

Terms and Conditions

Anna Charlesworth Pty Ltd (ACN 646 455 405)

These Terms and Conditions of Sale supersede all previous Terms and Conditions of Sale.

Payment terms

1. Anna Charlesworth Pty Ltd (ACN 646 455 405) and its related bodies corporate (as that term is defined in the Corporations Act 2001) (Supplier) may, at any time, unilaterally vary the terms of payment in its absolute and unfettered discretion without prior written notice to the Customer.
2. Standard payment terms are full payment before commencement of manufacturing of goods ordered. The Supplier may, in its sole discretion, accept a 50% non-refundable deposit to commence works in connection with an order.
3. Unless stated otherwise all prices quoted are in Australian dollars and payments are to be made in Australian currency free of exchange.
4. If the Customer fails to make full payment within the required time:
 - (a) the entire amount of the Customer's outstanding debt will become immediately due and payable to the Supplier without any need for the Supplier to make written demand for such payment; and
 - (b) the Supplier may do any one or more of the following:
 - (i) suspend any deliveries;
 - (ii) charge the Customer interest computed daily and compounded monthly on the outstanding amount at the penalty interest rate of 1.5% per month calculated on a daily basis on the unpaid amount from due date until payment in full;
 - (iii) require the Customer to deliver the goods back to the Supplier at the Customer's cost; and
 - (iv) recover all reasonable collection and legal costs.
5. Payment for goods supplied shall be made in full by the Customer to the Supplier by a method of payment approved by the Supplier without deduction, counterclaim or set off, prior to delivery of the goods.
6. Time is of the essence regarding the making of all payments.
7. The Supplier may, from time to time, offer customers discounts as an incentive for making timely payments. Any such incentives will only be provided to customers on such terms approved by the Supplier in writing. No settlement discounts will be allowed if the Customer's current account balance is overdue.
8. The Supplier reserves the right to recover any merchant fees or surcharges that it may incur as a consequence of the Customer purchasing goods from the Supplier by credit card at the same rate charged to the Supplier by the merchant.
9. The Supplier reserves the right to impose a minimum order value should circumstances warrant it and may do so by written notice to the Customer.

Price and price variation

10. The Supplier reserves the right at any time to correct any errors or omissions in any documentation the Supplier has issued to the Customer.
11. The price does not include any special packaging costs.
12. Any modifications requested by the Customer to the standard specifications of the goods will incur additional costs, such costs are to be communicated to the Customer in accordance with clause 12. Any modification request will not be accepted should manufacturing have commenced on the original order.
13. The Supplier reserves the right to vary any quoted prices of goods at any time by notice in writing to the Customer, provided always that the Customer may within 14 days of receipt of that notice request that any part of an order for goods affected by the price variation be terminated and shall notify the Supplier in writing of such request. Within 14 days of receipt of a request for termination from the Customer, the Supplier may either terminate that part of the order, or elect to supply the goods to the Customer at the original price which shall be binding on the Customer and the Customer's request for termination shall have no effect.

Jurisdiction

14. These Terms and Conditions are governed by the laws of Victoria and the laws of the Commonwealth of Australia which are in force in Victoria.
15. The Customer acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Customer is formed at the address of the Supplier.
16. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.

Security/charges

17. The Customer charges in favour of the Supplier all of its estate and interest in any real property that the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
18. The Customer appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, charge, bill of sale or consent to any caveat the Supplier may choose in its reasonable discretion, even though the Customer may not have defaulted in carrying out its obligations hereunder.
19. Where the Customer has previously entered into an agreement with the Supplier by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the Personal Property Securities Act 2009 (PPSA)) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this

agreement and will secure all indebtedness and obligations of the Customer under this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Guarantee and Indemnity

20.

