

WARBURN ESTATE SALES TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

In these terms and conditions, unless the context otherwise requires:

- (a) **"Buyer"** means you or the person named in the Sales Invoice and/or Credit Agreement Terms and Conditions.
- (b) **"Sales Invoices"** means the sales invoice issued by the Seller to the Buyer.
- (c) **"Seller"** means Warburn Estate Pty Limited ABN 26 001 752 263

"Accounts" means profit and loss accounts and balance sheets together with statements, reports and notes, including a director's report or an auditor's report, attached to or intended to be read with any of those profit and loss accounts or balance sheets;

"Business Day" means weekdays and excludes Saturdays, Sundays and public holidays.

"CCA" means the Competition & Consumer Act 2010.

"Claim" means any claim, demand, action or proceeding;

"Collateral" has the meaning given under the PPSA and in particular for the purposes of these Terms and Conditions, the personal property that is not used predominately for personal, domestic or household purposes as identified in these Terms and Conditions hereof to which the Security Interest has attached;

"Collateral Security" means any document, including this document, that grants a Security Interest to the Seller, any Guarantee in favour of the Seller or other document or agreement at any time created or entered into in connection with or as security for any secured money owing from the Buyer to the Seller;

"Consumer Contract" means a supply of Goods by the Seller under these Terms and Conditions to an individual whose acquisition of the Goods is wholly or predominantly for personal, domestic or household use and consumption within the meaning of the Australian Consumer Law.

"Credit Agreement" means the agreement between the Seller and the Buyer for, or in relation to the sale and purchase of goods or services, or for the provision of finance for the purpose of purchasing goods or services and includes the Credit Agreement Terms and Conditions.

"Event of Default" means any event or circumstance specified as such in clause 12 or otherwise specified in this document as an Event of Default.

"Force Majeure" means any event that is beyond the reasonable control of a party and which prevents a party from performing, or delays the performance of, any of its obligations under this Agreement including, but without limitation:

- (a) forces of nature, any act of God, fire, storm, flood or explosion;
- (b) any strike, lockout or industrial action; and
- (c) any action or inaction by any Relevant Authority, or any organ of government or government agency.

"Goods" means any item of whatsoever nature which is sold or to be sold by the Seller to the Buyer and includes and future goods to be purchased by the Buyer;

"GST" means the tax payable on taxable Supplies within the meaning of the GST Act;

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

"Insolvency" has a comparable meaning to Insolvent

"Insolvent" means:

- (a) It is a corporation and is unable to pay its debts when they fall due;
- (b) It is a corporation and is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act 2001 (Cth));
- (c) A Liquidation occurs in relation to a person;
- (d) It is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any applicable law or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Seller);
- (e) An application is made to a court for an order, or an order is made that a corporation be wound up or that a liquidator be appointed to a corporation;
- (f) A creditor's petition or debtor's petition is filed against the Buyer; or
- (g) A receiver, manager, trustee, administrator or similar official is appointed over any or all of the assets or undertaking of a person.

"Liquidation" includes provisional liquidation, administration, receivership, appointment of Controller, compromise, arrangement, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

"Moneys" means any and all moneys advanced by the Seller to the Buyer on credit terms from time to time pursuant to any Credit Agreement and includes all legal fees and interest incurred by the Seller in recovering any and all money advanced from the Seller to the Buyer.

"Person" includes an individual, a body politic, a corporation, an association (incorporated or unincorporated), a statutory authority, a trust of any form or structure, a partnership, and any other authority or persons identified as the Buyer.

"PPSA" means the *Personal Property Securities Act 2009* as amended from time to time;

"PPS Register" means the personal property securities register established under section 147 of the PPSA;

"Prescribed Terms" means any terms, conditions, guarantees and warranties which the CCA and any other law expressly provides may not in respect of these terms and conditions be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent;

"Proceeds" has the meaning as provided by section 31 of the PPSA.

