Company to the Customer, the date shown for payment on any invoice to be rendered by the Company to the Customer and if a date is not shown, the date prescribed by the Company as the due date for payment for the Goods the subject of that invoice;

"Goods" means the products and services provided by the Company, the subject of an order placed by the Customer with the Company and accepted by the Company and **"Good"** means any one of them;

"GST" means the tax imposed or sought to be imposed by the GST Acts;

"GST Acts" means *A New Tax System (Goods and Services Tax) Act 1999* and related imposition Acts of the Commonwealth;

"Indirect or Consequential Loss" includes lost revenues, lost profits, lost business, lost goodwill or anticipated savings, incidental, indirect, consequential, special, economic or punitive damages whether arising from or in connection with any breach of contract, negligence or any other cause of action in connection with or relating to these Terms or any sale or supply of Goods by the Company to the Customer;

"Interest Rate" means one point five per centum (1.5%) per calendar month;

"Order" means an order for Goods by a Customer;

"PPS Act" means *Personal Properties Securities Act 2009* (Cth);

"PPS Register" means the Personal Properties Securities Register;

"Price" means, in respect of Goods agreed to be sold or supplied by the Company to the Customer, the price payable by the Customer to the Company for those Goods, in accordance with the Price List and these Terms;

"Price List" means the list of Goods and prices for those Goods, notified by the Company to the Customer, as current from time to time;

"Privacy Act" means the *Privacy Act 1988* (Cth);

"Terms" means these terms and conditions.

(2) Unless the context otherwise requires:

- (a) references to a party to these Terms includes the executors, administrators, successors and permitted assigns of that party;
- (b) references to any statute, ordinance or other law includes all regulations and other instruments thereunder and all consolidations, amendments, re-enactments or replacements thereof;
- (c) words importing the singular include the plural and vice versa, words importing a gender include other genders and references to a person must be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency;
- (d) where any word or phrase is given a defined meaning in these Terms, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (e) headings included in these Terms are for convenience only and must be disregarded in the construction of these Terms.

3. PRICES AND PAYMENT

(1) Goods will be invoiced at the time of dispatch or notification that Goods are available for dispatch and the Company will issue to the Customer an invoice for:

- (a) the Price of the Goods delivered, calculated in accordance with the Accepted Quotation or the Price List for those Goods current on the date of acceptance by the Company of an Order from the Customer in respect of those Goods; and
- (b) all applicable delivery charges, freight, levies, insurance, goods and services taxes and any other taxes or charges applicable to the supply of those Goods ("Delivery Costs").

(2) The Company may replace or vary any Price List or Accepted Quotation from time to time by giving the Customer prior notice.

(3) If a Customer places an Order, the Customer will be required to pay the Price of the Goods in full on or before the date of the dispatch of any Goods to the Customer ("Cash Due Date") unless the Customer has made a written application for credit that has been approved in writing by the Company, in the sole discretion of the Company, prior to

delivery of the Goods to the Customer ("Approved Credit").

