OUR DISCLOSURES

By accepting these Terms, you agree that: (1) you may be required to pay for our costs if we deliver to a Delivery Address that is not a commercial site; you are not able to sign for the delivery at the Delivery Address; you do not collect the Goods by the collection time notified by us to you; Liabilities we may suffer or incur as a result of your or Your Personnel's acts or omissions, Your Items, information or documentation you provide; or breach of third party intellectual property rights; (2) we exclude our Liability for your or Your Personnel's acts or omissions; breach of these Terms, any law or third party rights; information or documentation you provide; Your Items; use of the Goods other than for its intended purpose; events beyond our reasonable control; and for consequential losses; (3) our maximum aggregate Liability in relation to the provision of the Goods will be limited to us resupplying the Goods to you or, in our sole discretion, to us repaying you the amount of the Price paid by you to us in respect of the provision of the relevant Goods to which the Liability relates; (4) if your personal information is collected by us under these Terms, your personal information may be disclosed to third parties for the purpose of us providing the Goods; (5) if in our reasonable discretion, we hold the view that our working relationship has detrimentally been affected due to your actions (including any abusive behaviour), we may terminate these Terms and refuse provision of the Goods and any future goods requested by you; and (6) where you make payment to us for the Price and the amount paid by you exceeds the Price as set out in the invoice, we will refund you the excess amount less a $50 administration charge.

TERMS OF TRADE

These terms and conditions are between **Aussie Buckets Pty Ltd (ACN 667 031 085),** (**we**, **us** or **our**) and you, the party stated in the Quote (**you** or **your**), together the **Parties** and each a **Party**. Together, these terms and conditions and the Quote form the entire agreement under which we will provide the Goods to you (together, the **Terms**).

1. ACCEPTANCE

1.1 You have requested the Goods set out in the Quote, and accept these Terms by:

(a) accepting the Quote online or sending an email accepting the Quote (expressly or impliedly); or

(b) instructing us to proceed with the Goods or making any payment of the Price (including any deposit).

1.2 The Quote will be valid for the period set out on the Quote.

1.3 **Please read these Terms carefully and contact us if you have any questions.**

2. GOODS

2.1 We agree to provide you the Goods in accordance with these Terms (including any Specifications) and all relevant laws.

2.2 You acknowledge and agree that any dates or time for delivery notified by us are estimates only, and we will have no Liability to you for failing to meet any delivery date.

2.3 We may provide the Goods to you using our employees, contractors and third-party providers (**Our Personnel**), and they are included in these Terms.

2.4 All variations to these Terms must be agreed in writing between the Parties and will be priced in accordance with our Quote or otherwise as reasonably determined by us.

2.5 You may request a variation or change to the Goods, including the timing for the provision of the Goods, by providing written notice (including by email) to us, with details of the variation or change (**Variation Request**).

2.6 We will not be obliged to comply with a Variation Request unless we accept it, and any effect on the Price (**Price Variation**), and the Price has been adjusted to reflect the Price Variation.

2.7 If we consider that any instruction or direction from you constitutes a variation, then we will not be obliged to comply with such instruction or direction unless a Variation Request has been issued in accordance with clause 2.5.

2.8 Where the Goods are varied or changed, or the costs of providing the Goods increases (including as a result of any change in law), (**Variation Event**) and the cause of that Variation Event relates to, or is connected with, an event or circumstance beyond our reasonable control, you agree to pay us our reasonable additional costs and expenses that we may suffer or incur as result of the Variation Event, as a debt due and immediately payable.

2.9 You agree that our Goods come with an industry standard flat face coupler and hose, and if you require another form of coupler or hose, you are required to expressly notify us of your requirement. If we are able to provide the Goods with another form of coupler, we will issue a Quote to you.

2.10 You agree that any works, goods or services (**Your Items**) provided by you or your

employees or contractors (**Your Personnel**) will be:

(a) provided solely at your own risk, and you agree that we will assume no responsibility or Liability for Your Items; and

(b) fit for purpose, of merchantable quality and compliant with all applicable laws.

2.11 You agree that all Pin Size Declaration Forms must be filled out, signed by you and returned to us when you accept the Quote.

