

Deed of Guarantee and Indemnity

In this document ("Guarantee"):

"**Guarantor**" means the person(s) listed below as guarantor (jointly and severally);

"**BOSFA NZ**" means BOSFA NZ Pty Ltd (ABN 73 006 538 898);

"**Secured Monies**" means all monies owing by the Customer to BOSFA NZ from time to time in respect of Goods supplied and all costs and expenses which may be payable by the Customer to BOSFA NZ.

"**Terms and Conditions**" means the BOSFA NZ Standard Terms and Conditions of Sale applicable to the Customer; unless otherwise stated, terms used or defined in the Terms and Conditions have the same meaning in the Guarantee.

In consideration of BOSFA NZ at the request of the Guarantor providing credit to the Customer for Goods supplied from time to time the Guarantor agrees to the following terms:

1. Guarantee

The Guarantor guarantees to BOSFA NZ the due payment by the Customer of the Secured Monies.

2. Indemnity

The Guarantor indemnifies BOSFA NZ against all losses, damages, costs and expenses which BOSFA NZ may suffer as a consequence of any failure by the Customer to pay any of the Secured Monies.

3. Payment

On any default by the Customer to pay any of the Secured Monies the Guarantor shall forthwith on demand by BOSFA NZ pay such Secured Monies to BOSFA NZ without the necessity of any prior demand having been made on the Customer or any other steps being taken against the Customer or its assets to enforce payment.

4. Charge

The Guarantor agrees that if requested by BOSFA NZ the Guarantor will:

- (a) charge in favour of BOSFA NZ all beneficial interests (freehold and leasehold) in real estate held now or in the future by it as security for payment of all and any moneys payable by the Guarantor under this Guarantee;
- execute a mortgage or other instrument of security in form requested by BOSFA NZ.

5. Liability Unaffected

The liability of the Guarantor under this Guarantee is not affected by:

- (a) the granting of time or any other indulgence to the Customer;
- (b) the release, waiver or variation of any of BOSFA NZ's rights against the Customer or any neglect or omission to enforce such rights;
- (c) any other things which under the law relating to sureties would or might but for this provision release the Guarantor in whole or in part from the obligations under this Guarantee;
- (d) the release of any one or more Guarantor by BOSFA NZ;
- (e) amendment of the Terms and Conditions;
- (f) the Customer:
 - i. being an individual committing an act of bankruptcy or becoming an insolvent under administration;

- ii. being a body corporate becoming an externally administered body corporate or having an application for winding up filed against it;
- (g) the Customer's obligations for payment becoming illegal, void, voidable or unenforceable in whole or in part;
- (h) payment by the Customer to BOSFA NZ to the extent that payment might be void or voidable for any reason (including under the Bankruptcy Act 1966 or the Corporations Act 2001);
- (i) failure to give notice of any matter to the Guarantor (including notice of default by the Customer);
- (j) the Guarantor ceasing to be an officer of the Customer;
- (k) the termination of any agreement between BOSFA NZ and the Customer; or
- (l) the withdrawal of or any variation to the credit provided by BOSFA NZ to the Customer.

6. Waiver of Rights

The Guarantor waives any rights as surety or indemnifier (legal, equitable, statutory or otherwise) which may at any time be inconsistent with any provisions of the Guarantee.

7. Continuing Obligation

The Guarantee is a continuing security and remains in force until the Secured Monies have been fully paid.

8. Costs

The Guarantor must pay BOSFA NZ all costs and expenses incurred by BOSFA NZ in connection with the Guarantee, including legal costs (on a solicitor-client basis), stamp duty and costs incurred in the recovery of monies owing by the Customer to BOSFA NZ or in otherwise enforcing BOSFA NZ's rights against the Customer under the Terms and Conditions or the Guarantor under the Guarantee.

9. Severance

If a provision of the Guarantee, would but for this clause be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result;

if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of this Guarantee.

10. Applicable Law

This document is governed by the law of the State or Territory applicable to the relevant Terms and Conditions and the courts of that State or Territory have nonexclusive jurisdiction in connection with this document.

11. BOSFA NZ May Assign

Without notice to the Guarantor or the Customer, BOSFA NZ may assign to any person

- (a) the whole or any part of a debt comprised in the Secured Money; and/or

this Guarantee including the benefit of any indemnity in this Guarantee.