- (4) The Company may vary, suspend or withdraw any Approved Credit arrangements between the Company and the Customer at any time by notice in writing at the sole discretion of the Company without liability to the Customer or any other party. The Customer agrees to pay to the Company immediately on demand all monies due in connection with any Approved Credit arrangements where the credit arrangements have been suspended or withdrawn for any reason.
- (5) If the Customer is using Approved Credit to pay for Goods, the Customer will be required to pay the Price of the Goods in full on or before the date that is thirty (30) days after the date of the invoice issued to the Customer in respect of the relevant Goods ("Credit Due Date").
- (6) If the Customer does not make payment to the Company in full on or before the Cash Due Date or the Credit Due Date (as applicable), the Customer's account will be considered overdue ("Overdue Account").
- (7) The Customer must not deduct any amounts from any payments owing to the Company (whether by way of set-off or otherwise) unless otherwise agreed in writing by the Company.
- (8) Where the value of any Order is less than \$250.00, a handling fee of \$25.00 will be applied to that Order. Any handling fee will be payable by the Customer on or before the Cash Due Date or the Credit Due Date (as applicable).
- (9) Any Delivery Costs will be payable by the Customer on or before the Cash Due Date or the Credit Due Date (as applicable).
- (10) Failure to comply with the terms of payment set out in this clause 3 shall constitute a breach of contract and the Company may treat the whole contract as repudiated and act accordingly, including taking any necessary enforcement action, without any further notice to the Customer.
- (11) All prices, charges, fees or other amounts payable by the Customer to the Company in accordance with any Price List, Accepted Quotation or invoice shall be calculated without including an amount for GST, unless it is clearly stated in that Price List, Accepted Quotation or invoice that the prices, charges, fees or other amounts payable include GST.
- (12) Despite any other provision in these Terms, or otherwise, each payment to be made by the Customer to the Company must be made together with an additional amount equal to the GST on the supply or component of the supply (made or to be made) giving rise to, or in connection with, that payment.
- (13) The Price must be paid in cleared funds, by cash, cheque or credit card by the Cash Due Date or the Credit Due Date (as applicable).
- (14) Each Order submitted by the Customer to the Company will be deemed to include a representation by the Customer that the Customer is solvent and able to pay all of the debts of the Customer as and when they fall due. The Customer must inform the Company immediately if there are any facts which might reasonably affect the decision of the Company to accept an Order or grant Approved Credit to the Customer.

4. INTEREST ON OUTSTANDING AMOUNTS

Interest will accrue monthly at the Interest Rate in respect of any Overdue Accounts during the period in which any account is classified as an Overdue Account.

5. LIMITATION OF LIABILITY

- (1) The Company acknowledges that the CC Act and similar State and Territory legislation confer certain rights and remedies on the Customer in relation to the sale or supply by the Company to the Customer of Goods, pursuant to these Terms, or otherwise, which cannot be excluded, restricted or modified by agreement ("Non-Excludable Rights"). The Company does not exclude any Non-Excludable Rights but does exclude all other

terms, conditions, guarantees and warranties implied by the written or unwritten law in relation to any sale or supply by the Company to the Customer of Goods.

- (2) Subject to law, the Company makes no representation and gives no warranty in relation to any sale or supply of Goods by the Company to the Customer.
- (3) The Customer acknowledges that the Customer has not relied upon any representation or warranty made by or on behalf of the Company in relation to any sale or supply of Goods pursuant to these Terms, and will not rely upon any representation or warranty made by or on behalf of the Company in relation to any future sale or supply of Goods by the Company to the Customer, which is not expressly agreed in writing by the Company prior to the sale or supply of those Goods, subject in all respects to the written law.
- (4) The Customer warrants that the Customer relies on its own knowledge and skill in the selection of any Goods purchased by the Customer from the Company.
- (5) To the extent permitted by law, in respect of each sale or supply of Goods by the Company to the Customer:
 - (a) each CC Act Implied Term is expressly excluded;
 - (b) no other term, condition, agreement, warranty, representation or undertaking whether express or implied in any way extending to, otherwise relating to or binding on the Customer or the Company is made or given by or on behalf of the Customer or the Company other than by these Terms; and
 - (c) the liability of the Company is limited to the lowest of the cost of replacing the Goods, supply of equivalent product, or having the Goods repaired.
- (6) In no event will the Company be liable to the Customer for any lost revenue, profit or goodwill or anticipated savings, incidental, indirect, consequential, economic or punitive damages whether arising from or in connection with breach of contract, negligence or any other cause of action in connection with or relating to these Terms or the supply of any Goods by the Company to the Customer.