- (a) In this Clause:
- (i) Co-Surety means, in relation to a guarantor:
 - (A) Each other guarantor; and
 - (B) Any other person (other than a guarantor or debtor) who is liable to pay Guaranteed Money to the Supplier.
 - (ii) Guarantee means a guarantee, indemnity, letter of credit, letter of comfort or any other obligation (whatever it is called and whatever its nature) by which a person is responsible for another person's obligations or debts;.
 - (iii) Guarantee and Indemnity means the guarantee and indemnity contained herein and otherwise on the terms and conditions set out in these Terms and Conditions;
 - (iv) Guaranteed Money means all the money that a person (including, but not limited to, the Customer) is or may in the future be liable to pay to the Supplier under or in connection with these Terms and Conditions, and in any way whatever and whether:
 - (A) The person is liable alone or together with another person;
 - (B) The person is liable as a principle debtor, surety, partner, trustee, beneficiary or otherwise; and
 - (C) The relevant liability:
 - I Is actual or contingent, ascertained or unascertained, fixed or fluctuating; or
 - II Is in respect of principal, interest, Guarantee obligations, purchase obligations, fees, costs, expenses, losses or damages; or
 - III Is in dollars, another currency or a combination of currencies; or
 - IV Is of any other characters.
 - (v) Guarantor means each person noted as "Director" in Schedule 1 of these Terms and Conditions who by signing Schedule 1 each agrees to be liable for the debts of the Customer on a principal debtor basis pursuant to these Terms and Conditions.
 - (vi) Insolvency or Incapacity of a person includes:
 - (A) the winding up of the person; and
 - (B) the appointment of an external administrator to the person; and
 - (C) the appointment of a receiver, receiver and manager or controller to a person or its assets;
 - (D) any composition, compromise, arrangement, merger, amalgamation, reconstruction, administration, assignment for the benefit of creditors, insolvency of, by, or adversely affecting the person and any procedure which is equivalent or analogous in any jurisdiction; and
 - (E) the death or permanent incapacity of the person.
 - (vii) Obligor means the Customer and the Guarantor (or each of them or any one of them as the case requires).
 - (viii) Trust means any trust of which the Customer or Guarantor (as the case requires) is a trustee.
- (b) The Guarantor (jointly and severally where relevant) irrevocably and unconditionally Guarantees to the Supplier that:
- (i) the Guaranteed Money will be paid to the Supplier on time; and
 - (ii) all obligations of the Customer under or in connection with these Terms and Conditions will be observed and performed on time.
- (c) If the Guaranteed Money or any part of the Guaranteed Money is not paid to the Supplier on time and the Supplier makes a demand on the Guarantor, the Guarantor must pay the Guaranteed Money (or the part of the Guaranteed Money demanded) to the Supplier within three (3) business days, whether or not the Supplier has made a demand on the Customer or any other person.
- (d) The Guarantor (jointly and severally where relevant) irrevocably and unconditionally indemnifies the Supplier against loss the Supplier suffers:
- (i) because the Guaranteed Money is not paid to the Supplier on time or there is any failure in the timely observance of performance of any obligations under the Conditions; or
 - (ii) due to the Insolvency or Incapacity of the Customer, a Guarantor or a Co-Surety; or
 - (iii) because:
 - (A) the Guaranteed Money (or money which would be Guaranteed Money if it were recoverable) is not recoverable from; or
 - (B) a liability to pay the Guaranteed Money is not enforceable against,
 - (C) the Customer, the Guarantor, a Co-Surety or any other person for any reason, whether or not the Supplier knew or ought to have known anything about it.
- (e) The Guarantor (jointly and severally where relevant) must pay to the Supplier on demand the amount of loss referred to in clause 20(d).