2.12 You agree that if you fail to fill out the Pin Size Declaration Form, it may, to the extent permitted by law, impact any warranties available to you.

2.13 You agree that certain Goods need to be installed and operated within the scope of the Operational Manual. If you have not been provided, or have misplaced the Operational Manual, you must notify us before you commence installation or usage of the Goods.

2.14 You agree that failure to comply with clause 2.13 may, to the extent permitted by law, impact any warranties available to you.

3. GUARANTEES

3.1 In Australia, our goods come with guarantees which 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.

3.2 In addition to any other rights you may have under the Australian Consumer Law, we provide the following guarantees for our product range:

(a) **Price Match Guarantee:** If you find a product of the same or substantially similar nature and specifications to our Equipment, we will match the price.

3.3 Each of the guarantees contained in clause 3.2 are subject to our absolute discretion and the conditions identified below. The guarantees do not apply to any performance range products or products that are provided by distributors other than us.

3.4 The Price Match Guarantee is subject to the following conditions:

(a) this guarantee only applies to Australian competitors approved by us;

(b) the comparable product must be of a substantially similar nature and specifications to the Equipment; and

(c) you must provide quoted proof when requesting the Price Match Guarantee.

3.5 **Product Disclaimers:**

(a) the photos of products displayed online or in any of our assets may vary from the actual purchased item;

(b) we do not have images for all product variations, therefore the final product in terms of profiles and wear protection may differ;

(c) the final paint colour may exhibit minor variations depending on the manufacturing location and special requests for custom colours. Absolute colour accuracy is not guaranteed; and

(d) we constantly update and improve our products. As a result, the final design may slightly differ from the information and images available online. We are committed to providing the most updated version of our products.

4. PRICE AND PAYMENT

4.1 You agree to pay us the Price in accordance with these Terms. All amounts are stated in Australian dollars and are exclusive of GST (unless otherwise stated).

4.2 Unless otherwise agreed between the Parties, any deposit in our Quote is payable within 7 days after date of the invoice, and must be paid before we commence the provision of the Goods. The remainder of the Price must be paid upfront before we commence the delivery of the Goods, and not less than 2 days after we notify you that the Goods have arrived in our warehouse (**Notification Date**). If you do not settle the invoice within 2 days after the Notification Date, you agree that we will place the Goods in storage, and you agree to pay us the fees that we incur as a result of the storage, being the daily rate communicated by us to you in writing.

4.3 You may request to pay the Price under a finance plan. We will provide you with details of available finance plans, including the payment options (e.g. weekly or monthly), minimum payment amounts and interest free periods. Your approval to pay the Price under a finance plan will be subject to a nominated finance provider, Finlease (Australia) Pty Ltd ABN 35 003 752 636, ACL: 390584. If your request for finance is approved, your arrangement to pay the Price under a finance plan will be between you and our finance provider; other terms and conditions and fees may apply; and any terms and conditions as to your payment of the Price under a finance plan will be incorporated into these Terms.

4.4 You acknowledge and agree that, where you make payment to us for the Price

and the amount paid by you exceeds the Price as set out in the invoice, we will refund you the excess amount less a $50 administration charge.

4.5 We may charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid 7 days after the payment date.

5. YOUR OBLIGATIONS AND WARRANTIES

You represent, warrant, acknowledge and agree that:

(a) there are no legal restrictions preventing you from engaging us, or agreeing to these Terms;

(b) you have not relied on any representations or warranties made by us in relation to the Goods (including as to whether the Goods are or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms;

(c) you will cooperate with us, and provide us with all documentation, information, instructions and access necessary to enable us to provide the Goods, as requested by us, from time to time, and in a timely manner;

(d) you will provide us with pin size details;

(e) if these Terms state that we are responsible for delivering the Goods to the Delivery Address, the Delivery Address will be a commercial site;

(f) the information you provide to us is true, correct and complete;

(g) you will not infringe any third-party rights in working with us and receiving the Goods, including in the provision of any Intellectual Property to us, such as photographs;

(h) the Goods may only be used for its intended purpose, and cannot be used for other purposes. For the avoidance of doubt, the Goods are not intended to be attached to any external ropes or materials;