"Purchase Money Security Interest" ("PMSI") has the same meaning as that given by section 14 of the PPSA.

"Sales Confirmation" means the document so titled issued by the Seller that formally accepts the order for goods from the Buyer;

"Security Interest" has the meaning given under the PPSA and includes:

- (a) any Security Interest arising from the purchase of Goods on retention of title terms entered into by the Buyer and Seller in the ordinary course of the Buyer's business on the Seller's usual; terms of trading as long as the purchase price is paid and all obligations relating to the purchase are performed when due (unless the obligations are contested in good faith); and
- (b) any Security Interest arising from a lease or bailment entered into by the Buyer in the ordinary course of the Buyer's business and on the usual terms of trading of the lessor or bailor, as long as the monetary or other obligations under the lease or bailment are paid for or performed when due.

"Standard Specifications" means the Seller's standard specification for the goods current at the time the goods are delivered to the Buyer. Copies of the Standard Specifications are available on request from the Seller;

"Terms and Conditions" means these terms and conditions.

"Third Party Purchaser" means any third party with whom the Buyer intends to sell the Goods;

"Web Site" means <http://www.warburnestate.com.au/>

Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neutral gender and vice versa;

The headings in these terms and conditions are provided for convenience only and do not affect the interpretation thereof.

A reference to "dollar" or "\$" is to an amount in Australian currency.

2. ALTERATION TO TERMS AND CONDITIONS

- (a) The Seller may, at any time and from time to time by written notice to the Buyer, alter these Terms and Conditions of Sale.
- (b) The placing of an order, or the receipt of the stock as ordered and subsequent payment of an invoice relating to that order by the Buyer will indicate the Buyer's acknowledgement and agreement to these and any amended Terms and Conditions.

3. PRICE

- (a) For each order that is made via the Web Site, the Buyer will pay the Seller the purchase price for the Goods (and any delivery services) via the payment options available on the Web Site at the time of making an order.
- (b) Payment is deemed to have been made only once it has been received by the Seller in cleared funds.
- (c) Prices for individual items of Goods and delivery services listed on the Web Site may change from time to time. The purchase price for the Goods and delivery services in relation to an order will be calculated by reference to the prices specified on the Web Site at the time that order is placed.
- (d) Where Goods supplied to the Buyer are of a kind ordinarily acquired for personal, domestic or household use, the Seller will provide a quotation or otherwise notify the Buyer of a single total price, inclusive of GST, applicable to those Goods if the price is capable of being quantified. The Buyer shall be liable to pay to the Seller all amounts on account of GST in the same manner and by the same means as all other charges.
- (e) The price of Goods specified by the Seller in any quotation is subject to any other conditions specified in that quotation.
- (f) Unless otherwise indicated, all prices for Goods are exclusive of all applicable taxes and charges. The Buyer shall be liable for all excise, sales, GST or any other tax, charge or government impost (domestic or foreign) upon the Goods or any part of the Goods, or upon the manufacture, use sale or delivery of the Goods in addition to the purchase price. Where Goods are subject to GST, the Buyer must pay GST at the same time as payment for Goods is made.
- (g) Unless otherwise agreed, prices do not include the cost of delivery of Goods, including but not limited to costs incurred by the Seller arising out of late notification by the Buyer of a change to agreed delivery schedule, storage charges where Goods are not collected immediately upon being made available and demurrage costs incurred by the Seller.

4. PAYMENT

- (a) Unless the Seller grants credit to the Buyer under a Credit Agreement and subject to the Seller's right to withdraw credit, payment for Goods purchased from the Seller must be made by the Buyer in immediately available funds on or immediately prior to delivery of the Goods.
- (b) Where the Buyer has an approved credit account or Credit Agreement with the Seller, the Buyer shall ensure that payment for the Goods is made to the Seller in accordance with the terms of the Credit Agreement.
- (c) The Seller may set off any amount owed by the Buyer to the Seller or any of its related entities against any amount of money owed, or may become owing, by the Seller or any of its related entities to the Buyer. The Buyer waives any right to set off any amount that is, or may become, owing by the Buyer to the Seller against any amount owing by Seller to the Buyer. This clause overrides any other document or agreement to the contrary.
- (d) Payments made by credit card may be subject to a surcharge.