- (f) This is a continuing guarantee and indemnity which:
- (i) is not wholly or partly discharged by the payment of any of the Guaranteed Money, the settlement of an account or any other matter (other than an unconditional written release by the Supplier); and
 - (ii) applies to the present and future balance of the Guaranteed Money.
- (g) The liability of the Guarantor is not adversely affected by anything which would otherwise reduce or discharge the liability of the Guarantor under the law relating to sureties, guarantees and indemnities. In particular, the liabilities of the Guarantor is not adversely affected by:
- (i) the Supplier granting time or any other indulgence or concession;
 - (ii) the supplier increasing the amount, or otherwise varying the type or terms, of financial accommodation provided to the Customer; or
 - (iii) any transaction or agreement (or variation of a transaction or agreement) between the Supplier and the Customer, Co-Surety, or any other person (even though the relevant transaction, agreement or variation may adversely affect the Guarantor);
 - (iv) the Insolvency or Incapacity of any person, or the Supplier becoming party to or bound by an Insolvency or Incapacity;
 - (v) an external administrator being appointed to any guarantor, a Co-Surety or the Customer;
 - (vi) any judgment or order against the Customer, the Guarantor, a Co-Surety or any other person;
 - (vii) if:
 - (A) an obligation of the Guarantor, the Customer, a Co-Surety or any other person; or
 - (B) the Conditions, liability under the Terms and Conditions or any provision of the Terms and Conditions,
 - (viii) becomes void, voidable, unenforceable, defective, disputed, released, waived, impaired, transferred, enforced, or impossible or illegal to perform;
 - (ix) the Guaranteed Money not being recoverable or the liability of the Customer, a Co-Surety or any other person to the Supplier ceasing (including as a result of the release or discharge by the Supplier);
 - (x) the Supplier failing to enforce the Terms and Conditions;
 - (xi) property secured under the Terms and Conditions being destroyed, diminished, forfeited, extinguished, surrendered or resumed;
 - (xii) any default, misrepresentation, negligence, misconduct, acquiescence, delay, mistake or other action or inaction of any kind by or on behalf of the Supplier or any other person.
- (h) Until the Supplier has received all the Guaranteed Money and the Supplier is satisfied that it will not have to repay any money received by it in connection with the Guaranteed Money, the Guarantor must not (either directly or indirectly):
- (i) claim, exercise, or attempt to exercise a right of set-off or any other right which might reduce or discharge the Guarantor's liability under the Conditions; or
 - (ii) claim or exercise a right of subrogation or a right of contribution or otherwise claim the benefit of any security under these conditions; or
 - (iii) unless the Supplier has given written direction to do so:
 - (A) prove, claim or otherwise exercise voting rights in the Insolvency or Incapacity of the Customer or a Co-Surety in competition with the Supplier; or
 - (B) otherwise claim or receive the benefit of a distribution, dividend or payment arising out of the Insolvency or Incapacity of the Customer or a Co-Surety; or
 - (iv) demand, or accept payment of, any money owed to the Guarantor by the Customer or any Co-Surety.
- (i) Despite any liability of the Customer to the Guarantor, the Guarantor does not have a debt provable in the winding up of the Customer unless:
- (i) the Supplier has received all the Guaranteed Money and has notified the Guarantor in writing that it is satisfied it will not have to repay any money received by it in reduction of the Guaranteed Money; or
 - (ii) the Supplier has given a written discretion to the Guarantor to prove in the winding up of the Customer.
- The Guarantor agrees that, if the Customer is wound up, no set-off between mutual debts of the Guarantor and the Customer occurs until the Guarantor has a provable debt.
- (j) The Supplier may demand payment of the Guaranteed Money or exercise any other right under the Terms and Conditions without first:
- (i) claiming payment from or proceeding against the Customer or any other person; or
 - (ii) enforcing any other right, power, remedy or security,
- and the Guarantor waives any right it has, or may have, to require the Supplier to do so.
- (k) Where the Guarantor comprises more than one person, the Supplier:
- (i) may in its absolute discretion:
 - (A) demand payment of the Guaranteed Money from all or any of them; and

- (B) proceed against all or any of them; and
- (ii) is not obliged to exercise any of the Supplier's rights under these Terms and Conditions against:
 - (A) all of the persons comprising the Guarantor; or
 - (B) any of those persons (even if the Supplier has exercised rights against another); or
 - (C) two or more of them at the same time.
- (l) The Supplier may credit money received in or towards satisfaction of the Guaranteed Money (including dividends received in any winding up) to a suspense account. The Supplier may keep the money in that account for as long as, and at whatever interest rate, the Supplier thinks fit. The Supplier may apply the money to reduce the Guaranteed Money whenever it thinks fit.
- (m) These Terms and Conditions and any other agreement to which the Guarantor is a party bind the Guarantor in its personal capacity and in its capacity as trustee of any Trust.
- (n) The Supplier has recourse to the assets of the Guarantor when seeking to recover the Guaranteed Money, whether the assets are owned by it beneficially or held by it in its capacity as trustee of the Trust.
- (o) The Guarantor represents and warrants to the Supplier that the Guarantor can be indemnified out of the assets of the Trust for all liabilities incurred by the Guarantor under the Terms and Conditions.

Formation of contract

21. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any order or other offer to purchase received by it.
22. Placement of an order or other offer to purchase, either verbally or in writing, will constitute acceptance of these Terms and Conditions.
23. Each order or other offer to purchase may be accepted by written acceptance by the Supplier, performance of it (including by delivery) or issue by the Supplier of an invoice in respect of it (whichever occurs first). Such acceptance will complete a contract between the Customer and the Supplier on these Terms and Conditions.