(i) we aim to display the colours, design and dimension of the Goods as accurately as possible, however, they can appear slightly different on your screen or device. To the maximum extent permitted by law, we do not warrant that the appearance of any Goods on your screen or device are accurate, complete, reliable, error-free or as they appear in real life;

(j) the Goods may only be used in accordance with the Manual, and, if relevant, the Operational Manual and it is your responsibility to inspect the Goods on delivery or collection and prior to each use, including to inspect the tightness of the bolts in the Goods and whether greasing of the Goods will be required;

(k) you will provide us and Our Personnel with sufficient access to the Delivery Address and other facilities at the Delivery Address, to enable us to provide the Goods (including at the dates and times that we may reasonably request); and

(l) you will ensure that the Delivery Address is safe and free of harmful materials or substances.

6. AUSTRALIAN CONSUMER LAW AND MANUFACTURER'S WARRANTY

6.1 Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the Goods which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in these Terms excludes your Statutory Rights as a consumer under the ACL.

6.2 You agree that our Liability for the Goods is governed solely by the ACL and these Terms.

6.3 Subject to your Statutory Rights, we exclude all express and implied warranties, representations and guarantees of any kind (whether under statute, law, equity or on any other basis) and all materials, work, goods and services (including the Goods) are provided to you without warranties, representations and guarantees of any kind.

6.4 The description of the Goods in the Quote will inform you whether the manufacturer provides a warranty for that Good. Unless otherwise stated, if a warranty applies, the manufacturer warrants that the Goods will be free from manufacturing defects (**Manufacturer's Warranty**) for a period of 5 years (**Warranty Period**). If there is a defect in the Goods within the Warranty Period, the manufacturer may, provide certain remedies, as set out in the Quote.

6.5 If the Manufacturer's Warranty applies, please contact us with details of the

defect in the Goods, alongside any pictures and additional information which we may request (e.g. proof of purchase), and we will liaise with the manufacturer as to your claim under the Manufacturer's Warranty. The manufacturer may require you to return the defective Goods directly to them and the costs of the return may need to be borne by you.

6.6 You agree that we do not provide any warranty against defects in the Goods, and, to the maximum extent permitted by law, our obligations to you for any defects in the Goods is limited to the remedies you have available under the Australian Consumer law.

7. DELIVERY, TITLE AND RISK

7.1 If the Parties agree that:

(a) we are responsible for delivering the Goods to you, we will use reasonable endeavours to deliver the Goods to the Delivery Address by the delivery time, as notified by us to you; or

(b) you are responsible for collecting the Goods from us, we will use reasonable endeavours to make available the Goods, and you agree to collect the Goods, at the collection location by the collection time, as notified by us to you. You agree to comply with any policies and procedures which apply at the relevant collection location. If you do not collect the Goods, by the collection time, as notified by us to you, you will be responsible for paying the costs of storage of the Goods.

7.2 You understand and agree that we can only provide a quote for delivery costs once a valid Delivery Address is provided.

7.3 If these Terms state that we are responsible for delivering the Goods to the Delivery Address:

(a) if, for any reason, you have not provided a valid Delivery Address, you must provide us with a valid Delivery Address upon our request, and you may be liable to pay additional costs for us to deliver the Goods to the new Delivery Address;

(b) you agree to pay for all Delivery Costs; and

(c) if the Delivery Address is not a commercial site or if you are not available to sign for the

delivery of the Goods, you agree that we may be required to re-direct the delivery of the Goods to a depot, and you will be responsible for paying the costs of re-direction and the costs of storage of the Goods.

7.4 You agree that if at any time we are required to store the Goods for you, due to your failure to collect the Goods from the depot within a reasonable time, you are required to pay for the cost of storage of the Goods, as a debt due and immediately payable.

7.5 Title in the Goods will remain with us until all amounts due and payable to us under these Terms are paid in full. Risk in the Goods will pass to you on delivery of the Goods to your nominated Delivery Address or collection of the Goods at the collection location (as applicable).

7.6 You agree that we hold a general lien over any Goods owned by us that are in your possession, for the satisfactory performance of your obligations under these Terms. You agree that these Terms and your obligations under these Terms create a registrable security interest in favour of us, and you consent to the security interest (and any other registrable interest created in connection with these Terms) being registered on any relevant securities register (and you must do all things to enable us to do so).

