



Where strength matters

# APPLICATION FOR CREDIT ACCOUNT

(ABN 45 389 242 304)

Trading Name:  ABN:

Registered Name:  ACN:

Business Structure: Company  Partnership  Trust  Sole Trader  Other

### IF APPLICANT IS A TRUST, SPECIFY;

Name of Trustee:  Trust ACN:

### IF APPLICANT IS A PARTNERSHIP, SPECIFY;

All partner details are required on a separate form: Partner Details ([www.millform.com.au/resources](http://www.millform.com.au/resources))

### CUSTOMER CONTACT DETAILS;

Postal Address:

Street Address:

Phone Number:  Fax Number:

Mobile:  Email address:

Year established:  Bank & Branch:

Credit-limit applying for: \$

### NAMES, RESIDENTIAL ADDRESSES OF ALL DIRECTORS/PARTNERS:

### CURRENT TRADE REFERENCES:

Ph:

Ph:

Ph:

Ph:

Has the Applicant been placed under any form of receivership or bankruptcy, or has the Applicant served as a director of any incorporated entity that has been placed under any administration of liquidation, within the last five years?

Yes  No

I expressly acknowledge that: (a) I am the Applicant (as owner/partner/director/trustee) and I have the authority to sign this form; (b) all details given are true and correct to the best of my knowledge; and (c) that I have read and understood the Trading Terms and Conditions of Sale and agree that the Applicant will be bound by them.

Signed:  Name:  Position:

Date:

SAVE





# DIRECTORS GUARANTEE

We, the directors of the Applicant referred to in the attached Application for Credit Account, in consideration of Millform Australia agreeing to provide credit to the Applicant, jointly and severally agree, as witnessed by our execution of this Guarantee:

1. to guarantee the payment of all debts now due or to become due by the Applicant to Millform Australia and indemnify Millform Australia for any losses arising as a result of the Applicant failing to pay debts due to Millform Australia;
2. that this guarantee and indemnity is a continuing obligation on our part and is not affected by the giving of any time or other indulgence to the Applicant by Millform Australia;
3. that each of us is jointly and severally liable as amongst ourselves and with the Applicant for all amounts owed by the Applicant to Millform Australia and Millform Australia is at liberty to act as though any one of us was the principal debtor and we hereby waive all and any of our rights as surety which may at any time be inconsistent with any of these provisions;
4. that if the Applicant goes into liquidation or bankruptcy then we agree not to prove in such liquidation or bankruptcy until all debts to Millform Australia together with all other amounts owing to Millform Australia by the Applicant and the legal costs of Millform Australia on a solicitor and client basis have been paid;
5. that this guarantee is revocable at any time as to future transactions by the service of written notice on Millform Australia at Millform Australia' place of business and we agree that we remain liable for all debts of the Applicant to Millform Australia up to and including the transaction immediately prior to the service of the notice;
6. we have recognised our right to seek independent legal and financial advice on the documents prior to signing, and that Millform Australia is under no obligation to provide us with legal and financial advice as to the consequences and effect of these documents, nor to explain these documents to us.
7. that otherwise this guarantee continues notwithstanding:
  - 7.1 a change in the constitution of the partnership or company notwithstanding Section 18 of the Partnership Act or any other enactment;
  - 7.2 the Applicant's business being assigned or in any way transferred to a different party;
  - 7.3 a summons or application being filed for the winding-up of the Applicant or a resolution being passed for the winding-up of the Applicant, whether provisionally or otherwise; or
  - 7.4 where a judgment is granted against the Applicant and that judgment remains unsatisfied or unappealed for a period of fourteen (14) days after the date of such judgment.
8. that this guarantee is enforceable against all of the guarantors who have executed the guarantee, notwithstanding that all the named guarantors may not have executed the guarantee.