5. INTEREST

- (a) The Seller reserves the right to charge interest on any amount overdue from the date it became due at a pro rata rate of 10% per annum. All payments made by the Buyer will first be applied to the accrued interest.

6. DELIVERY, OWNERSHIP AND RISK

- (a) Whilst the Seller endeavours to provide you with instance access to Goods, dates and times quoted for delivery are estimates only. Maximum lengths for products may vary and delivery of such will be determined by

- the Seller on a case by case basis. Any date or time named, accepted or provided by the Seller for delivery, completion, dispatch, shipment or arrival of the Goods is an estimate only and does not constitute a condition of these Terms and Conditions or part of the description of the Goods and is not of the essence.
- (b) Goods ordered for collection will be held for a maximum period of 30 Business Days after the specific collection date. If the Goods are not collected by that time, they may be delivered to (at the Seller's option) the Buyer's site, store, farm or to a store selected by the Seller and all costs incurred by the Seller in relation to the holding and delivery of the Goods shall be charged to and be paid by the Buyer.
- (c) The Seller shall not be obliged to complete any order in one delivery and expressly reserves the right to deliver by instalments. Where the Seller delivers by instalments each instalment shall be deemed to be sold to the Buyer under a separate contract. Failure to deliver any one instalment by the time quoted for delivery of that instalment (if any) shall not entitle the Buyer to repudiate the order.
- (d) The Goods are at the Buyer's risk from the time at which they are delivered to the Buyer or to the Buyers nominee.
- (e) The Buyer shall notify the Seller within seven (7) days of delivery of the Goods of any short fall, loss or damage in respect of the Goods. Subject to the Australian Consumer Law, failure to notify the Seller within this seven (7) day period will disentitle the Buyer to any remedy in respect of the shortage, loss or damage.
- (f) If the Seller is prevented either directly or indirectly from performing any of its obligations under these Terms and Conditions, including without limitation, making a delivery of the Goods or any part of the Goods by reason of Force Majeure it shall be entitled, at its option, by notice to the Buyer, either to:
- i. extend the time for delivery of the Goods for a reasonable period; or
 - ii. subject to refunding the Buyer for any payment already made to the Seller in respect of those particular Goods (if any), terminate these Terms and Conditions, and the Buyer shall not have any claim against the Seller for damages or any other remedy for breach of contract.
- (g) Where the Seller or its transport contractor enters the Buyer's premises or the premises of a third party nominated by the Buyer as a delivery point, the Buyer:
- i. releases the Seller from any claim the Buyer may at any time, have against the Seller but for this release in respect of damage occasioned to the Buyer's premises or injury to persons arising out of the delivery by the Seller or its transport contractor of Goods to such premises; and
 - ii. indemnifies and holds the Seller harmless from and against any loss, damage or liability suffered or incurred by the Seller in respect of damage occasioned to the third party's premises or injury to persons arising out of the delivery by the Seller or its transport contractor of Goods to the premises of the third party except for and to the extent that such loss, damage or liability suffered or incurred by the Seller arises out of the negligence or wilful misconduct of the Seller or its transport contractor.
- 7. CONDITIONS AND WARRANTIES**
- (a) The *Competition and Consumer Act 2010* (Cth) and the *Australian Consumer Law* may guarantee certain conditions, warranties and undertakings in relation to the Goods. To the extent they apply, these guarantees cannot be modified nor excluded by contract, and these Terms and Condition do not purport to modify or exclude any conditions, warranties, guarantees and undertakings under the *Australian Consumer Law*.
- (b) Except as expressly set out in these Terms and Conditions and the *Australian Consumer Law*, the Seller makes no warranty, representation or other statement in respect of the Goods, their quality or their fitness for any purpose, except as stated expressly in these Terms and Conditions, or as may otherwise be required by law.
- (c) If the Buyer purchases Goods as a Consumer as defined in the *Australian Consumer Law*, then the *Australian Consumer Law* contains certain guarantees in relation to the Goods that cannot be excluded. In these circumstances, the Buyer may be entitled to an identical replacement (or one of similar value if reasonably available), a refund or compensation for drop in value to the Goods, at the Buyer's option. In the case of a minor failure, the Buyer may have the Goods repaired, replaced or obtain a refund at the Seller's option.
- (d) If and only if the Buyer is not a Consumer as defined in the *Australian Consumer Law*, the Seller warrants that the Goods, whether manufactured by the Seller or one of its associated entities, shall, for a period of twelve months from the date of despatch of the Goods from the Seller's premises, be free of faulty workmanship, materials or design.
- (e) The warranties provided in paragraph (d) of this clause shall be effective, and impose liability on the Seller to give effect to such warranty, only if:
- i. the Seller is provided with written notice of the circumstances giving rise to the claim arising within 30 days of the occurrence of such circumstances; and
 - ii. the Seller is permitted to inspect Goods before they are repaired or replaced; and
 - iii. the Buyer returns the Goods or components to the Seller's premises, at the Buyer's expense; and
- iv. the Seller is satisfied, by its own examination of the Goods, that any alleged circumstances giving rise to the claim have not been caused by:
1. improper use, installation, operation, damage due to accident, neglect, lightning power surge, or from improper repair, alteration, modification or adjustment to the Goods; or
 2. unusual deterioration or degradation due to physical, electrical, electromagnetic or noise environments.
- (f) To the extent permitted by law, the Seller's liability for any loss, injury or damage, shall be limited to making good, by replacement or repair, at the Seller's option, and at the Buyer's expense in relation to costs over and above the direct costs of replacing or repairing the Goods or the component parts of the Goods at the Seller's premises, any defects which appear under proper use.
- (g) Any repairs, alterations or other work carried out to the Goods by a person other than an authorised representative of the Seller shall invalidate the warranty in paragraph (f) of this clause.
- (h) If the Buyer requests or insists that warranty service in paragraph (f) of this clause be carried out on site or at the Buyer's premises then any costs over and above the direct costs of replacing or repairing the Goods or the component parts of the Goods at the Seller's premises shall be at the Buyer's expense.
- 8. INDEMNITIES**
- (a) The Buyer indemnifies the Seller for any and all direct, special, indirect and/or consequential loss or damage, however caused to the Seller and/or to third parties, that results as a consequence of the Seller supplying, or failing to supply at all or on time, the Goods, to the Buyer, or to any third party, under or in association with these Terms and Conditions.
- (b) The Seller shall be liable to the Buyer, or to any third party, for direct, special, indirect and/or consequential loss or damage, however caused, suffered by the Buyer, or to any third party, only to the extent that such loss or damage is caused directly by the fault of the Seller.
- 9. RETENTION OF TITLE**
- (a) The Buyer agrees that legal and equitable title to the Goods is retained by the Seller until the Seller receives payment in full from the Buyer for the Goods and all Moneys owing by the Buyer to the Seller at any time.
- (b) Prior to title in the Goods passing to the Buyer, the Buyer and/or its agents or contractors:
- i. must hold the Goods as bailee and fiduciary agent of the Seller;
 - ii. where the Buyer processes the Goods, either by using the Goods to manufacture or grow other goods or by incorporating the Goods in or with any other goods, must hold such part of the new goods ("Processed Goods") on trust for the Seller as bailee and fiduciary agent of the Seller;
 - iii. must store the Goods and such part of the Processed Goods separate from its own goods and those of any other third party so that they are readily identifiable as the property of the Seller;
 - iv. must keep the Goods in good and merchantable condition and fully insure the Goods against loss or damage however caused;
 - v. must not sell the Goods except with the prior written consent of the Seller or in the ordinary course of the Buyer's business, provided that any such sale is at arms' length and on market terms;
 - vi. any proceeds of re-sale, insofar as they relate to the Goods shall be held on trust for the Seller in a separate account; and
 - vii. must not create any encumbrance over the Goods which is inconsistent with Seller's title and ownership of the Goods, including a security interest in favour of any third party on the PPSR.
- (c) For the purpose of this clause 9, "such part" means an amount equal in dollar terms to the amount owing by the Buyer to the Seller at the time the Goods are used in the manufacture of, or incorporated into, the Processed Goods.
- (d) If the Buyer is in breach of these Terms and Conditions, the Buyer must return the Goods to the Seller immediately on demand.
- (e) If the Buyer does not return the Goods to the Seller on demand under clause 9(d), the Buyer irrevocably authorises representatives of the Seller to enter upon the premises where the Goods are located to take possession of the Goods without prior notice, and the Buyer indemnifies the Seller for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against the Seller in connection with the retaking possession of the Goods or the exercise by the Seller of its rights under this clause, and the Buyer shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.
- (f) The Buyer and Seller agree that the provisions of this clause apply despite any Credit Agreement between the parties under which the Seller grants to a line of credit to the Buyer.
- 10. PPSA**
- (a) Subject to the terms of these Terms and Conditions, the terms "Attachment", "Collateral", "Debtor", "Financing Change Statement", "Financing Statement", "Grantor", "Perfected", "Perfection", "Proceeds", "Secured Party", "Security Agreement" and "Security Interest" have the meanings given in the PPSA.
- (b) The Buyer acknowledges and agrees that these Terms and Conditions constitute a security agreement for the purposes of section 20 of the PPSA and that value has been given for the Security Interest pursuant to section 19 of the PPSA.