8. TERM AND TERMINATION

8.1 These Terms will commence upon your acceptance in accordance with clause 1.1 and will continue until the earlier of the date:

(a) we consider the Goods to be supplied to you in accordance with these Terms; or

(b) these Terms are terminated in accordance with this clause 8.

8.2 Either Party may terminate these Terms if the other Party has materially breached these Terms and such breach is not rectified within 14 days from the date notice is received by that Party.

8.3 If in our reasonable discretion, we hold the view that our working relationship has detrimentally been affected due to your actions (including any abusive behaviour), we may terminate these Terms and refuse provision of the Goods and any future goods requested by you. If we terminate these Terms in accordance with this clause 8.3, we agree to refund you any amounts paid for the Goods.

8.4 On termination of these Terms, you agree that:

(a) subject to clause 8.3 any amounts paid for

Goods rendered by us are non-refundable;

(b) you agree to pay us all amounts due and payable to us under these Terms (including for all Goods) up to the date of termination, as a debt immediately due and payable; and

(c) you agree to return or give us access to recover all property belonging to us on request (including any Intellectual Property or Confidential Information), and

to give us or Our Personnel such rights of access necessary to exercise our rights under this clause.

8.5 The accrued rights, obligations and remedies of the Parties are not affected by termination of these Terms.

9. LIABILITY, INDEMNITY AND EXCLUSIONS

9.1 **Exclusions:** Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by (whether directly or indirectly): (a) acts or omissions of you or Your Personnel;

(b) your breach of these Terms, any law or third party rights;

(c) any information, documentation, specifications or directions given by you or Your Personnel, including any pin size information;

(d) Your Items;

(e) use of the Goods for purposes other than its intended purpose as set out in these Terms; or

(f) any event or circumstance beyond our reasonable control.

9.2 **Indemnity:** Despite anything to the contrary, to the maximum extent permitted by law, you are liable for, and agree to make good, indemnify us and hold us harmless in respect of, any Liability that we may suffer, incur or otherwise become liable for, arising from or in connection with:

(a) acts or omissions of you or Your Personnel;

(b) any information, documentation, specifications or directions given by you or Your Personnel, including any pin size information;

(c) any breach of third party intellectual property rights;

(d) the Delivery Address not being a commercial site; or

(e) Your Items.

9.3 **Limitation of liability:** Despite anything to the contrary, to the maximum extent permitted by law:

(a) we will not be liable for any Consequential Loss; and

(b) our maximum aggregate Liability in relation to the provision of the Goods will be limited to us resupplying the Goods to you or, in our sole discretion, to us repaying you the amount of the Price paid by you to us in respect of the provision of the relevant Goods to which the Liability relates.

10. INTELLECTUAL PROPERTY

10.1 As between the Parties, all Intellectual Property Rights developed, adapted, modified or created

by or on behalf of us or Our Personnel (including in connection with these Terms or the provision of the Goods), whether before or after the date of acceptance of these Terms, will at all times vest, or remain vested, in us.

10.2 You grant us a non-exclusive, irrevocable, worldwide, sublicensable and transferable right and licence to use your and your Personnel's Intellectual Property that you provide to us (including any photos) for any purpose reasonably contemplated by these Terms, including in order to promote our business, whether online or on digital or print or social media. We may, in our absolute discretion, provide you with a discount on the Price for the benefit of the licence described in this clause 10.2, but you agree that we are under no obligation to do so.

11. CONFIDENTIALITY

11.1 Subject to clause 11.2, you must (and must ensure that Your Personnel do) keep confidential, and not use or permit any unauthorised use of, all Confidential Information.

11.2 Clause 11.1 does not apply where the disclosure is required by law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with these Terms and provided that you ensure the adviser complies with the terms of clause 11.1.

12. GENERAL

12.1 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party

may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Institute of Victoria, to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

12.2 **Governing law:** These Terms are governed by the laws of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

12.3 **GST:** If and when applicable, GST payable on the Price will be set out in our invoice. You agree to pay the GST amount at the same time as you pay the Price.