12. Final Discharge

Even when the Guarantor does not own any money to BOSFA NZ, BOSFA NZ is not obliged to discharge the Guarantee if in BOSFA NZ's opinion:

- (a) within a reasonable time the Guarantor might owe money to BOSFA NZ; a payment made to BOSFA NZ might be void or voidable for any reason (including under the Bankruptcy Act 1966 or the Corporations Act 2001).

The guarantor acknowledges that they have read and understood this guarantee and, prior to its execution, have had the opportunity to obtain independent legal and/or financial advice.

Executed as a Deed

Name of Customer:	
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Name of Guarantor:	
Signature of Guarantor:	
Address of Guarantor:	
Name of Witness:	
Signature of Witness:	
Date:	

Name of Guarantor:	
Signature of Guarantor:	
Address of Guarantor:	
Name of Witness:	
Signature of Witness:	
Date:	

Name of Guarantor:	
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Name of Witness:	
Signature of Witness:	
Date:	

Name of Guarantor:	
Signature of Guarantor:	
Address of Guarantor:	
Name of Witness:	
Signature of Witness:	
Date:	

****** PLEASE ENSURE ALL FIELDS ARE COMPLETED ******



In this document:

- (a) **"Accession"** means any Goods which are installed in or affixed to other goods;
- (b) **"ACL"** means the *Australian Consumer Law* which is contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*;
- (c) **"Amount Payable"** means, at any time, all amounts payable by the Customer to the Supplier at that time (whether or not those amounts have become due for payment under clause 4 or any other provision of the Terms and Conditions) in connection with the Goods or a Contract (including, without limitation, any invoiced amount, interest, fees, costs or expenses);
- (d) **"Customer"** means the customer specified in an application for commercial credit (or if there is no application, the person placing the Order, or on whose behalf the Order is placed, with the Supplier);
- (e) **"Default"** is defined in clause 8;
- (f) **"Contract"** means:
- any contract to which these Terms and Conditions are expressed to form part; and,
 - for the supply of Goods pursuant to an Order, the contract (which includes these Terms and Conditions) formed for the supply of the Goods to the Customer upon an Order Acknowledgment;
- (g) **"Goods"** means any goods, products, services or materials supplied or to be supplied by the Supplier at any time and from time to time including, without limitation, any goods specified in an Order Acknowledgment or invoice;
- (h) **"Order"** is an order or offer to purchase described in clause 1(a);
- (i) **"Order Acknowledgment"** is defined in clause 1(a);
- (j) **"Processed Goods"** means Goods which after their delivery become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass;
- (k) **"PPSA"** means the *Personal Property Securities Act 2009 (Cth)*;
- "Supplier"** means BOSFA NZ Pty Ltd.
- (l) **"Terms and Conditions"** means the terms and conditions set out in this document, as modified or amended in relation to a particular Order by a written Order Acknowledgment or in accordance with clause 25;
- (m) the terms "financing statement", "proceeds", "purchase money security interest", "security agreement", "security interest" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA;
- (n) unless otherwise stated, an expression used or defined in the *Corporations Act 2001 (Cth)* has the same meaning in the Terms and Conditions;
- (o) words indicating the singular include the plural and vice versa.
- 1. Orders, Order Acknowledgments and Terms and Conditions**
- (a) An order or an offer to purchase can be made by the Customer in writing or verbally. An Order is accepted when the Customer receives from the Supplier an acknowledgment of the Order from the Supplier, the Supplier appropriates the relevant Goods for delivery to the Customer or the Supplier delivers the relevant Goods to the Customer, whichever first occurs (**"Order Acknowledgment"**).