Retention of title

24. 22. Title in the goods does not pass to the Customer until the Customer has made payment in full for the goods and, further, until the Customer has made payment in full of all the other money owing by the Customer to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).
25. Whilst the Customer has not paid for the goods supplied in full and all other monies owing at any time, the Customer agrees that property and title in the goods will not pass to the Customer and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
26. Until payment in full of all monies owing has been made to the Supplier, the Customer will hold the goods in a fiduciary capacity and as bailee for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
27. The Customer will be entitled to sell the goods, use them in any value adding process (being a processing, mixing or affixing process including printing, gluing, cutting and binding) ("value added goods") and sell value added goods in the ordinary course of its business, but until full payment for the goods and all other monies owing has been made to the Supplier, the proceeds (as defined in the PPSA) will be held by the Customer on trust for the Supplier absolutely and money forming part of the proceeds will be held in a separate account that clearly identifies those proceeds as money held on trust for the Supplier. The Customer acknowledges and agrees that such sales do not give rise to any liability or obligations on the part of the Supplier in contract or otherwise.
28. The Customer's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 26 hereof unless and until the funds held on trust are remitted to the Supplier.
29. The Supplier may, whilst it retains title to the goods, at its absolute discretion and without further notice and prejudice to any other of its rights, demand the return of the goods or re-take possession of the goods from any site owned or controlled by the Customer, and the Customer grants the Supplier (or its duly appointed agent) an irrevocable licence to do so without any liability for any loss or damage suffered as a consequence of such entry or re-taking of possession.
30. The Supplier is entitled, from time to time, to enter the Customer's premises to inspect, copy or take extracts from the books, records and files of any kind relating to the sale of the goods, the identification of sale proceeds in respect of the goods, the identification of the book debts due to the Customer. The Customer acknowledges and agrees that:
 - (a) the Customer will keep its books, records and files of any kind available for inspection by the Supplier at the Customer's principal place of business; and
 - (b) any failure by the Supplier to exercise any right under this clause 29 or any other rights is not a waiver of any of the Supplier's rights, including without limitation those rights that arise under this clause 29.
31. The Customer will be responsible for the Supplier's costs and expenses in exercising its rights under clauses 29 and 30. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against the Supplier, its employees, agents or contractors.
32. The Customer agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Customer on those goods, and the Customer hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Customer.
33. Pending payment of all monies owing, the Customer's right to sell the goods in the ordinary course of its business will immediately cease on the happening of any of the following events:
 - (a) the Customer ceases to be able to pay its debts as and when they fall due;
 - (b) the Customer commits an act of bankruptcy or has a controller or trustee appointed in respect of its estate or any part of its assets;
 - (c) execution is levied against any of the Customer's possessions;
 - (d) a resolution is passed for, an application is made for, or the Customer is placed in, liquidation, whether voluntary or otherwise;
 - (e) the Customer's act or omission would entitle a receiver to take possession of any assets, or would entitle an external administrator to be appointed to it;

- (f) the Customer commits a material breach of any of these Terms and Conditions or any other agreement between the Customer and the Supplier;
 - (g) the Customer purports to enter into a forward sale contract in respect of the goods or value added goods or purports to assign or factor the book debts due to it without the Supplier's prior written consent, which consent may be withheld in the Supplier's absolute discretion; or
 - (h) the Supplier gives notice to the Customer terminating its right to sell the goods in the ordinary course of business.
34. For the avoidance of doubt, the Supplier's interest in the goods constitutes a security interest and to the extent applicable a 'purchase money security interest' pursuant to the PPSA.
35. The Customer must ensure that no security interest (within the meaning of the PPSA) is created, exists or subsists over the goods (including any replacement part or other item that is incorporated into any goods), in the Customer's possession or control prior to title to the goods passing to the Customer other than a security interest arising under these Terms and Conditions.

Provision for further information

36. The Customer undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.
37. If the Customer is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Corporations

38. If the Customer is a corporation, the Customer represents, warrants and agrees that its directors have approved the Customer entering into this agreement.

Trustee capacity

39. If the Customer is the trustee of a trust (whether disclosed to the Supplier or not), the Customer represents and warrants to the Supplier and agrees that:
- (a) the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
 - (b) the Customer has the right to be indemnified out of trust assets;
 - (c) the Customer has the power under the trust deed to sign this agreement; and
 - (d) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
40. The Customer must give the Supplier a copy of the trust deed upon request.

Partnership

41. If the Customer enters into this agreement as partners, the Customer represents, warrants and agrees that all of the partners have approved the Customer entering into this agreement.
42. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Insolvency

43. If the Customer becomes insolvent, the Customer remains liable under this agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Customer being insolvent.

Waiver

44. A waiver of any provision or breach of this agreement given by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement given by the Customer must be made by the Customer's authorised officer in writing.
45. Until ownership of the goods passes, the Customer waives its rights it would otherwise have under the PPSA:
- (a) under section 95 to receive notice of intention to remove an accession;
 - (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law decisions;
 - (c) under section 121(4) to receive a notice of enforcement action against liquid assets;
 - (d) under section 125 in respect of the obligation to dispose of or retain collateral;
 - (e) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
 - (f) under section 130 to receive a notice to dispose of goods;
 - (g) under section 132(2) to receive a statement of account following disposal of goods;
 - (h) under section 132(3)(d) to be shown amounts paid to other secured parties in a statement of account;
 - (i) under section 132(4) to receive a statement of account if no disposal of goods for each 6-month period;
 - (j) under section 134(2)(a) to receive notice of retained collateral;
 - (k) under section 135 to receive notice of any proposal of the Supplier to retain goods;
 - (l) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
 - (m) under section 142 to redeem the goods;

- (n) under section 143 to reinstate the security agreement; and
- (o) under section 157(1) and 157(3) to receive a notice of any verification statement.

