1. Definitions and interpretation

1.1 Definitions

In these Terms of Trade:

Additional Charge means:

(a) fees or charges for additional work performed at the Customer's request that are not included as a result of the conduct, calculated in accordance with the Supplier's then current prices

(b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

Business Day for the purposes of the operation or event by which the Goods are converted into, are mixed with, or otherwise become part of other goods (including, but not limited to, loss of profit from other transactions which the Supplier would have been a party to had the Goods not been delivered), the Supplier is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and account for the Customer's Order.

8. Acceptance of Goods

If the Customer fails to advise the Supplier in writing of any faults in all faults or defects found by the Customer within 48 hours of delivery, the Supplier is deemed to have accepted the Goods and to have accepted that the Goods are not faulty.

9. Title and risk

(a) Risk in Goods passes to the Customer immediately upon delivery.

(b) Property in Goods supplied to the Customer pursuant to these Terms of Trade does not pass to the Customer until all money including money owing in respect of other transactions between the Supplier and the Customer is received and payable to the Supplier by the Customer.

(c) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Supplier:

(i) is a bailee of the Goods until property in them passes to the Customer;

(ii) irrevocably appoints the Supplier its attorney to do all acts and things necessary to ensure the retention of title to the Goods including the Supplier's rights under these Terms of Trade or any other contract have been made and the Supplier has not previously carried out work for the Customer or where the Supplier has not previously carried out work for the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been provided by the Supplier to the Customer.

(d) Where Goods are supplied to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Supplier may require the Customer to store the New Goods in a manner acceptable to the Supplier in order for it to provide the Goods or Services within the quotation time frame.

(e) The Supplier is not entitled to retain any money owing to the Customer on any account, whether by the Supplier under these Terms of Trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services.

(f) The Supplier is entitled to insist on payment of interest at the rate of 10% per annum on all overdue amounts owed by the Customer to the Supplier, calculated daily.

(g) Where Goods and services associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable in accordance with this agreement and a credit term notified in writing by the Supplier.

(h) The Supplier and the Customer agree to comply with their obligations in relation to Goods and Services Tax (GST) under the A New Tax Law (New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

(i) Additional Charges

The Customer may require the Supplier to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order to provide the Goods or Services within the quotation time frame (if any).

(b) The imposition of Additional Charges may also occur as a result of cancellation by the Customer of an Order where cancellation would result in a variation but the Supplier is unable to fully utilise the Goods or Services provided, or where the Customer's Order within 48 hours of delivery, the Supplier is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and account for the Customer's Order.

9. Title and risk

(a) Risk in Goods passes to the Customer immediately upon delivery.

(b) Property in Goods supplied to the Customer pursuant to these Terms of Trade does not pass to the Customer until all money including money owing in respect of other transactions between the Supplier and the Customer is received and payable to the Supplier by the Customer.

(c) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Supplier:

(i) is a bailee of the Goods until property in them passes to the Customer;

(ii) irrevocably appoints the Supplier its attorney to do all acts and things necessary to ensure the retention of title to the Goods including the Supplier's rights under these Terms of Trade or any other contract have been made and the Supplier has not previously carried out work for the Customer or where the Supplier has not previously carried out work for the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been provided by the Supplier to the Customer.

(d) Where Goods are supplied to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Supplier may require the Customer to store the New Goods in a manner acceptable to the Supplier in order for it to provide the Goods or Services within the quotation time frame.

(e) The Supplier is not entitled to retain any money owing to the Customer on any account, whether by the Supplier under these Terms of Trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services.

(f) The Supplier is entitled to insist on payment of interest at the rate of 10% per annum on all overdue amounts owed by the Customer to the Supplier, calculated daily.

(g) Where Goods and services associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable in accordance with this agreement and a credit term notified in writing by the Supplier.

(h) The Supplier and the Customer agree to comply with their obligations in relation to Goods and Services Tax (GST) under the A New Tax Law (New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

(i) Additional Charges

The Customer may require the Supplier to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order to provide the Goods or Services within the quotation time frame (if any).

(b) The imposition of Additional Charges may also occur as a result of cancellation by the Customer of an Order where cancellation would result in a variation but the Supplier is unable to fully utilise the Goods or Services provided, or where the Customer's Order within 48 hours of delivery, the Supplier is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and account for the Customer's Order.
under section 275.

(i) To the extent the law permits, the Supplier need not comply with any request for exercise of any right or provision of any provisions of Chapter 4 of the PPSA that may be contractually excluded.

(ii) If the Supplier exercises a right, power or remedy in connection with the circumstances, rights, duties and obligations arising in, under or from these Terms of Trade provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer.

