



Address: 46 Tulloch Way, Canning Vale WA 6155
Phone: 08 9456 1204
Fax: 08 9456 0584
ABN: 47 100 887 901

STANDARD TERMS OF TRADE APPLICABLE TO SALES & SERVICES

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 or reasonably required as a result of the Customer's 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 means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Customer means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.

Goods means any goods supplied by the Supplier including those supplied in the course of providing Services.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Loss includes, but is not limited to, costs (including, but not limited to, party to party legal costs and the Supplier's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Order means a purchase order for Goods and/or Services placed by a Customer and as varied in writing from time to time by the parties.

PPS Act means:

- (a) the Personal Property Security Act 2009 (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

and the following words have the respective meanings given to them in the PPS Act: collateral, financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement.

Quote means a written description of the Goods or Services to be provided, an estimate of the Supplier's charges for the supply of goods and /or performance of the required work and an estimate of the time frame for the performance of the work.

Services means the services to be provided by the Supplier to the Customer in accordance with a Quote, an Order and these Terms of Trade.

Supplier means the entity specified as the supplier of Goods or Services on the Quote or Order or invoice and includes the Supplier's agents and permitted assigns.

1.2 Interpretation

In these Terms of Trade, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms of Trade;
- (d) a reference to a party to these Terms of Trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms of Trade; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (ii) in all other cases, must be done on the next Business Day.

2. General

2.1 Engagement of the Writer

- (a) These Terms of Trade together with any application for commercial credit the Customer completed and submitted to the Supplier and any guarantee the Customer completed and submitted to the Supplier apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services, including all Quotes, Orders, contracts and variations. These Terms of Trade take precedence over Terms of Trade contained in any document of the Customer or elsewhere.
- (b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- (c) The Supplier may amend any details in a Quote by notice in writing to the Customer.



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Such amended details supersede any relevant prior detail in dealings between the parties.

- (d) These Terms of Trade may be amended by the Supplier from time to time. Updated Terms of Trade will be published on the Suppliers website at www.national-tools.com.au and the Customer will be deemed to have accepted the updated Terms of Trade if it continues to place an Order after the updated Terms of Trade have been published in the Suppliers website.

3. Quotes

- (a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for 30 days from the date of issue unless otherwise specified on the quote.
- (b) Unless otherwise expressly agreed in writing, a Quote does not include delivery and/or installation of the Goods.
- (c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of all necessary items and instructions to the Supplier.
- (d) Following provision of a Quote to the Customer, the Supplier is not obliged to commence work until the Quote has been accepted by the Customer by completing an Order.
- (e) The Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these Terms of Trade.
- (f) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Supplier.

4. Orders

- (a) Every Order by the Customer for the provision of Goods and/or Services must be submitted in writing.
- (b) An Order will not be placed by the Customer unless the Order clearly identifies the Goods and/or Services ordered and the Supplier's Quote. Any costs incurred by the Supplier in reliance on incorrect or inadequate information may result in the imposition of an Additional Charge.

- (c) Orders must be signed by an authorised representative of the Customer and must specify the required date of delivery.
- (d) Placement of an Order by the Customer signifies acceptance by the Customer of these Terms of Trade and (if applicable) the most recent Quote.
- (e) The Supplier may in its absolute discretion refuse to provide Goods or Services including where:
- (i) Goods are unavailable for any reason whatsoever;
 - (ii) credit limits cannot be agreed upon or have been exceeded; or
 - (iii) payment for Goods or Services previously provided to 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 received by the Supplier.
- (f) The Supplier will accept an Order by notifying the Customer verbally or in writing or by commencing to fulfil the Order.
- (g) An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation, including, but not limited to loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

5. Variations

- (a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods and/or Services.
- (c) The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the



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variation.