Costs

- 46. The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Customer. The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).
- 47. The Customer will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Customer to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
- 48. The Customer acknowledges and agrees that payments by the Customer will be applied by the Supplier as follows:
 - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 45 and 46.
 - (b) Secondly, in payment of any interest incurred in accordance with clause 4(b)(ii).
 - (c) Thirdly, in payment of the outstanding invoice(s).
- 49. In circumstances where the Supplier seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Customer will be allocated in a manner at the Supplier's absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which the Supplier seeks to enforce its purchase money security interest.
- 50. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 48 herein.
- 51. Payments allocated (and/or reallocated) under clause 48 and/or 49 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.

Risk

- 52. Risk in the goods passes to the Customer immediately on dispatch of the goods for delivery, or on invoice for charged and held goods. The Customer acknowledges that the Supplier is not responsible for any damage that occurs after the goods have been dispatched for delivery, including but not limited to any theft or misplacement by couriers, freight handlers or shipping companies.

Taxes and duty

- 53. The Customer must pay GST on any taxable supply made by the Supplier to the Customer under this agreement. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply. Any pricing and/or quotations provided by the Supplier to the Customer will indicate what the GST component of the price is, unless the goods are shipped outside of Australia.
- 54. The Customer will be liable for and responsible for all applicable import duties and taxes associated with delivery of the goods. The Customer will also be liable for any additional freight charge that accrue after the dispatch of the goods.
- 55. If as a result of:
 - (a) any legislation becoming applicable to the subject matter of this agreement; or
 - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
 - (c) the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay the Supplier these additional amounts on demand.

Set-off

- 56. All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
- 57. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Customer by the Supplier.

Miscellaneous

- 58. The Supplier is not liable for any loss caused to the Customer by reason of disease, pandemic, strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
- 59. In relation to the supply of goods, the Supplier's liability is limited to any one or more of the following as determined by the Supplier:
 - (a) replacing the goods or supplying equivalent goods;
 - (b) repairing the goods;
 - (c) providing the cost for replacing the goods or for acquiring equivalent goods; or
 - (d) providing the cost for having the goods repaired.
- 60. In relation to the supply of services, the Supplier's liability is limited to any one or more of the following as determined by the Supplier:
 - (a) supplying the service again; or
 - (b) providing for the cost of having the services supplied again.
- 61. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer.

62. Without limiting other methods of service at law, the Customer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in its credit application or any other address later notified to the Supplier by the Customer or the Customer's authorised representative.
63. The Customer further agrees that where the Supplier has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
64. The Customer irrevocably grants to the Supplier the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if the Supplier has cause to exercise any of its rights under sections 123 and/or 128 of the PPSA, and the Customer shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
65. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions of the Competition and Consumer Act 2010 or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

Cancellation

66. Cancellation of any order by the Customer requires approval in writing from the Supplier (which may or may not be granted in its sole discretion) otherwise the goods will be delivered to the Customer and the Supplier will be entitled to receive payment of the purchase price from the Customer in accordance with these Terms and Conditions.
67. In the event that the Supplier accepts cancellation of an order by a Customer, it reserves the right to charge the Customer a cancellation fee.
68. The Supplier may cancel an order at any time for any reason in which case the Supplier will refund to the Customer any payments made by the Customer towards that order and the refund constitutes the sole remedy of the Customer in connection with the cancellation.
69. The Supplier is not obliged to supply goods in relation to any order and may cancel or suspend (in its absolute discretion and without limitation to any other remedy available to it) the trading account of the Customer at any time if:
 - (a) the Customer breaches any of these Terms and Conditions;
 - (b) the Customer has provided any false or misleading or inaccurate information to the Supplier (including information set out in the Application);
 - (c) the Customer commences to be wound up, struck off, placed in liquidation, under official management, or to appoint either a receiver or an administrator; or
 - (d) the Supplier has formed the opinion (in its absolute discretion) that the Customer no longer meets the financial conditions or commitment expected from the Supplier's customers.
70. In addition to other remedies herein or at law, cash payments or satisfactory security from the Customer may be required by the Supplier before dispatch of the Goods, or the due date for payment by the Customer under any order may be accelerated by the Supplier.