- (c) The Buyer further acknowledges that:
- i. the Seller holds (as Secured Party) a Security Interest over all of the present and after acquired Goods supplied by the Seller to the Buyer and any Proceeds of the sale of those Goods ("Collateral") and a single registration on the PPS Register will cover all present and after acquired Goods;
 - ii. that any purchase by the Buyer on credit terms from the Seller pursuant to any Credit Agreement, or any retention of title supply pursuant to clause 10 hereof will constitute a PMSI;
 - iii. the PMSI granted herein will continue to apply to any and all Goods coming into existence or Proceeds of sale of Goods coming into existence;
 - iv. the Seller will continue to hold a Security Interest in the Goods in accordance with and subject to the PPSA, notwithstanding that the Goods may be processed, commingled or become an accession with other goods.
 - v. any Security Interest of the Seller will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all over registered or unregistered Security Interest;
 - vi. until title in the Goods passes to the Buyer, it will keep all goods supplied by the Seller free and ensure all such goods are kept free of any charge, lien or Security Interest and not otherwise deal with the goods in a way that will or may prejudice any rights of the Seller under these Terms and Conditions, the PPSA, or any other document that the Seller may require the Buyer to enter for the purposes of securing the Seller's Security Interest in the Goods; and
 - vii. in addition to any other rights under these Terms and Conditions or otherwise arising, the Seller may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises to search for, inspect, seize, dispose of or retain those Goods in respect to which the Buyer has granted a Security Interest to the Seller.
- (d) The Buyer undertakes to:
- i. sign any further documents and provide such information which the Seller may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register;
 - ii. indemnify and upon demand reimburse the Seller for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register or releasing any Security Interests;
 - iii. not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of the Seller; and
 - iv. provide the Seller not less than 7 days prior written notice of any proposed change in the Buyer's name, address, contact numbers, business practice or such other change in the Buyer's details registered on the PPS Register to enable the Seller to register a Financing Change Statement if required.
- (e) The Buyer hereby agrees to sign any further documentation, including but not limited to, any payment direction, priority agreement or security deed for the purposes of securing payment of any Secured Moneys or Moneys to the Seller and further, agrees to provide to any Third Party Purchaser a copy of the documentation for the purposes of securing payment of any Secured Moneys to the Seller.
- (f) The Seller and the Buyer agree that sections 96, 125 and 132 of the PPSA do not apply to the security agreement created under these Terms and Conditions.
- (g) By accepting these Terms and Conditions, the Buyer hereby waives its rights to received notices under sections 95, 118, 121, 130, 132, 135, 142 and 143 of the PPSA.
- (h) The Buyer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- (i) The Buyer shall unconditionally ratify any actions taken by the Seller under this clause 11.
- (j) This clause 11 will survive the termination of these Terms and Conditions to the extent permitted by law.
- 11. EVENT OF DEFAULT**
- (a) If there is an Event of Default, the Seller will be entitled to exercise its rights under these Terms and Conditions in addition to those rights at law and equity.
- (b) Without limiting any matters at law, equity, or under these Terms and Conditions, the following matters are deemed as Events of Default:
- i. the Buyer fails to pay or repay in accordance with these Terms and Conditions, the Credit Agreement, or any other written demand provided by the Seller to the Buyer requiring payment of the Moneys;
 - ii. a representation, warranty or statement by or on behalf of the Buyer in any agreement entered into between the parties is not true in a material respect or is misleading in a material respect when made or repeated;
 - iii. the Buyer becomes Insolvent;
 - iv. Collateral or Goods is or will be able to be transferred (including by sale or creating a Security Interest or under proceedings to enforce a judgment) in breach of a provision in these Terms and Conditions prohibiting that transfer;
- v. the Buyer does not comply with its obligations under any priority agreement or payment direction entered into in accordance with these Terms and Conditions;