6. FREIGHT, INSURANCE AND DELIVERY

- (1) The Company will, if requested by the Customer, at the cost and risk of the Customer, arrange for the delivery of Goods to the Customer at an address nominated by the Customer. In those circumstances, delivery is deemed to take place when the Goods are unloaded at the address nominated by the Customer.
- (2) Goods are sold "ex-warehouse", meaning that the Customer pays all costs associated with delivering the Goods to the Customer, including all applicable freight and insurance charges in relation to delivery of the Goods unless otherwise agreed in writing.
- (3) The Company has no obligation to arrange for insurance of Goods against the risk of carriage. If the Company agrees to arrange freight and insurance, in respect of any Goods sold or supplied by the Company to the Customer, the Customer must pay and reimburse the Company for all such costs.
- (4) Deliveries that necessitate special road or rail transport or in relation to which specific packing or packaging materials are required (as determined by the Company in the sole discretion of the Company) will incur an additional charge, payable by the Customer.
- (5) The Company will endeavour to deliver Goods promptly but any date or time quoted for delivery is an estimate only and do not constitute a guarantee of delivery or delivery by such date or time. The Company shall not be liable for any loss or damage whatsoever and howsoever arising even if arising out of negligence of the Company should the Company be delayed or prevented from delivering Goods, supplying services or otherwise performing any of the contractual obligations owing by the Company to the Customer or to any third party.
- (6) In the event of any delay in the delivery or supply of any Goods or services to the Customer, the due date for delivery shall be deferred for a period equal to the delayed time.
- (7) The Customer must accept and pay for the Goods in accordance with clause 3 of the Terms notwithstanding any failure by the Company to deliver the Goods by the quoted date.
- (8) The Company may, in the sole discretion of the Company, delay delivery of any Goods until the Company has received payment from the Customer of all money due by the Customer to the Company in respect of those Goods and any other Goods previously sold by the Company to the Customer.
- (9) Written advice from the Company to the Customer that the Goods are ready for dispatch shall constitute delivery and the terms of payment shall apply.
- (10) Charges will apply for frustrated delivery and any handling and/or storage costs where Goods are ready to deliver but are unable to be delivered as a result of any action or inaction by the Customer.
- (11) The Customer acknowledges and agrees that the Company will not be liable for any delay or failure to perform an obligation of the Company under these Terms caused by a force majeure event. Force Majeure will include any cause beyond the reasonable control of the Company including strikes and lockouts.

7. GOODS RETURNED FOR CREDIT

- (1) If the Company accepts a return of Goods from the Customer, any amount payable by the Company to the Customer as a result of that return of Goods is not payable in cash by the Customer to the Company, but may only be applied in reduction of the price payable by the Customer to the Company for future Goods sold by the Company to the Customer.
- (2) All claims for credit in relation to damaged Goods ("Credit Claim") must be made within 48 hours of receipt of the Goods. In order to be eligible to make a Credit Claim, the delivery note must indicate that the Goods were damaged upon receipt and the delivery note must be signed.
- (3) A Customer cannot make a Credit Claim in relation to damaged Goods unless prior authority for the Credit Claim has been granted in writing by the Company by way of a Goods Returned Authority ("GRA"). The GRA must be completed and signed by an authorised representative of the Company.
- (4) Except for the return of faulty or incorrectly supplied Goods and only where permitted by law, a re-stocking charge equivalent to a minimum of thirty percent (30%) of the Price of the Goods will be applied to all Goods the subject of any Credit Claim. Goods

cannot be the subject of a Credit Claim where more than thirty (30) days have passed from the date of the invoice issued to the Customer in respect of the Goods.

- (5) In circumstances where the Goods do not originate with the Company, a Credit Claim may only be made if the original manufacturer or supplier of the Goods also accepts the return of the Goods.
- (6) All Goods that are the subject of a Credit Claim must be in their original state, including packaged in their original packaging and must not be shop-soiled, obsolete or damaged. Any Goods that are the subject of a Credit Claim and that are damaged in any way or are not in their original condition may be rejected or credited at a reduced rate in the absolute discretion of the Company.
- (7) In circumstances in which Goods have been specifically produced or modified in accordance with a Customer's specific requirements, those Goods cannot be the subject of any Credit Claim, other than as required by law.
- (8) All Goods the subject of a Credit Claim must be delivered to the premises of the Company at the Customer's cost.
- (9) No Credit Claim will be recognised unless the Credit Claim is made within seven (7) days of delivery of the Goods to the Customer and the original invoice number and date must be quoted in each Credit Claim.
- (10) While the Company takes reasonable care in packing the Goods, unless otherwise agreed or required by law, the Company shall take no responsibility in relation to Goods that are lost or damaged in transit.