12.4 **Notices:** Any notice given under these Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of

post, or at the time of transmission in the case of transmission by email.

12.5 **Online execution:** These Terms may be executed by means of such third-party online document execution service as we nominate subject to such execution being in accordance with the applicable terms and conditions of that document execution service.

12.6 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.

12.7 **Survival:** Clauses 6, 7, 8, 9, 10 and 11 will survive the termination or expiry of these Terms.

13. INTERPRETATION & DEFINITIONS

13.1 In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in the Quote, and:

Approval means any approval, consent, permit, application, registration or equivalent required to be obtained in connection with the Goods by any Authority or any law.

Authority means any national, State, Territory or local government departments, bodies, instrumentalities or other public authorities the approval of which is applicable to or necessary for the provision of the Goods.

Confidential Information includes information which:

(a) is disclosed to you in connection with these Terms at any time;

(b) is prepared or produced under or in connection with these Terms at any time;

(c) relates to our business, assets or affairs; or

(d) relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms,

whether or not such information or documentation is reduced to a tangible form or marked in writing as “confidential”, and howsoever you receive that information.

Consequential Loss includes any consequential, special or indirect loss, damage or expense including any real or anticipated loss of revenue, loss of profit, loss of use, loss of occupation, loss of benefit, loss of financial opportunity, or economic loss whether arising out of a breach of these Terms, at law, under any statute, in equity, or in tort (including negligence).

Delivery Costs means the costs associated with the delivery or provision of the Goods, including any insurance, customs, tariffs, duties or other such charges that may apply to the Goods.

Goods means the goods to be provided by us under these Terms, as expressly set out in the Quote.

Intellectual Property means any copyright, registered or unregistered designs or trade marks, domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration

of, and any improvements, enhancements or modifications of, the foregoing.

Intellectual Property Rights means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party, a Party or otherwise.

Manual means the initial product care and set up guide for the Goods.

Operational Manual means the manual provided for a
Tilting Hitch, Quick Hitch, Crusher Bucket, Rotary Screen Bucket, Demolition Grab, Multipurpose grab and Rock Breaker.

Pin Size Declaration Form means the declaration form required to be filled out with the Quote, including the Standard Pin Size Declaration Form and Tilting/Quick Hitch Pin Size Declaration Form.

Price means the price set out in our Quote for the provision of the Goods and all other reasonable expenses or disbursements properly incurred by us in the provision of the Goods.

Quote means the quote (including any online quote) to which these Terms are attached by reference.

Specifications means any specifications for the Goods, and, if applicable, as further particularised in an attachment to these Terms or the Quote.

For any questions or to submit a claim for a guarantee, please contact us at:

Aussie Buckets Pty Ltd (ACN 667 031 085)

Email: support@aussiebuckets.com.au

Phone: +61 3 9917 3678

Terms and Conditions of Credit

These terms and conditions of credit (**Terms**) are between AUSSIE BUCKETS PTY LTD (ACN 667 031 085) (**we**, **us**, **our**) and the applicant named in the credit application form (**Form**) under "Business Details" (**you** or **your**), together the **Parties** and each a **Party**. Capitalised terms in these Terms and Conditions of Credit (these **Credit Terms**) have the meanings given to them in the Terms of Trade (to which these Credit Terms are attached).

1. Credit

1.1. If we accept your application for credit, we agree to provide the Goods to you on credit for the period of 30 days from the date of issue of our invoice (**Credit Term**).

1.2. Our extension of credit to you will be subject to these Credit Terms and any agreement which has been agreed by the Parties for the supply of the Goods to you (**Terms of Trade**).

1.3. You agree that these Credit Terms will be additional to, and not in substitution for, any Terms of Trade. To the extent of any ambiguity or discrepancy between these Credit Terms and any Terms of Trade, these Credit Terms will prevail.

1.4. We reserve the right to refuse your application for credit and/or revoke our extension of credit to you at any time in our sole discretion, including if in our reasonable view, your financial situation or ability to pay us is impaired, without incurring any liability to you. If we revoke our extension of credit, this will not affect any Goods provided to you on credit prior to the revocation.