- vi. a loan provided by the Seller to the Buyer under the Credit Agreement is used for a purpose other than the stated purpose; and
- vii. if the Buyer is a partnership and without prior notification to the Seller, the constitution of the partnership is changed or the partnership is dissolved.
- (c) Where the Buyer is in default in the performance of any of its obligations under these Terms and Conditions and the Goods have not been supplied under a Consumer Contract, the Seller may refuse, without prejudice to any other rights it may have under these Terms and Conditions or at law, to supply or deliver further Goods to the Buyer until such time as the Buyer has remedied that default, and / or may choose to terminate the Credit Agreement or any other agreement between the parties.
- (d) If the Goods have been supplied by the Seller under a Consumer Contract and the Buyer is in default in the performance of any of its material obligations under these Terms and Conditions, the Seller may refuse to deliver further Goods until such time as the Buyer has remedied that default.
- (e) For the avoidance of doubt, if the Buyer (including a Buyer under a Consumer Contract) is Insolvent, this is deemed to be an Event of Default and will immediately allow for the Seller, in its absolute discretion, to exercise any and all of its rights of enforcement pursuant to Chapter 4 of the PPSA as well as those rights pursuant to these Terms and Conditions.
- (f) If the Buyer (including a Buyer under a Consumer Contract) is Insolvent, the Seller may in its discretion exercise any or all of the following rights in addition to any other rights it may have under these Terms and Conditions, at law, or in equity:
- i. suspend deliveries of further Goods to the Buyer whether under these Terms and Conditions or otherwise;
 - ii. terminate the Credit Agreement in relation to Goods that have not been delivered;
 - iii. withdraw any credit facilities which may have been extended to the Buyer and require immediate payment of all Moneys owed to the Seller by the Buyer; and
 - iv. issue an invoice for, and demand immediate payment of, Goods ordered by the Buyer but not delivered.
- (g) All costs incurred by the Seller relating to any action taken by the Seller to recover Moneys due from the Buyer (including, without limitation, legal or other debt collection costs) shall be payable by the Buyer on demand.
- 12. MANUFACTURERS' CHANGES**
- (a) Manufacturers of the Goods provided by the Seller may vary from time to time. The Seller cannot guarantee the accuracy of any information contained in or on the Goods and the Buyer should rely upon their own enquiries.
- (b) Where the Seller is acting, as agent of a manufacturer or supplier, the Seller shall not be liable for any alteration, variation, representation, guarantee, condition or warranty in the Goods made by the manufacturer or the supplier.
- 13. POWER OF ATTORNEY**
- (a) The Buyer for valuable consideration irrevocably appoints the Seller and any of the Seller's officers jointly and severally its attorney (with power to appoint a substitute or substitutes and to remove any of them) to act at any time after termination of these Terms and Conditions in the name of the Buyer to deal with any Goods left unpaid for and to execute a variation or termination of these Terms and Conditions and generally to execute any document and do or perform any act or thing in respect of the Goods as fully and effectually as the Buyer could do and the Buyer will ratify and confirm anything the attorney or any substitute may lawfully do or cause to be done.
- 14. CONFIDENTIALITY**
- (a) Except as required by law, these Terms and Conditions and subject to the PPSA, the Seller and the Buyer agree to treat these Terms and Conditions as confidential.
- (b) The Seller and the Buyer acknowledge and agree that this clause constitutes a confidentiality agreement pursuant to section 275(6) of the PPSA.
- (c) Neither the Seller nor the Buyer will disclose, send or make available any of the information referred to in section 275(1) of the PPSA to any person except as required by law, these terms and conditions and subject to the PPSA.
- 15. GST**
- (a) If the Seller has any liability to pay GST on the supply of any Goods to the Buyer, the Buyer must pay the Seller an amount equivalent to the GST liability of the Seller at the same time as the principal is paid for the Goods.
- 16. ENFORCEMENT COSTS**
- (a) In the event that the Buyer breaches any of these Term and Conditions, the Buyer will be required to pay expenses reasonably incurred by the Seller in enforcing or preserving its rights under these Terms and Conditions. These expenses include those incurred by the Seller in preserving or maintaining property secured, collection expenses and expenses resulting from enforcement under the PPSA.