Limitation of liability

71. Except as expressly provided to the contrary in these Terms and Conditions, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise in relation to the goods (including but not limited to those implied by the United Nations Convention on Contracts for the International Sale of goods) are excluded to the maximum extent permitted by law.
72. To the extent that any provision of legislation of the Commonwealth or any State or Territory may imply warranties or impose obligations on the Supplier which cannot be excluded, the Supplier's liability will be limited to one or more of the following as determined by the Supplier:
 - (a) the replacement of the goods or the supply of equivalent goods;
 - (b) the repair of the goods;
 - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (d) the payment of the cost of having the goods repaired.
73. Except as expressly provided in these Terms and Conditions, the Supplier shall not be liable to the Customer, its employees, agents or contractors for any loss or damage to the goods or any other property or injury to persons (including but not limited to loss of profits or business or other direct, indirect, special, consequential or incidental damages) resulting from, arising out of, or in connection with the acquisition, delivery, re-supply, retaking of possession, installation or use of the goods or any other claim whatsoever arising directly or indirectly out of or in any way attributable to the performance or non-performance of an order.
74. The Supplier's total liability in all circumstances is limited to the amount paid or payable by the Customer for the relevant goods.
75. The Customer agrees to indemnify the Supplier, its employees, agents and contractors against all actions, proceedings and claims (including consequential loss and loss of profits and legal fees and expenses on an indemnity basis) whatsoever brought against the Supplier, its employees, agents or contractors in relation to any injury loss of life or damage to any property or financial or other consequential loss for and in respect of any loss injury expense or damage howsoever caused whether by the negligence of the Supplier or not arising directly or indirectly out of or in any way attributable or incidental to the performance of an order. The Supplier holds the benefit of this indemnity as agent for its employees, agents and contractors and may enforce it on their behalf.

Customer Acknowledgements

76. The Customer acknowledges that the goods are not sold pursuant to a sale by description or a sale by sample. Any description of the goods on any of the Supplier's documents is given by way of identification only.
77. To the extent permitted by law, the Customer acknowledges that:
 - (a) the Customer is relying on its own skill and judgement in relation to its selection of the goods;
 - (b) the Customer has not advised the Supplier of the intended purpose of the goods and the Supplier has not advised the Customer of the suitability of the goods for any purpose, including the suitability of materials purchased by the Customer; and
 - (c) the Supplier may change, alter or modify the design, dimensions or construction of any goods at its absolute discretion without prior written notice to the Customer. Any change, alteration or modification of the design, dimensions or construction of any goods are not a basis to seek to return the goods in accordance with these Terms and Conditions.

- (d) the Supplier is not responsible and is not liable in relation to the longevity of any lightbulbs supplied with the goods.

Customer Warranties

78. The Customer warrants to the Supplier that:
- (a) it possesses the relevant knowledge and all necessary licences, permits or approvals to receive, handle and store the goods;
 - (b) it will comply with all laws and the conditions of any licences, permits or approvals relating to the handling and storage of the goods;
 - (c) any person who receives the goods and signs for the goods on delivery on behalf of the Customer has all the relevant authority to do so on behalf of the Customer;
 - (d) the Supplier is not responsible or liable for any damage caused by the improper installation or assembly of the goods, improper storage between delivery and installation of the goods, improper cleaning solutions or methods applied to the goods after delivery; improper use or installation of light bulbs; exposure to weather or improper environment; or inappropriate positioning of the goods.
79. To the extent permitted by law, the Customer indemnifies the Supplier against all losses, damages or costs (whether incurred by or awarded against the Supplier) that the Supplier may incur as a result whether directly or indirectly, of:
- (a) the Customer's use, sale and/or handling of the goods;
 - (b) any claim that the Customer's use of the goods infringes the intellectual property rights of any person and/or entity; or
 - (c) repossessing the goods or enforcing any rights the Supplier has against the Customer under these Terms and Conditions or at law, including without limitation, any claims from parties whose property has been incorporated into the goods.

Delivery

80. Delivery of the goods is deemed to occur either:
- (a) when the goods are unloaded or provided at the premises nominated by the Customer, whether or not any person is present to accept the delivery; or
 - (b) if collected by the Customer, when the Supplier notifies the Customer that the goods are ready for collection from its premises.
81. The Supplier reserves the right to charge the Customer the cost of delivery at the Supplier's discretion based upon the time of delivery, the value of the order and the location of delivery.
82. Any dates specified for delivery of any goods are estimated dates only and the Supplier shall not be liable for any damage or loss whatsoever which the Customer may suffer as a result of delivery being delayed for any reason. The Customer acknowledges that a delay in the delivery of the goods does not constitute a breach of these Terms and Conditions.
83. The Supplier reserves the right to deliver the goods by instalments and each instalment shall be deemed to be a separate contract subject to these Terms and Conditions. Should the Supplier fail to deliver or make defective delivery of one or more instalments this shall not entitle the Customer to terminate the entire order.
84. The Customer shall inspect all goods delivered against the invoice and/or delivery docket at the time of receipt of goods and must note any deficiencies before acknowledging receipt.
85. Any damage or deficiencies must be documented, photographed and sent to the Supplier within seven (7) days of receipt of the goods. Any notifications of any damages or deficiencies sent to the Supplier after this time will be deemed to be invalid and not accepted by the Supplier.
86. Without prejudice to any other rights and remedies which it may have, the Supplier may charge storage and transportation expenses if the Customer fails or refuses to take or accept delivery or indicates to the Supplier that it will fail or refuse to take or accept delivery at the time specified or at any other times that the Supplier (or its nominated carrier) is able to deliver the goods.
87. The storage fees payable by the Customer to the Supplier shall be 1% of the value of each item the subject of the relevant order per month in advance or \$100 per week in advance (whichever is higher). In such circumstances, the Supplier accepts no responsibility for any damage whatsoever to the goods whether caused by or attributable to directly or indirectly the Supplier, its employees, agents or contractors. Notice by the Supplier that the goods have been stored in accordance with this clause shall constitute delivery of the goods.