1.5. We may advise you of a credit limit at which we agree to extend credit to you. You agree to not exceed the credit limit. We reserve the right to review credit limits in our sole discretion, including increasing or decreasing the credit limit.

2. Your obligations

2.1. We will issue invoices to you on a monthly basis and, unless otherwise agreed in the Form or in writing with us, you agree to pay us the price for the Goods prior to the expiry of the Credit Term, using the payment method set out in our invoice.

3. Overdue accounts

3.1. If:

(a) you fail to pay any monies due and owing prior to the expiry of the Credit Term;

(b) you fail to comply with these Credit Terms;

(c) you suffer an Insolvency Event; or

(d) these Credit Terms are terminated in accordance with clause 6.1,

the full balance of your account will become due and payable immediately.

3.2. If any payment has not been made in accordance with these Credit Terms, we may (at our absolute discretion):

(a) cease providing the Goods, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs);

(b) charge interest at the rate set out in clause 4.5 of the Terms of Trade, on any such amounts unpaid after the relevant due date for payment; and

(c) suspend or revoke our extension of credit.

4. Warranties and representations

4.1. You represent, warrant and agree that:

(a) you have full legal capacity, right, authority and power to agree to these Credit Terms, to perform your obligations under these Credit Terms, and to carry on your business;

(b) these Credit Terms constitute a legal, valid and binding agreement, enforceable in accordance with its terms;

(c) the details on the Form are true, correct and complete;

(d) you have all the rights necessary to disclose the information (including personal information) set out in the Form; and

(e) no Insolvency Event has occurred in respect of you and that you will immediately notify us if you are (or you are likely to be) the subject of an Insolvency Event.

4.2. In these Credit Terms, **Insolvency Event** means any of the following events or any analogous event: (a) a party disposes of the whole or any part of the party's assets, operations or business other than in the ordinary course of business; (b) a party ceases, or threatens to cease, carrying on business; (c) a party is unable to pay the party's debts as the debts fall due; (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the party's assets, operations or business; (e) any step is taken for a party to enter into any arrangement or compromise with, or assignment for the benefit of, a party's creditors or any class of a party's creditors; or (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or

liquidator of the whole or any part of a party's assets, operations or business.

5. Collection notice

5.1. We may collect personal information about you in order to supply our Goods, to contact and communicate with you, to respond to your enquiries and for other purposes set out in our privacy policy.

5.2. We may disclose that information to third party service providers (including information technology service providers, data storage, web-hosting and server providers, professional advisors and our business partners) to supply our Goods or as required by law.

5.3. You authorise us to use all personal information set out in the Form to contact and communicate with third party service providers, for internal record keeping, to allow us to manage our relationship with you and for the purposes of assessing your application. If you do not provide this information, we may not be able to assess your application or provide you with our Goods.

5.4. Our privacy policy contains further information about: (1) how we store and use your personal information; (2) how you can access and seek correction of your personal information; (3) how you can make a privacy-related complaint; and (4) our complaint handling process.

5.5. By providing personal information to us, you consent to us collecting, holding, using and disclosing your personal information in accordance with our privacy policy.

6. Termination

6.1. These Credit Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:

(a) the other Party (**Defaulting Party**) breaches a material term of these Credit Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or

(b) (to the extent permitted under the Corporations Act 2001 (Cth)) any step is taken to enter into any arrangement between the Defaulting Party and its creditors, any step is taken to appoint a receiver, a receiver and manager, a liquidator, a provisional liquidator or like person of the whole or any part of the Defaulting Party's assets or business, the Defaulting Party is bankrupt, or the Defaulting Party is unable to pay its debts as they fall due.

6.2. This clause 6 will survive the termination or expiry of these Credit Terms.

7. General

7.1. **Amendment:** These Credit Terms may only be amended in writing and as agreed by the Parties.

7.2. **Assignment:** Subject to clause 7.3, a Party must not assign or deal with the whole or any part of its rights or obligations under these Credit Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

7.3. **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Credit Terms, to a debt collector, debt collection agency, or other third party.

7.4. **Disputes**: A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Credit Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first complying with this clause. A Party claiming that a Dispute has arisen must give written notice to the other Party specifying the nature of the Dispute (**Dispute Notice**). The Parties must meet (whether in person, by telephone or video conference) within 10 Business Days of service of the Dispute Notice to seek (in good faith) to resolve the Dispute.