- (b) The Terms and Conditions apply to every Order, unless otherwise agreed in writing by the Supplier. Acceptance of Goods by the Customer is conclusive evidence that the Terms and Conditions apply and are binding on the Customer.
- (c) The Customer acknowledges that each Contract constitutes a security agreement, and that the Supplier may register a financing statement (or comparable notice in any other relevant jurisdiction) in respect of the security interests provided for by the Contracts.
- (d) The Contract for the supply of Goods pursuant to an Order constitutes the entire agreement between the Supplier and the Customer with respect to that Order. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of that Contract.
- (e) If at any time in relation to the supply of the Goods, the Customer provides, refers to, submits or otherwise uses terms and conditions other than the Terms and Conditions, such terms and conditions will not form part of, or be incorporated into, the Order or the Contract.
- 2. Prices**
- (a) Unless otherwise agreed in writing, the price charged for the Goods shall be (i) exclusive of any transaction tax (**"transaction tax"** includes the goods and services tax as well as any identified or new transaction taxes that come into existence after the effective date of the Terms and Conditions), and (ii) as per the price ruling as determined by the Supplier at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling as at that date of delivery.
- (b) Where a product margin is included on the invoice for Goods the Customer will pay that product margin in addition to any quoted price.
- (c) Where a transaction tax applies to any supply made under the Terms and Conditions, the Supplier may recover from the Customer an additional amount on account of that transaction tax.
- (d) Notwithstanding any provision in the Contract, the Supplier may increase the price of Goods after an Order Acknowledgment and prior to delivery of the Goods if the price increase results from an increase in the price of any inputs which comprise part of the Goods.
- (e) The Customer may upon the alteration of the price charged for the Goods in accordance with this clause 2, cancel any Order (or part thereof) at the new price within 7 days of the Supplier providing notice of the change of price.
- 3. Delivery**
- The Supplier will make all reasonable efforts to have the Goods delivered to the Customer or its designated agent as agreed between the parties (or if there is no specific agreement then at the Supplier's reasonable discretion), but the Supplier shall not be liable for (a) any failure to deliver or delay in delivery for any reason; or (b) any damage or loss due to unloading or packaging; or (c) except to the extent that such damage was caused by the negligent act or omission of the Supplier, damage to property caused upon entering premises to deliver the Goods. Any costs incurred by the Supplier due to any failure by the Customer to accept the Goods at time of delivery will be reimbursed by the Customer to the Supplier. Except as required by law, the Supplier will be under no obligation to accept Goods returned for any reason.
- 4. Payment**
- For so long as the Supplier has agreed to provide credit to the Customer under the Terms and Conditions and has not exercised its powers to withdraw, refuse or suspend credit under clause 8(b) or 10(c) or otherwise, payment for the Goods must be made in full (without any set off) and received by the Supplier by the last business day of the month following the month of delivery unless otherwise specified by the Supplier on any statement of account or invoice or unless the Contract specifies otherwise. Payment is only received by the Supplier when it receives cash or when the proceeds of other methods of payment are credited and cleared to the Supplier's nominated bank account. The Supplier may set off any amount due and payable by the Supplier to the Customer against any amount due and payable by the Customer to the Supplier.
- 5. Title and related matters**
- (a) The legal and equitable title to the Goods will only be transferred from the Supplier to the Customer when the Amount Payable has been reduced to zero.