Indent Sales

88. Where the Supplier arranges for the goods to be supplied to the Customer by a third-party supplier, the following terms and conditions apply:
- (a) All orders are accepted subject to the Supplier being able to arrange supply of the goods;
 - (b) Where the Supplier arranges for the goods to be imported into Australia and they are supplied direct to the Customer or held at premises controlled by the Customer or its agent:
 - (i) the price conversions from overseas currency to Australian currency will be at the rate of exchange quoted in the original order confirmation;
 - (ii) the Customer will be responsible (at its cost) for obtaining any licences and approvals necessary to import the goods;
 - (iii) the provisions of the Incoterms 2010 as applicable to the contract between the third party supplier and the Supplier are deemed to be included in and form part of the contract with the Customer except to the extent that any such provisions are inconsistent with these Terms and Conditions;
 - (iv) where the term "net delivered" is used it shall have the meaning equivalent to the Incoterm "Delivered Duty Paid – Buyer's Premises Incoterms 2010" and it shall be the Customer's responsibility in any such contract to arrange for the goods to be unloaded and the Customer shall bear all risks associated with the unloading of the goods;
 - (v) except in the case of goods sold at net delivered prices, all bank charges and other clearing costs will be met by the Customer; and
 - (vi) where the basis of sale is net delivered, payment is due by the end of the month following the date on which the goods are delivered to the Customer or collected by the Customer. In all other cases, the goods will be invoiced on the date of the bill of lading and payment is due at the time specified on the sale note.

- (c) The Customer acknowledges that the goods referred to in any particular order will be subject to certain conditions of sale imposed by the third party supplier. Because of this the Customer accepts that there may be certain variations in quantities supplied, thickness, sheet size, and reel dimensions within certain tolerances generally accepted within the paper industry.
- (d) The Supplier accepts no liability for, and the Customer agrees to indemnify the Supplier from, any claim arising where a third party supplier refuses to accept an order or does not fulfil an order or for any cause whatsoever beyond the Supplier's reasonable control.

Packing

89. Packing will be effected in accordance with the Supplier's standard practice and the cost of packing is included in the price. If the Customer requests alternative packing the Customer will bear the cost of such packing.

Claims and returns

90. Goods may only be returned for credit or exchange by written request from the Customer to the Supplier within 5 days from the date of delivery of the goods.
91. Goods returned for a credit or exchange to the Supplier will not be accepted unless:
- (a) the goods are returned in original packaging and are fit for resale;
 - and
 - (b) the Customer agrees to pay any restocking fee charged by the Supplier.
92. In addition to the Customer's rights in respect of defective or non-conforming goods, the Customer may return goods where all of the following circumstances apply:
- (a) the Supplier has agreed in writing in advance;
 - (b) the goods are, in the Supplier's opinion, in good saleable condition;
 - (c) the goods remain in the original undamaged packaging as supplied to the Customer by the Supplier;
 - (d) the goods are not custom made in accordance with the Customer's particular requirements or imported from overseas at the Customer's request;
 - (e) the goods are returned within 30 days following delivery; and
 - (f) the Customer is liable for the delivery and insurance costs incurred in respect of any goods returned to the Supplier.
93. Any goods returned must be at the Customer's entire risk and expense except in cases where goods have been supplied in error by the Supplier. All goods returned must be by the Supplier's nominated carrier.

Sub-contracting

94. The Supplier may sub-contract the production, manufacture, supply or delivery of all or some of the goods.

Containers & Pallets

95. Any containers or pallets owned by the Supplier used for delivery of the goods remain its property, and may not be used by the Customer other than for storage of the goods delivered.
96. Any deposit fees paid are refundable only after the containers and pallets are returned in good order and condition. Any costs incurred by the Supplier in the repair of containers or pallets will be borne by the Customer.
97. On delivery of the goods, any pallets hired by the Supplier from a third party will be transferred to the Customer's account with the relevant hire company.