8. CANCELLATIONS

- (1) Subject to Schedule 2 of the *Competition & Consumer Act 2010* (Cth) and the *Competition & Consumer Regulations 2010* (Cth), the Customer must not cancel or suspend any part of an Order for Goods or purchase of Goods without the written consent of the Company.
- (2) If an Order for Goods or the purchase of any Goods is suspended or cancelled by the Customer (and such suspension or cancellation is accepted by the Company) for any reason, the Customer must reimburse the Company for any costs, charges, expenses, loss of profit and damage, consequential or otherwise, that the Company has or may suffer in relation to such suspension or cancellation.

9. RISK

- (1) Risk in Goods sold by the Company to the Customer passes from the Company to the Customer upon despatch from the warehouse of the Company.
- (2) If the Customer or an agent authorised by the Customer collects the Goods from the Company, risk in the Goods will pass to the Customer on collection of the Goods from the Company and the Company will not be responsible for any loss or damage caused to the Goods in transit.
- (3) Title in the Goods supplied by the Company to the Customer will not pass to the Customer, notwithstanding that risk in the Goods has passed to the Customer, until such time as the Goods and any other goods supplied by the Company to the Customer have been paid for in full. Until such time as the Goods have been paid for in full, the Customer must store the Goods in such a manner as to show clearly that the Goods remain the property of the Company. If the Customer sells any Goods in the ordinary course of business to any third party purchaser before the Goods have been paid for in full ("Agency Sale"), such Agency Sale shall be made by the Customer acting as agent for the Company and the Customer must account to the Company for the proceeds of the Agency Sale.
- (4) The Customer and the Company agree that the provisions of this clause apply notwithstanding any arrangements between the parties under which the Company grants the Customer credit to purchase the Goods from the Company.
- (5) Subject to any conditions or warranties mandatorily implied by law and subject to any conditions or warranties contained herein, all conditions, warranties and representations on the part of the Company, whether express or implied, are hereby expressly negated and excluded.
- (6) In the event that the Company is deemed liable for breach of a condition or warranty mandatorily implied by law, the liability of the Company in respect of such breach shall be limited to one of the following, namely, the replacement of the Goods or the supply of equivalent Goods, the repair of the Goods, the payment of the cost of replacing the Goods or acquiring equivalent Goods, or the payment of the cost of having the Goods repaired, at the sole discretion of the Company.

- (7) In placing an Order with the Company, the Customer shall be deemed to have satisfied him or herself as to, and shall be solely responsible for, the suitability of the Goods for the purposes required. Subject to any legislation or express agreement to the contrary, the Customer acknowledges that the Customer does not rely on the skill or judgement of the Company, its servants or agents in determining whether the Goods to be supplied are fit for any particular purpose and the Customer further acknowledges that any advice furnished by the Company with respect to the use of the Goods is given on the basis that the Company assumes no obligation of liability for advice given in relation to the purchase of the Goods by the Customer; all such advice being given and accepted by the Customer at the Customer's risk.

10. POWER OF DEFAULT

- (1) In the event of any one or more of the following:-

- (a) the Customer fails to pay any amount owing to the Company as and when it falls due for payment, or
- (b) a receiver and manager, liquidator, administrator, provisional liquidator or official manager is appointed over all or any of the assets of the Customer or a scheme of arrangement is proposed or appointed with respect to the Customer, or
- (c) a petition is presented for the bankruptcy or winding up of the Customer, or the Customer is struck off the register of companies, then,

The Company may, at its option, exercise any of the following rights:

- (i) demand payment of the whole of the debt of the Customer then outstanding notwithstanding the time for payment has not risen, and/or
- (ii) take possession of all goods on which title has not passed to the Customer and for that purpose, the Customer authorises the Company by its servants or agents, to enter any premises where the Goods may be situated and to take possession thereof, and/or
- (iii) the Customer agrees to pay all costs and expenses incurred by the Company in respect of any recovery or attempted recovery of the debts of the Customer and/or possession of the Goods and the amount payable shall form part of the debt of the Customer.