- (b) Until the Amount Payable has been reduced to zero, the Customer holds the Goods as bailee for the Supplier and a fiduciary relationship exists between the Customer and the Supplier.
- (c) If there is any Amount Payable, until the Goods are sold in accordance with clause 5(f), or become an Accession or Processed Goods, the Customer shall:
- keep the Goods separate and in good condition as a fiduciary of the Supplier, clearly showing the Supplier's ownership of the Goods;
 - keep books recording the Supplier's ownership of the Goods and the Customer's sale or otherwise of them in accordance with clause 5(f); and
 - if required by the Supplier, deliver the Goods up to the Supplier.
- (d) The Customer may only install or affix the Goods to other goods (so that they become an Accession to those other goods) or use or permit the Goods to be manufactured, processed, assembled, commingled or otherwise dealt with (so that they become Processed Goods) in the ordinary course of its normal business.
- (e) If the Customer is in Default, in addition to the Supplier's other rights under the Terms and Conditions, the PPSA or any other applicable law, the Supplier may:
- take possession of the Goods or any Processed Goods, wherever they are located;
 - remove any Goods which have become an Accession; and/or
 - enter upon the Customer's premises for that purpose; and/or
 - appoint any person to be a receiver of all or any of the Goods, Accessions, Processed Goods or other assets the subject of the security interests created by this document.
- (f) Despite clause 5(a), the Customer may sell the Goods, any Accession or any Processed Goods to a third party in the normal course of the Customer's business provided that the Customer holds the proceeds of sale on trust for the Supplier to the extent of the Amount Payable. The Customer must keep those proceeds separate on trust for the Supplier and not mix those proceeds with any other monies.
- (g) Unless otherwise expressly agreed in writing, the Supplier will allocate and apply amounts received from the Customer in the following order:
- in or towards payment of any part of the Amount Payable which is not part of the purchase price of any Goods, in the order in which those amounts were incurred; and
 - secondly, in or towards payment of the purchase price of Goods in the order in which those Goods were invoiced.
- This order of allocation and application will apply notwithstanding any instruction, request or appropriation of the Customer as to the way in which a payment made by it should be applied by the Supplier, or any condition attached by the Customer to any payment made by it.
- 6. Security Interest, Charge and Mortgage**
- (a) The Customer grants to the Supplier a security interest in the Goods to secure payment of the Amount Payable. The security interest:
- extends to and continues in all proceeds, Accessions and Processed Goods; and
 - is a purchase money security interest to the extent to which it secures payment of that part of the Amount Payable which comprises the aggregate unpaid purchase price of Goods.
- (b) The Customer must not do or permit anything to be done that may result in the purchase money security interest granted to the Supplier ranking in priority behind any other security interest.
- (c) The Customer charges and mortgages in favour of the Supplier, all of the Customer's interest and rights in all present and future real property of the Customer to secure the performance of the Customer's obligations under each Contract, including payment of the Amount Payable. The Customer acknowledges that the Supplier has a caveatable interest in any real property of the Customer under this clause and may lodge a caveat over that property. Upon demand by the Supplier, the Customer agrees to immediately execute a mortgage in favour of the Supplier on terms satisfactory to the Supplier to more particularly describe the mortgage conferred by this clause. Should the Customer fail within a reasonable time of such demand to execute that mortgage, then the Customer irrevocably appoints the Supplier as its attorney with authority to do on its behalf any thing that it may lawfully authorise an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any real property of the Customer.
- 7. Contracting out of the PPSA**
- (a) The Customer:
- waives the right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement relating to any security interest created under the Contract; and
 - contracts out of its rights to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in paragraph (b)).
- (b) To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 142 and 143, which sections (or parts of sections) shall not apply.
- 8. Default**
- (a) A party will be in Default if:
- it breaches a material term of any Contract and such breach is not remedied within 14 days of receiving notice from the other party requiring it to do so, unless such breach arises out of the supply of defective Goods, in which case the Supplier shall remedy the breach within such time as is reasonable in the circumstances;
 - being a body corporate it becomes an externally-administered body corporate or has an application for winding up filed against it;
 - in the case of the Customer being an individual, it commits an act of bankruptcy or becomes an insolvent under administration;
 - in the case of the Customer, payment for the Goods has not been received by the Supplier by the due date for payment; or
 - in the case of the Customer, any representation or warranty made by it in or in connection with a Contract, or any information provided by it to the Supplier in or in connection with a credit application, is incorrect, misleading or deceptive (whether by omission or otherwise) in any material respect; or
 - in the case of the Customer, the Supplier forms the opinion in its absolute discretion that the Customer's creditworthiness or credit standing alters from that indicated in its credit application.
- (b) If a party Defaults, the other party may:
- treat an Order Acknowledgment or the whole of the Contract as repudiated and sue for breach of contract; and/or
 - being the Supplier, refuse to supply any Goods to the Customer on credit or at all; and/or
 - being the Supplier, claim the return of any Goods in the Customer's possession where title has not passed to the Customer or exercise any other right or remedy available to it under the Contract, the PPSA or any other applicable law, including to enforce the security interests created by the Contract; and/or
 - being the Supplier, by notice to the Customer declare all monies owing by the Customer to the Supplier on any account immediately due and payable (including the Amount Payable).
- 9. Risk**
- Risk in the Goods passes to the Customer upon delivery (including all risks associated with unloading) or upon title in the Goods passing to the Customer, whichever is the earlier.
- 10. Credit**
- (a) Any agreement by the Supplier to grant the Customer credit upon these Terms and Conditions has been or will be made on the basis of a credit application and such other documents and information as may be required by the Supplier.
- (b) Until the Supplier grants the Customer credit by notice in writing, or if having granted credit, the Supplier exercises its powers to withdraw, refuse or suspend credit under clause 8(b) or 10(c) or otherwise under

these Terms and Conditions, the Supplier will only supply Goods to the Customer on the basis of cash in advance.