Warranty

98. The goods are supplied with a 12-month warranty that entitles the Customer to a replacement or refund for a major failure of the goods. The commencement of the 12-month period for the warranty is from the date of delivery of the goods.
99. The Customer is 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.
100. To be eligible to claim under the warranty the Customer must be the original purchaser and owner of the goods.
101. To initiate a claim under the warranty, the Customer send a written notice to the Supplier in accordance with these Terms and Conditions which is to include the proof of purchase of the goods, a description of the damage that has occurred to the goods, the extent of the damage, and how and when the damage occurred.
102. The warranty does not include any of the exclusions listed in clause 77(d) of these Terms, fair ware and tear, fading staining or mold/mildew, damage obtained from acts of nature, colour variation, surface blemishes, negligent or intentional damage.

Waiver

103. Failure by the Supplier to insist on strict compliance with any of these Terms and Conditions or any delay by the Supplier in exercising its rights under any contract between the Supplier and the Customer will not constitute a variation or waiver of any provision of this contract or of any right available to the Supplier.

Execution

104. The Customer acknowledges that its agents and employees may place orders for goods with the Supplier and that it shall be bound by these Terms and Conditions irrespective of whether any such orders are unauthorised or fraudulent.

Notices

105. The Supplier may serve any notice on the Customer by forwarding it by post or facsimile or email at the last known address of the Customer.

Clerical errors

106. Clerical errors, typing errors or other errors in computations, catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note or specification of the Supplier shall be subject to correction by the Supplier.

Severance

107. If part or all of any provision of these Terms and Conditions or its application to any person or circumstance is illegal or unenforceable, the provision or part of a provision will be interpreted as may be necessary to ensure it is not illegal or unenforceable. If any provision or part of a provision cannot be interpreted in that way, the provision or part of a provision will be severed from these Terms and Conditions and the remaining provisions and parts of provisions continue in force and remain effective.

Variation

108. The Customer agrees that these Terms and Conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by giving fourteen (14) days prior written notice to the Customer.

109. Any proposed variation to these Terms and Conditions by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

110. Variations requested by the Customer will only be binding upon the Supplier if they are accepted in writing.

Consent to register

111. The Customer hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.

112. The Customer must assist the Supplier to complete the registration of any financing statement in respect of the goods, and will do all things and provide all information necessary to enable the Supplier to perfect the Supplier's security interest in the goods and complete any financing change statement.

113. The Customer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Intellectual Property

114. Any technical information, knowledge or manufacturing methods at any time transmitted either verbally or in writing by the Supplier to the Customer shall be considered confidential to the Customer who shall not use such information, knowledge or manufacturing methods for any purpose nor sell, transfer or divulge them in any manner to anyone without the prior written consent of the Supplier.

115. The Customer warrants that the use by the Supplier of any designs or instructions provided by the Customer will not infringe any patents, trademarks, designs or copyright ("intellectual property") of any other person and the Customer agrees to indemnify the Supplier against any claim relating to or arising from any alleged infringement or any intellectual property of any other person.

116. If at any time a claim is made against the Supplier or if the Supplier becomes aware that a claim is likely to be made against it for an alleged infringement of any intellectual property or contributing to any alleged infringement by the Supplier or any other person as a result of supplying the goods, the Supplier may terminate or suspend its services to the Customer at its sole discretion.

Entire agreement

117. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

118. Notwithstanding clause 105, all supplies of consignment stock are made on the terms of the Consignment Agreement between the Supplier and the Customer (or in absence of such an Agreement, the Supplier's usual form Consignment Agreement) and i-Consignment Terms and Conditions where applicable to that agreement as well as these Terms and Conditions.

SCHEDULE 1 – GUARANTEE AND INDEMNITY

I/We the undersigned sign this agreement for and on behalf of the Customer. Orders placed by us and invoiced to the Customer specified remain the contractual responsibility for payment by the Customer. The Customer and Guarantor(s) hereby acknowledge having read and agreed to these Terms and Conditions which apply to all goods and services provided by the Supplier.

We the undersigned Director(s) of the Customer hereby agree that I/we guarantee and indemnify the Supplier on the terms and conditions set out in the Terms and Conditions.

Signed, sealed and delivered by the said
..... [INSERT NAME OF DIRECTOR] in
the presence of:

Signature of witness

Signature

Name (print)

Signed, sealed and delivered by the said
..... [INSERT NAME OF DIRECTOR] in the
presence of:

Signature of witness

Signature

Name (print)