## SIGNED AS A DEED BY:

Signature of Director	<input type="text"/>	Signature of Witness	<input type="text"/>
Name of Director (Print)	<input type="text"/>	Name of Witness (Print)	<input type="text"/>
Signature of Director	<input type="text"/>	Signature of Witness	<input type="text"/>
Name of Director (Print)	<input type="text"/>	Name of Witness (Print)	<input type="text"/>
Signature of Director	<input type="text"/>	Signature of Witness	<input type="text"/>
Name of Director (Print)	<input type="text"/>	Name of Witness (Print)	<input type="text"/>
Signature of Director	<input type="text"/>	Signature of Witness	<input type="text"/>
Name of Director (Print)	<input type="text"/>	Name of Witness (Print)	<input type="text"/>



# TRADING TERMS AND CONDITIONS

## Millform Products ABN 45 389 242 304 Trading Terms and Conditions of Sale

### 1 Definitions and Interpretation

#### 1.1 In these Terms and Conditions:

**Additional Charges** means all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, in addition to the Price,

**Australian Consumer Law** means the Law set out in schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Authority** means any entity, body or organisation having jurisdiction over the Goods, the supply of the Goods and matters relating to it.

**Business Day** means a day except for:

- a. a Saturday, Sunday or public holiday in the State of New South Wales; and
- b. 27, 28, 29, 30 and 31 December.

**Customer** means the entity or persons to whom or which the Goods are to be supplied under this Supply Contract.

**Claim** means any claim, action, suit, cause of action, cost, expense, demand, liability, whether by indemnity, under contract, in equity, under statute, in tort or otherwise and any other liability of any nature.

**Company** means the Shore Group Pty Ltd (ACN 619 999 585) as trustee for the Millform Products Unit Trust (ABN 45 389 242 304), its successors, assigns, employees, servants and agents

**Consumer** has the meaning given in section 3 of the Australian Consumer Law. For the avoidance of doubt, the Customer will be acquiring the Goods as a Consumer if:

- a. the amount paid or payable for the goods does not exceed \$40,000; or
- b. the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption.

Notwithstanding paragraphs (a) and (b), the Customer will not be acquiring the Goods as a Consumer if the Customer acquires the goods:

- c. for re-supply; or
- d. to use them up or transform them in trade or commerce:
  - i. in the course of a process of production or manufacture; or
  - ii. in the course of repairing or treating other goods or fixtures on land.

**Credit Card Transaction** means a transaction using the "credit" function of a credit card using the Visa or MasterCard payment system.

**Credit Terms** has the meaning given in clause 11.

**Custom Order** means Goods that have been specifically customised by provision of the Services.

**Defect** means an error or defect in the Goods due to faulty material or workmanship for which the Company is responsible.

**Delivery Date** means the date identified as such in an Order or as otherwise agreed between the Company and the Customer

**Due Date** means, as applicable:

- a. where Credit Terms have not been extended, upon acceptance of an Order by the Company; or
- b. where Credit Terms have been extended, 30 days from the end of the month in which the invoice is issued by the Company to the Customer.

**Frames** means the green or yellow frames used to transport and store the Products including the delivery of the Products.

**Force Majeure Event** means any event beyond the reasonable control of a party including the following events:

- a. acts of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, revolution, insurrection, military or usurped power or terrorism;
- b. raw material shortages, accidents or breakdowns of plant and machinery;
- c. shipping congestion at port of loading/unloading, blockades, embargos, shortage of transport, import restrictions or currency restrictions;
- d. act (or failure to act) of Authorities (unless such act is the requirement of Authorities to either



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party to comply with any mandatory Law in force at the commencement of this Supply Contract);

- e. sabotage, strikes, lockouts, go-slow or any other industrial dispute or disturbance; and
- f. acts of God including all severe weather conditions, natural disasters, earthquakes, volcanic activity, hurricanes, cyclones, floods, fires, tsunamis and lightning strikes.

**Goods** means those goods to be supplied by the Company to the Customer under this Supply Contract.

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

**Intellectual Property Rights** means all intellectual property and industrial rights of any description including without limitation all rights conferred by statute, common law or equity (whether or not registered) in relation to inventions (including patents), trademarks, designs, copyright, circuit layout rights, trade secrets, know-how and confidential information and all other rights of a proprietary nature created as a result of intellectual activity in the industrial, scientific, literary and artistic fields.