6. Invoicing and payment

- (a) The Supplier may in its absolute discretion, issue an invoice to the Customer for an amount to be paid in any one or more of the following ways:
- (i) prior to commencing the provision of the Goods and/or Services, for an amount equal to the Quote and Additional Charges where the Supplier has not previously carried out work for the Customer or where the Supplier chooses to do so;
 - (ii) as specified in the Quote the Supplier may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at the Supplier's discretion either for work done to that point, work in the future or both) and require that proportion of the Quote be paid in advance of any further Goods and/or Services being provided; or
 - (iii) upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Order and for any Additional Charges.
- (b) The Customer must pay each invoice issued by the Supplier to the Supplier within 30 days of the last day of the month in which a valid tax invoice is issued to the Customer.
- (c) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (d) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- (e) The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of 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. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- (f) The Customer is to pay the Supplier on

demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to the Supplier, calculated daily.

- (g) All costs and expenses 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 under the Terms of Trade.
- (h) The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (**GST**) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

7. Additional Charges

- (a) The Supplier may require the Customer 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 for it to provide the Goods or Services within the specified 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 results in Loss of the Supplier, storage costs for goods not collected from the Supplier within 2 weeks of the date on which the Customer is notified of the availability of the Goods for collection at the rate set out in the Quote, photocopying, communication costs, couriers, packing and handling, Government or council taxes or charges, additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.

8. Acceptance of Goods

If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 7 days of delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

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



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- respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.
- (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 Customer:
- (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 goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
 - (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;
 - (iv) must not allow any person to have or acquire any security interest in the Goods;
 - (v) agrees that the Supplier may repossess the Goods if payment is not made within 14 days (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the due date for payment; and
 - (vi) the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies the Supplier in respect of any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises.
- (d) 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, and the Customer makes a new object from the Goods, whether finished or not, or the Customer mixes the Goods with other goods or the Goods become part of other goods (**New Goods**), the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these Terms of Trade or any other contract have been made and the Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.
- (e) For the avoidance of doubt, under paragraph (d), the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Notwithstanding paragraph (c) the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business provided that:
- (i) where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale less any GST on trust for the Supplier - in a separate account - until all amounts owned by the Customer to the Supplier have been paid; or
 - (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.
- (g) 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 Customer acknowledges that the Supplier has a right to register and perfect a personal property security interest (in any manner the Supplier Consider appropriate) in relation to any security interest contemplated or constituted by this Terms of Trade in the Goods and the proceeds arising in respect of any dealing in the Goods and the Customer agrees to sign any documents and provide all assistance and information to the Supplier to facilitate the registration and maintenance of any security interest. The Supplier may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). The Customer waives the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.
- (h) The Customer undertakes to:
- (a) do anything (in each case, including executing any new document or providing any information) that is reasonably required by the Supplier (i) so that the Supplier can acquire and maintain one or



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- more perfected security interests under the PPSA in respect of the Goods and its proceeds, (ii) to register a financing statement or financing change statement and (iii) to ensure that the Suppliers security position, and rights and obligations, are not adversely affected by the PPSA;
- (b) not register a financing change statement in respect of a security interest contemplated or constituted by these Terms and without Our prior written consent; and
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the Suppliers prior written consent.
- (i) If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with these Terms & Conditions and:
- (a) section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the Customer will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
- (b) section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
- (j) Unless otherwise agreed and to the extent permitted by the PPSA, the Customer and the Supplier agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Customer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.
- (k) For the purposes of section 20(2) of the PPS Act, the collateral is Equipment including any Equipment which is described in any Order from time to time. This Order is a security agreement for the purposes of the PPS Act.
- (l) The Supplier may apply amounts received in connection with the Order to satisfy obligations secured by a security interest contemplated in any way the Supplier determines in its absolute discretion.
- (m) The Customer agrees to notify the Supplier in writing of any change to the Customers details set out in the Order, within 5 days from the date of such change.
- ### 10. Returns and Credits
- (a) Goods specifically procured or procured on indent or specifically manufactured for the Customer cannot be returned to the Supplier.
- (b) The Customer cannot return Goods to the Supplier without the prior written agreement of the Supplier to the return of the Goods and the prior written agreement of the Supplier of the terms and conditions on which the Supplier will accept the return of the goods.
- ### 11. Loans
- (a) In relation to any Goods loaned by the Supplier to the Customer, the Customer shall be deemed to have purchased the Goods for the list price for the Goods applicable at the end date of the loan period and will be liable for payment of the list price to the Supplier on the issue of an invoice by the Supplier if the Goods are not returned to the Supplier by the end date of the loan period specified at the time of the loan to the Customer.
- (b) The Customer must return to the Supplier, any Goods loaned to it by the Supplier, by the end date of the loan period specified at the time of the loan to the Customer, in the original packing and in original condition, fair and reasonable wear excepted.
- (c) The Customer must pay all costs of the return to the Supplier of Goods loaned to it by the Supplier and if freight is applicable the Customer must prepay such freight and if the Customer fails to prepay such freight the Supplier is not obliged or required to accept delivery of the Goods.
- ### 12. Intellectual Property Rights
- (a) The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise the Supplier to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the Supplier for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified the Supplier against all Losses incurred by the Supplier in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.