- (b) Only the net proceeds of any enforcement of security and/or resultant recovery or receipt of monies will be applied to any monies owed by the Buyer. For the avoidance of doubt, the net proceeds of enforcement is to be exclusive of any GST, excise, duties, fees or fines payable.
- 17. INCONSISTENCY**
- (a) In the event of any inconsistency between these Terms and Conditions and any specific terms contained in any other contract between the parties, the specific terms contained in these Terms and Conditions will prevail to the extent of that inconsistency.
- 18. SEVERABILITY**
- (a) Any provision in these Terms of Sale which is invalid or unenforceable in any jurisdiction is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable, and otherwise must be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.
- 19. WAIVER**
- (a) Waiver of any right, power, authority, discretion or remedy arising on a breach of or default under an agreement in force between the Seller and the Buyer on these Terms and Condition and must be in writing and signed by the party granting the waiver.
- 20. NOTICES**
- (a) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party under these Terms and Conditions must be in legible writing and in English addressed to such address as the other party has specified to the sender of the notice.
- 21. ASSIGNMENT**
- (a) The Buyer must not assign or otherwise purport to transfer its rights or obligations under these Terms or Conditions to any other person without the prior written consent of the Seller.
 - (b) The Seller may assign or otherwise transfer its rights or obligations under these Terms and Conditions to any other person without requiring the prior written consent of the Buyer.
- 22. CREDIT AGREEMENT**
- (a) The terms and conditions of the Credit Agreement are incorporated by reference to these Terms and Conditions. Those terms are legally binding between the Buyer and Seller and should be read together with the Credit Agreement terms and conditions. To the extent of any inconsistency, these Terms and Conditions prevail over the Credit Agreement Terms and Conditions.