11. PERSONAL PROPERTIES SECURITIES ACT 2009 (CTH)

- (1) All credit account customers will be registered on the Personal Properties Security Register. Notwithstanding any other term contained in these Terms, the Goods and any other products delivered by the Company to the Customer shall remain the sole and absolute property of the Company as legal and equitable owner, until the date the first of the following occurs:

- (a) there are no longer any amounts owing to the Company for those Goods;
- (b) the Company registers a Financing Statement (as that term is defined in the PPS Act) in respect of those Goods; and
- (c) the Customer sells or transforms those Goods in accordance with clause 10(3).

- (2) Until and unless the Customer has paid the Company in full for the Goods, the Customer must:

- (a) store those Goods on its premises separately from any other goods that may be in the possession of the Customer and in a manner which makes them readily identifiable as the Company's Goods;
- (b) hold those Goods as the Company's bailee;
- (c) return those Goods to the Company on demand; and
- (d) immediately pay to the Company the proceeds of any sale of those Goods or hold any proceeds of the sale of those Goods on trust for the Company in a separate account.

- (3) The Customer agrees that the Customer shall only sell Goods in respect of which the Customer has not made full payment to the Company on the conditions that any such sale is conducted at arm's length and is for the full market value of those Goods and the Company has not demanded the return of those Goods.

- (4) The Customer grants to the Company a Purchase Money Security Interest (as that term is defined in the PPS Act), in all Goods as security for all amounts owing and unpaid by the Customer to the Company in respect of those Goods.

- (5) The Customer must not grant any Security Interest (as that term is defined in the PPS Act) or any further Purchase Money Security Interest (as that term is defined in the PPS Act) in the Goods other than the Purchase Money Security Interest referred to in clause 10(4) of these Terms without:

- (a) providing fourteen (14) days prior notice in writing to the Company; and
- (b) obtaining the prior written consent of the Company.

Failure to comply with this Term will constitute a breach entitling the Company to terminate the obligations of the Company under these Terms pursuant to clause 18(2).

- (6) The Company may apply to register a Financing Statement, or a Financing Change Statement (as those terms are defined in the PPS Act), from time to time, in relation to a Purchase Money Security Interest, without notice to the Customer. The Customer must promptly sign any further documents and/or provide any further information requested by the Company to complete and register a Financing Statement or a Financing Change Statement. The Customer agrees to indemnify and, upon demand, reimburse the Company for all costs incurred in searching, registering and/or

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discharging a Financing Statement or other document with the PPS Register and any reasonable fees incurred by the Company in enforcing the Purchase Money Security Interest referred to in clause 10(4) of these Terms.

- (7) Until all amounts owing to the Company for Goods have been received from the Customer by the Company, the Customer grants an exclusive, irrevocable licence to

the Company to enter any premises where Goods for which payment in full has not been received by the Company are kept to take possession of those Goods and to use all reasonable force in doing so without any liability for any resulting damage.

- (8) The Customer acknowledges and agrees that the Company may exercise any and all remedies afforded to a Secured Party (as that term is defined in the PPS Act) under the PPS Act including, but not limited to, entry into any building or premises owned, occupied, or used by the Customer, to search for and seize, dispose of or retain those Goods in respect of which the Customer has granted to the Company a Purchase Money Security Interest.