- (c) The granting of credit does not obligate the Supplier to extend any particular amount of credit to the Customer and the Supplier may withdraw, refuse, suspend or limit credit to the Customer at any time, in its absolute discretion, without notice or providing any reason.

- (d) The Customer must notify the Supplier in writing if there is any change in the shareholding or ownership of the Customer or any material change in the Customer's financial position.

11. Intellectual Property

- (a) The Customer warrants to the Supplier that all documents provided by the Customer are accurate and that the Supplier is entitled to use all such documents for the purposes of the Contract and that such use does not infringe any third party's intellectual property rights.

- (b) The Customer indemnifies the Supplier against all claims and all losses and damages incurred by the Supplier as a result of documents provided by the Customer to the Supplier for the purposes of or in the course of the supply of the Goods breaching a third party's intellectual property rights.

- (c) If the Customer receives any confidential information from the Supplier the Customer may not use or disclose such information unless it receives the prior written consent of the Supplier, such information enters the public domain (other than as a result of a breach of this clause) or the use or disclosure is required by law.

- (d) The Customer may not use any trade mark or other intellectual property of the Supplier, unless it receives the prior written consent of the Supplier (which consent may be given, withheld or withdrawn, or given subject to conditions, at the Supplier's discretion).

12. Force Majeure

The Supplier is not liable for failure to perform its obligations under the Contract to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by the Supplier because of circumstances outside the Supplier's control, failure of the Supplier's machinery, or failure of a supplier to the Supplier, provided that the Supplier gives notice to the Customer of the delay and uses reasonable efforts to remedy the cause of the delay quickly.

13. Representations and Fitness for Purpose

- (a) Except as expressly provided to the contrary in the Contract, all representations, warranties, guarantees and implied terms or conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.

- (b) The Customer agrees that if it is aware (or should be aware) that the Goods, the subject of an Order, are for a particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Customer will clearly specify that purpose or those characteristics in any such Order. The Customer agrees that, unless expressly agreed by the Supplier in writing, it has made its own enquiries in relation to the suitability of the Goods and does not rely on representations by the Supplier in relation to their suitability for a particular purpose or any steps which may need to be taken in relation to their use.

14. Limitation of Liability

- (a) The Supplier's liability to the Customer (and any party claiming through the Customer against the Supplier) for any claim for loss or damages (including legal expenses) made in connection with the Contract (including the supply of Goods described in the Contract) whether in contract, tort (including negligence), under statute, in equity or otherwise shall be strictly limited as follows (except to the extent that the law prohibits such a limitation):

- i) for any liability arising from Goods not meeting the specification or which are said to be otherwise defective or deficient, the Supplier's liability is limited to the cost of replacement of those Goods as soon as reasonably practicable, or the repair of those Goods or the repayment (or allowance) of the invoice price of those Goods (at the option of the Supplier);

- ii) for any liability arising from the services forming part of the Goods not meeting the scope or which are said to be otherwise defective or deficient, the Supplier's liability is limited to the provision of the services again or payment of the cost of having the relevant services provided (at the option of the Supplier);

- iii) for any liability that does not fall within the scope of clauses 14(a)i) or ii), the Supplier's liability for any loss or damage arising from or caused in any way by the Supplier, the Goods it supplies or the Contract is excluded (to the maximum extent permitted by law).

- (b) The Supplier shall not be liable, to the maximum extent permitted by law, for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods it supplies, where "indirect, special or consequential loss or damage" includes: (A) any loss of income, profit, production, contract, customers, business opportunity or business; (B) any loss of goodwill or reputation; (C) any loss of value of intellectual property; (D) any loss or damage resulting from the loss or damage to goods other than the Goods.