(iii) The Customer is not to assign, or purport to assign, any of its obligations or rights under these Terms of Trade without the prior written consent of the Supplier.

11. Default or Customer

(a) Each of the following occurrences constitutes an event of default:

(i) the Customer breaches or is alleged to have breached these Terms of Trade for any reason (including, but not limited to, defaulting on any payment due under these Terms of Trade) and fails to remedy that breach within 14 days of being given notice by the Supplier to do so.

(ii) the Customer or guarantor, being a natural person, commits an act of bankruptcy or takes or tries to take advantage of Part X of the Bankruptcy Act 1996 (Cth).

(iii) the Customer or guarantor, being a corporation, is subject to:

(A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;

(B) a receiver, receiver and manager or an administrator under Part 5.3 of the Corporations Act 2001 (Cth) being appointed to all or any part of the Customer’s property and undertaking;

(C) the entering of a scheme of arrangement (other than for the purpose of restructuring);

(D) any assignment for the benefit of creditors;

(E) the Customer purports to assign its rights under these Terms of Trade without the Supplier’s prior written consent;

(F) the Customer or guarantor, being a natural person, commits an act of bankruptcy or takes or tries to take advantage of Part X of the Bankruptcy Act 1996 (Cth).

(G) if a dispute is notified, the dispute must immediately be referred to the parties’ respective senior management. Those representatives are to meet to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACCC) before having recourse to arbitration or litigation. The terms of the Guidelines are incorporated into these Terms of Trade. This paragraph survives termination of these Terms of Trade.

12. Termination

In addition to the express rights of termination provided in these Terms of Trade, a party may terminate these Terms of Trade by giving 30 days written notice to the other party.

13. Exclusion of Liability

(a) The Customer expressly agrees that use of the Goods and Services is at the Customer’s risk. To the full extent allowed by law, the Supplier’s liability for breach of any term implied into these Terms of Trade by any law is excluded.

(b) All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer’s use of the Goods or Services will not entitle the Customer to reject the Goods unless delivered, or to make any claim in respect of them.

(c) The Supplier gives no warranty in relation to the Services provided under these Terms of Trade. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services including in their form, content and timeliness in respect of, error, omission, defect, including, without limitation, for and in relation to any of the following:

(i) any Goods or Services supplied to the Customer;

(ii) any delay in supply of the Goods or Services;

(iii) any defects in the Goods or Services.

Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods and/or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss as a result of the Customer’s reliance on such advice, recommendation, information, assistance or service.

To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages whatsoever including, without limitation, losses for loss of data, profits or revenues arising in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the use or reliance on these Terms of Trade, whether based on Terms of Trade, negligence, strict liability or otherwise, so long as the Supplier has been advised of the possibility of such damages.

The Customer acknowledges that the Goods or Services are not for personal, domestic or household purposes.

14. Indemnity

(a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand or action or threatened action or proceedings made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these Terms of Trade including, but not limited to any legal costs incurred by the Supplier in relation to meetings any claim or demand or any party legally costs for which the Supplier is liable in connection with any such claim or demand. This provision remains in force after the termination of these Terms of Trade.

(b) In circumstances beyond the Supplier’s control prevent or hinder its providing the Goods or Services, the Supplier is free from any obligation to provide the Goods or Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.

15. Assessment of Applications for Credit

(a) The Assessment of any application for credit by the customer is at the supplier’s complete discretion.

(b) The customer consents to the supplier:

(C) to contact the customer’s listed business references in relation to the customer’s business reference for the purpose of assessing any application for credit.

(c) The Assessment of any application for credit reporting information about the customer and/or guarantor from a credit reporting body (the CRB) for the purposes of assessing any application for credit and collecting payments that are overdue in relation to credit. The Customer also agrees that the supplier can obtain, from any business providing information about commercial credit-worthiness, commercial credit reports about the customer and/or guarantor for the purposes of assessing applications for credit.

17. Other Matters

(a) These Terms of Trade are governed by the laws of the state of Victoria and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

(b) These Terms of Trade and any Quotations and written communications or communications by and on behalf of either the Customer or the Supplier in relation to these Terms of Trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these Terms of Trade.

(c) If any provision of these Terms of Trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.

(f) The customer’s failure or delay to exercise a power or right does not operate as a waiver of that power or right.

(i) A notice or other communication required or permitted to be given by one party to another party must be in writing to be effective and, unless otherwise provided, if mailed, on the second Business Day after posting; or if sent by facsimile or e-mail before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

(i) A party may only change its postal or e-mail address or fax number for service by giving notice of that change in writing to the other party.