- (9) The Customer and the Company agree, pursuant to Section 115 of the PPS Act, to contract out of the following provisions of the PPS Act in respect of all Goods:

- (a) sections 95, 121(4), 123(2), 130 and 135 (to the extent that the Company is required to give notice to the Customer);
- (b) sections 96, 125, 129(2), 132(3)(d), 132(4), 142 and 143.; and
- (c) to the extent permitted under the PPS Act, section 271.

- (10) To the extent permitted under the PPS Act, the Customer expressly waives its right to receive from the Company a copy of any Financing Statement, Financing Change Statement or Verification Statement (as that term is defined in the PPS Act) that is registered, issued or received at any time in relation to any Goods.

- (11) The Customer warrants that it is not at the time of entering into this deed insolvent and knows of no circumstances which would entitle any creditor to appoint a receiver or to petition for winding up or to exercise any other rights over or against its assets.

- (12) These provisions relating to title shall apply notwithstanding any agreement or arrangement, whether part of these Terms or otherwise, pursuant to which the Company may give credit to the Customer.

12. PRIVACY

The personal information of Customers is collected and managed in accordance with the National Privacy Principles in the *Privacy Act 1988* (Cth).

13. ADDITIONAL SECURITY

- (1) The Customer grants to the Company as security for the payment of all monies payable by the Customer to the Company and the performance of all obligations, covenants, warranties, terms, provisions, stipulations and work to be observed, performed or fulfilled by the Customer pursuant to these Terms:

- (a) a security interest (as that term is defined in the PPS Act) in all of the present and after-acquired property (as that term is defined in the PPS Act) of the Customer; and
- (b) a fixed charge over all present and after-acquired property of the Customer that is not personal property (as that term is defined in the PPS Act) including for the avoidance of doubt, real property being any freehold and leasehold land, all estates and interests in any land and all buildings, structures and fixtures (including trade fixtures) for the time being on that land.

- (2) The Customer and the Company acknowledge and agree that the Purchase Money Security Interest granted pursuant to clause 10(4) of these Terms has priority in respect of the Goods over the security interest and charge granted pursuant to clause 13(1) of these Terms.

14. INVALIDITY

If the whole or any part of a provision of these Terms is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of these Terms have full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

15. VARIATION

These Terms contain the whole contract between the Company and the Customer and no variation of these Terms is binding on the Company unless the variation is in writing and signed by the Company.

16. INCONSISTENCY

Notwithstanding any other provision, if there is any inconsistency or conflict between an Order for the supply of Goods by the Company to the Customer or any other document between the Company and the Customer and these Terms then these Terms will prevail.

17. DISPUTE RESOLUTION

- (1) If a party claims a dispute has arisen that party must promptly give the other party notice in writing of the dispute. Representatives from each party must meet immediately with a view to resolving the dispute amicably and without delay.

- (2) If after thirty (30) days the dispute remains unresolved the parties will confer with a mutually agreed third party to assist to resolve the dispute by mediation.

- (3) The Customer agrees, upon request in writing by the Company, to pay into the Company's solicitor's trust account in the joint names of the parties any amount claimed by the Company as a condition precedent to any dispute by the Customer of any such

claim. Upon resolution of the dispute the amount and any accrued interest will be dispersed in accordance with the resolution.

18. TERMINATION

- (1) The Company may terminate these Terms and the arrangements between the Customer and the Company at any time by providing four (4) weeks written notice to the Customer.
- (2) Without prejudice to any other rights the Company may have under these Terms or at law, the Company may terminate the obligations of the Company under these Terms immediately by notice in writing to the Customer if:
 - (a) the Customer is in breach of any obligation on the part of the Customer under these Terms and such breach is not remedied by the Customer within five (5) business days after service by the Company upon the Customer of a written notice requiring the Customer to rectify the breach;
 - (b) the Customer becomes insolvent; or
 - (c) an administrator, receiver or receiver and manager is appointed in respect of the Customer or all or any of the assets of the Customer.
- (3) For the avoidance of doubt, to the extent permitted by law, upon termination of these Terms:
 - (a) all amounts owing by the Customer to the Company under these Terms are immediately payable by the Customer to the Company.
 - (b) the Company may retain all monies paid by the Customer to the Company.
 - (c) the Company may cease further deliveries of any Goods to the Customer;
 - (d) the Company may, at the sole discretion of the Company, enter any premises where Goods for which payment in full has not been received by the Supplier are kept to take possession of those Goods in accordance with clause 10(7) of these Terms

without prejudice to any other rights of the Company and without being liable in any way to the Customer or any other party.