- (c) Any claim by the Customer in respect of defective, non-conforming or damaged Goods must be made in writing within 14 days of the delivery of the Goods, unless a longer period is expressly agreed to by the Supplier in writing.

- (d) Despite any other provision of the Contract, the Supplier is not liable, to the maximum extent permitted by law, for:

- i) the cost of removal of Goods not meeting the specification or which are said to be otherwise defective or deficient, whether installed or otherwise;

- ii) the cost of installation of replacements for Goods not meeting the specification or which are said to be otherwise defective or deficient;

- iii) defects or deficiencies in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.

15. Waiver

Except as expressly set out in the Terms and Conditions, a party waives a right under the Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

16. Severance

If a provision of the Contract would, but for this clause, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result;
- (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.

17. Variation and notices

- (a) The Supplier may at any time vary the Terms and Conditions applicable to future Orders and may notify the Customer of these changes or provide any other notice under or in connection with the Terms and Conditions by email, facsimile, post or, in the case of a variation of the Terms and Conditions, by publishing the revised Terms and Conditions or notice on its website. If the Supplier publishes the revised Terms and Conditions on its website, the revised Terms and Conditions are effective from the Effective Date noted in these Terms and Conditions. If the Supplier publishes the revised Terms and Conditions on its website, it may (but is not obliged to) notify the Customer that it has done so on any invoice or Order Acknowledgement.

- (b) Notices given by the Supplier will be deemed to be received:

- i) if given by email, on being sent, provided the notice is sent to the email address of an officer or employee of the Customer responsible for placing or administering orders for Goods and no "out of office" or other automated reply is received indicating that the message has not been or will not be received or read by the intended recipient;

- ii) if given by facsimile transmission to a facsimile number shown in the application for credit (or any other number provided by the Customer) by production by the Supplier of a copy of the facsimile transmission bearing the time and date of dispatch, on that date and at that time; and

- iii) if given by post, on the third day after posting.

- (c) The Customer agrees to regularly check the Supplier's website for any notices of changes to the Terms and Conditions and to accept any notices from the Supplier as agent for any guarantor.

18. Costs

The Customer must pay the Supplier all costs and expenses incurred by the Supplier in connection with a Contract including legal expenses (on a full indemnity basis), stamp duty (including fines and penalties) and costs incurred or payable by the Supplier in connection with registering, maintaining or releasing any security interest, charge, mortgage or caveat in connection with a Contract, or the recovery of the Amount Payable or in otherwise enforcing the Supplier's rights against the Customer under a Contract. The costs of registering any PPSA financing statement will be paid by the Customer and may be invoiced or debited against the Customer's credit account.

19. Default Interest

The Supplier may charge interest on any overdue amount at a rate equivalent to 2.5% p.a. above the business overdraft interest rate of its principal banker, as determined and calculated by the Supplier. Such interest will be payable on demand by the Supplier and for so long as it remains unpaid will compound on a monthly basis.

20. Applicable Law

Each Contract is governed by, and the Customer submits to the law of the State of New South Wales (or any other State or Territory nominated by the Supplier). The courts of that State or Territory have non-exclusive jurisdiction in connection with the Contract. *The Sale of Goods (Vienna Convention) Act 1986 (New South Wales)* (and any similar legislation relating to the Vienna Convention in other States or Territories) does not apply to the Contract.

21. Assignment

The Supplier may assign its rights or novate its rights and obligations under a Contract (in whole or in part) to any person without the consent of the Customer. In the event of a novation, the Customer may, if it has reasonable grounds to believe that the novatee will not comply with the Contract, by written notice given within 30 days of receiving notice of the novation terminate any Order which has not been completed and which was accepted prior to the novation. The Customer may not assign or otherwise transfer its rights under a Contract without prior notice to and consent from the Supplier. The Customer must promptly notify the Supplier in writing of any change to its registered address or other contact details provided to the Supplier.

22. Attorney

The Customer irrevocably appoints the Supplier and each of its authorised officers, jointly and severally, to be its attorney to do any act or thing which the Customer is required to do under a Contract, if the Customer is in Default (including executing and registering instruments). The Supplier may exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so. A third party may rely on a copy of the Terms and Conditions certified by a solicitor as evidence of the appointment of the Supplier as the attorney of the Customer. The Customer must ratify all acts and things done by the Supplier and its authorised officers in the exercise of this power of attorney.