If the Parties do not resolve the Dispute within 20 Business Days of the date the Dispute Notice was served (or such further period as agreed in writing by the Parties), either Party may:

(a) where you are resident or incorporated in Australia, refer the matter to mediation, administered by the Australian Disputes Centre in accordance with Australian Disputes Centre Guidelines for Commercial Mediation; or

(b) where you are not resident or incorporated in Australia, refer the matter to arbitration administered by the Australian Centre for International Commercial Arbitration, with such arbitration to be conducted in Melbourne, Victoria, before one arbitrator, in English and in accordance with the ACICA Arbitration Rules.

Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

7.5. **Further assurance:** Each Party must promptly do all things and execute all further instruments necessary to give full force and effect to these Credit Terms and your obligations under it.

7.6. **Governing law:** These Credit Terms are governed by the laws of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

7.7. **Joint and several Liability:** Where you constitute two or more individuals or entities, you will each be jointly and severally liable under these Credit Terms.

7.8. **Notices:** Any notice given under these Credit Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

7.9. **Relationship of Parties:** These Credit Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.

7.10. **Severance:** If a provision of these Credit Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Credit Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Credit Terms.

7.11. **Definitions:** In these Credit Terms, Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

CREDIT INFORMATION POLICY

This Credit Information Policy sets out how we collect, use and disclose credit information provided to us.

Credit Information: is a term used throughout this Credit Information Policy and refers to "credit information" and "credit eligibility information" as these terms are defined in the *Privacy Act 1988* (Cth) (**Privacy Act**).

The types of "credit information" we may collect about you may include:

- name, address, contact number and email address;
- the fact that you applied for credit from us;
- the amount of credit applied for;
- the amount of credit provided by us (if any);
- the terms of payment of credit provided to you by us, including any credit term;
- details of your payment history, including details of any default of payment by you;
- information regarding credit that was provided to you that has otherwise been discharged;
- information retrieved from any credit referees;
- information regarding your personal insolvency; and
- information about your involvement in any court proceedings.

The types of "credit eligibility information" we may collect about you from a credit reporting body include:

- a credit report; and
- a credit assessment score.

We collect credit information in a variety of ways, including:

- when you provide it directly to us, including through your completion of any credit application form provided by us or you entering an agreement with us for the supply of goods and/or services;
- when you make payment of any amount of credit provided by us; or
- from third parties, such as credit reporting bodies or from other credit providers, including any credit referees provided by you.

We may collect, hold, use and disclose credit information and credit eligibility information for the following purposes:

- verifying your identity;
- obtaining credit information from credit reporting bodies;
- assessing your application for credit;
- assessing your credit worthiness, including collecting your payment history in relation to any credit provided by us to you;
- enforcing our rights against you for repayment of any amount owed by you to us;
- doing business with you;
- administering your account, including for internal record keeping, administrative, invoicing and billing purposes;
- dealing with complaints or issues you may have in relation to our business;
- complying with our legal obligations and resolving any disputes that we may have; and
- if otherwise required or authorised by law.

We may disclose credit information to:

- other credit providers to allow them to determine your financial arrangements with us;
- third party service providers for the purpose of enabling them to provide their services to us, including (without limitation) IT service providers, data storage, web-hosting and server providers, payment systems operators, debt collectors or other service providers who may assist us in securing a debt and professional advisors;
- our employees, contractors and/or related entities;
- our existing or potential agents or business partners;
- anyone to whom our business or assets (or any part of them) are, or may (in good faith) be, transferred;
- courts, tribunals and regulatory authorities, in the event you fail to pay for goods or services we have provided to you;
- courts, tribunals, regulatory authorities and law enforcement officers, as required or authorised by law, in connection with any actual or prospective legal proceedings, or in order to establish, exercise or defend our legal rights;
- any other third parties where you have consented; and
- as required or permitted by law, such as where we receive a subpoena.

We are not likely to disclose credit information to individuals or entities that do not have an Australian link. If we do disclose credit information to individuals or entities that do not have an Australian link, we will update this Credit Information Policy to provide details of the countries in which these entities are located.