- (4) Any obligation or payment under these Terms is independent and survives termination of these Terms.

19. CONFIDENTIALITY

The Customer must not disclose any information concerning the existence or contents of these Terms without the prior written consent of the Company unless:

- (1) the disclosure is required by law; or
- (2) the disclosure is to a professional advisor of the Customer, upon the basis that the advisor must not further disclose that information without the prior written consent of the Company.

20. INTELLECTUAL PROPERTY RIGHTS

The Customer acknowledges that any intellectual property rights, including graphics, logos, trademarks, distinctive brand features, design, text, icons, the arrangement of them, sound recordings and all software, are owned by the Company, or in some cases, a related body corporate of the Company, or third party, and that these remain the property of their respective owners and must not be used in any manner without the prior written consent of the owner. These intellectual property rights are protected by Australian and international laws and nothing in these Terms gives the Customer a right to use any of them.

21. DISCLAIMER

The Customer acknowledges that the Customer has not relied upon any representation or warranty made by or on behalf of the Company in relation to the supply of the Goods ordered.

22. GOVERNING LAW AND JURISDICTION

These Terms are governed by and construed in accordance with the laws of New South Wales, Australia and the Customer irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia. If any provision of these Terms is found to be invalid or unenforceable by a court of law, such invalidity or unenforceability will not affect the remainder of these Terms, which will continue in full force and effect.

23. ENTIRE AGREEMENT

These Terms comprise the entire agreement between the Customer and the Company and no earlier agreement, understanding or representation, whether oral or in writing, in relation to any matter dealt with in these Terms will have any effect from the date of these Terms.

24. ASSIGNMENT

- (1) The Customer must not assign any of the rights of the Customer pursuant to these Terms or this deed, without the prior written consent of the Company, which may be refused in the absolute discretion of the Company. Any consent by the Company will not release the Customer from any obligation of the Customer pursuant to these Terms.
- (2) The Company may assign all or any of the rights of the Company pursuant to these Terms.

25. NO AGENCY

The Customer will not by virtue of these Terms be, or for any purpose be deemed to be, an agent of the Company.

26. INDEMNITY

- (1) The Customer must indemnify and keep indemnified the Company and the servants and agents of the Company against all Claims made upon or against the Company arising out of or in any way connected with any breach of these Terms by the Customer or any person claiming through or under the Customer.
- (2) Subject to law, the Company has no liability to the Customer, or any person claiming

through or under the Customer for Indirect or Consequential Loss.

27. WAIVER

Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

28. RECOVERY COSTS

The Customer will pay any costs reasonably incurred by the Company or agents of the Company in respect of the Customer on an indemnity basis including but not limited to legal costs, monies due and repossession of Goods

29. FURTHER ASSURANCE

Each party must, at its own expense, do, sign, execute and deliver all deeds, documents, instruments and acts reasonably required of it by notice from another party to carry out and give full effect to these Terms, any transactions contemplated by them and the rights and obligations of the parties under them.

30. GENERAL

- (1) If the Customer is more than one person or entity, then the obligations of each person or entity under these Terms are joint and several and any notice, variation or other agreement required to be given by the Customer is valid if signed by at least one person.
- (2) Notwithstanding any other provisions in these Terms, these Terms do not exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition & Consumer Act 2010 (Cth), the Australian Consumer Law (except as permitted by section 64A) and any other implied warranties under the *Australian Securities and Investments Act 2001* (Cth) or similar consumer protection laws in the State and Territories of Australia) and which by law cannot be excluded, restricted or modified.