23. Standard Grades of Materials and Measures

- (a) Subject to clause 23(b), the Supplier will use its reasonable endeavours to:

- i) supply Goods having the grade of material specified in the Order Acknowledgment (if applicable); and
- ii) ensure that any grade of material as specified in the Order Acknowledgment will, unless otherwise agreed, be in accordance with applicable Australian Standards and/or as detailed in any current, relevant price schedules, product handbooks or other product literature of the Supplier.

- (b) Unless otherwise agreed in writing:

- i) all Goods will be supplied and delivered in accordance with the Supplier's standard practice and shall be subject to the Supplier's normal tolerances, limitations and variations of the following: dimension, weight, shape, composition, mechanical properties, structure, quality and service conditions;

- ii) any statements made by the Supplier as to weight, length, quantity or other characteristics of Goods are approximate and the Supplier may supply Goods on an actual or calculated basis (calculated in accordance with applicable Australian standards); and

- iii) the Supplier's statements as to weight, length, quantity or other characteristics are final (in the absence of manifest error) and will not be contested by the Customer unless the Customer has given the Supplier written notice of any error within 14 days of delivery and a reasonable opportunity to examine and re-test the Goods before they are used or dealt with.

24. Shortages

- (a) The Customer will inspect and check all Goods received as soon as practicable upon unloading. No claim by the Customer for shortages of Goods may be made unless such claim is notified to the Supplier with 48 hours of such inspection.

- (b) The Supplier will endeavour to rectify any shortages as soon as practicable after receiving notice but will not be liable for or in respect of such rectification.

25. Consumer transactions

Where and only to the extent that the supply of Goods is to a "consumer" (as that term is defined by the ACL) then clause 14 shall not apply and nothing in the Terms and Conditions shall be construed as excluding, restricting or modifying any Consumer Guarantee provided under the ACL, in respect of that supply of Goods.

26. Privacy

- (a) Where the Customer provides the Supplier with personal information (as defined in the *Privacy Act 1988*) about any individual (including the Customer where applicable), the Customer must have that individual's consent to provide that information to the Supplier.

- (b) The Supplier may collect, use and disclose that personal information for purposes relating to a Contract and to the Customer's credit application and account. This includes assessing the Customer's application, monitoring the value of and enforcing the security interests created by a Contract, reviewing credit arrangements on a periodic basis or in connection with changes (e.g. credit limit) as though assessing a new application, order fulfilment and delivery, market research, planning, business development, debt collection and customer relationship management. The Supplier may also conduct lawful and relevant credit and reference checks (including consumer credit checks on the Customer where the Customer is an individual), and deal with personal information in connection with any acquisition or potential acquisition of any part of the Supplier's business. Without the personal information sought, the Supplier may not be able to do these things, including fulfill orders and process credit applications.

- (c) The Supplier may provide marketing communications to the Customer by email and other means on an ongoing basis, unless the Customer opts out by contacting the Supplier or legal restrictions apply.

- (d) The Supplier may exchange personal information to any of its related body corporates (within the meaning of the *Corporations Act 2001 (Cth)*, the Customer's guarantors and prospective guarantors (e.g. for the purpose of them deciding whether to act as guarantor), the Customer's representatives and the Supplier's service providers. The Supplier may also exchange that information with other credit providers for purposes including to: assess a credit or guarantor application; determine credit/default status; and assess or comment on credit worthiness. Some of these parties may be located in other countries. While these parties outside Australia will often be subject to privacy and confidentiality obligations, Customer acknowledges and agrees for itself and as agent for each of its officers, employees, agents, contractors, guarantors and representatives that: (a) privacy obligations overseas may not always apply or may differ from Australian privacy laws; (b) the Supplier may not be accountable for the third party under the *Privacy Act* or for the overseas recipient's storage, use or disclosure of the information; (c) individuals may not be able to seek redress under the *Privacy Act* for that disclosure or for the acts or omissions of the overseas recipient of the information; and (d) the third party may be subject to foreign laws which might compel further disclosures of personal information (e.g. to government authorities).