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- (b) Unless specifically agreed in writing between the Supplier and the Customer, all Intellectual Property Rights in any works created by the Supplier on behalf of the Customer vest in and remain the property of the Supplier.
- (c) Subject to payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods or Services under these Terms of Trade for the purposes contemplated by the Order.
- (C) Act 2001 being appointed to all or any part of the Customer's property and undertaking;
- (D) the entering of a scheme of arrangement (other than for the purpose of restructuring);
- (iv) any assignment for the benefit of creditors;
- (iv) the Customer purports to assign its rights under these Terms of Trade without the Supplier's prior written consent;

13. Agency and assignment

- (a) The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these Terms of Trade.
- (b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, 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 under these Terms of Trade.
- (c) 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.
- (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
- (i) terminate these Terms of Trade;
- (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
- (iii) refuse to deliver Goods or provide further Services;
- (iv) pursuant to clause 9(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
- (v) retain (where applicable) all money paid on account of Goods or Services or otherwise.

14. Default by 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, being a natural person, commits an act of bankruptcy;
- (iii) the Customer, 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 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
- (c) In addition to any action permitted to be taken by the Supplier under paragraph (b), on the occurrence of an event of default all invoices will become immediately due and payable.

15. 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.

16. Exclusions and limitation 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



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Goods upon delivery, or to make any claim in respect of them.

- (c) The Supplier gives no warranty in relation to the Services provided or supplied. 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 of deliveries, failure of performance, 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; or
 - (iii) any failure to supply the Goods or Services.
- (d) 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 suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (e) To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on Terms of Trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- (f) The Customer acknowledges that the Goods or Services are not for personal, domestic or household purposes.
- (g) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

17. Indemnity

- (a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand 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 meeting any claim or demand or any party/party legal 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.

Force majeure

- (b) If circumstances beyond the Supplier's control prevent or hinder its provision of 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 to continue this agreement until such circumstances have ceased.
- (c) Circumstances beyond the Supplier's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

Dispute resolution

- (d) If a dispute arises between the Customer and the Supplier, the following procedure applies:
- (i) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this paragraph.
 - (ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.
 - (iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
- (e) If a dispute is notified, the dispute must immediately be referred to the parties'



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respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 5 Business Days (or other period as agreed).

- (f) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which are operating at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these Terms of Trade. This paragraph survives termination of these Terms of Trade.
- (g) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these Terms of Trade.
- (h) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

18. Other matters

- (a) These Terms of Trade are governed by the laws of the state where the Supplier's registered office is situated and each party irrevocably submits to the non-exclusive jurisdiction of the courts of such state.
- (b) These Terms of Trade, any Quotes, any application for Commercial Credit, any Guarantees and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these

terms.

- (c) These Terms of Trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into 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.
- (e) 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) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on an Order (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Order, sent by facsimile transmission to the facsimile number of the addressee specified in the relevant Order, with acknowledgment of receipt from the facsimile machine of the addressee or sent by e-mail to the e-mail address of the addressee specified in the relevant Order with acknowledgement of delivery.
- (h) A notice or other communication is taken to have been given (unless otherwise proved) 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 email address or fax number for service by giving notice of that change in writing to the other party.