**Insolvency Event** means:

- a. a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with its contractual obligations;
- b. execution is levied against a party by a creditor;
- c. in relation to a party being a corporation:
  - i. notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - ii. it enters a deed of company arrangement with creditors;
  - iii. a controller or administrator is appointed;
  - iv. an application is made to a court for its winding up and is not stayed within 14 days;
  - v. a winding up order is made in respect of it;
  - vi. it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
  - vii. a mortgagee of any of its property takes possession of that property; and
- d. if the party is an individual person or a partnership including an individual person, that he or she:
  - i. commits an act of bankruptcy;
  - ii. has a bankruptcy petition presented against his or her or presents his or her own petition;
  - iii. is made bankrupt;
  - iv. makes a proposal for a scheme of arrangement or a composition; or
  - v. has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of

the Bankruptcy Act 1966 (Cth) or like provision under the law governing this agreement

**Law** means applicable:

- a. statutes, rules, regulations, by-laws, orders, awards, codes, standards, ordinances and proclamations of the jurisdiction where the supply of Goods under this Supply Contract or a particular part is being carried out;
- b. approvals, consents, declarations, directions, exemptions, notarisations, licences, permits, certificates, waivers or other authorisations, however, described, required by any Law and includes any renewal or amendment and requirements of authorities or organisations having jurisdiction where the supply of Goods under this Supply Contract or a particular part is being carried out; and
- c. fees, charges, taxes, tariffs, and duties payable in connection with the foregoing.

**Major Failure** in respect of Goods has the meaning given to that term in section 260 of the Australian Consumer Law.

**Order** means a written or verbal order for Goods in the form of Annexure A or as amended by the Company from time to time.

**Personnel** means the employees, officers, agents, consultants, other contractors and subcontractors of a party to this Supply Contract.

**Point of Delivery** means the delivery address identified in an Order or as otherwise agreed between the Company and the Customer.

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**Price** means the price payable for the Goods identified in an Order, as may be adjusted by this Supply Contract and the cost of Taxes, all insurance, transport and other handling expenses relating to the Goods from the Company's premises.

**Price List** means the Company's price list for Goods as provided by the Company to the Customer from time to time.

**Services** means the design and engineering services provided by the Company's in house design and engineering team.

**Supply Contract** means these Terms and Conditions of Supply and any other document referred to therein.

**Company's Offer** means the offer by Company to supply Goods (and includes any special conditions contained in it or documents attached by the Company or which the Company agrees are incorporated by reference).



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**Tax or Taxes** means all forms of present and future taxes (but excluding income tax), excise, stamp or other duties, imposts, deductions, charges, withholds, rates, levies or other government impositions imposed, assessed or charged by any government agency, together with all interest, penalties, fines, expenses and other additional statutory charges relating to any of them, imposed or withheld by a government agency.

**1.2** In this document, unless otherwise indicated to the contrary:

- a. a reference to days means calendar days, and references to a person include an individual, firm or a body, corporate or unincorporated;
- b. the time for doing any act or thing under this Supply Contract shall, if it ends on a day which is not a Business Day, shall be deemed to end on the day following which is a Business Day;
- c. a reference to this document or any other document or agreement, includes any variation, replacement or novation of them;
- d. the use of the word “include”, “includes”, or “including” shall be interpreted to mean “include”, “includes”, or “including” without limitation;
- e. words in the singular include the plural and vice versa;
- f. headings are for ease of reference only and do not affect interpretation;
- g. no rule of construction shall apply to the disadvantage of a party on the basis that the party put forward the Contract or any part of it;
- h. a reference to “\$” or “dollars” is to Australian dollars;
- i. all sums are exclusive of GST unless the context requires otherwise;
- j. a reference to a party to this document or another agreement or document includes the party’s successors, permitted substitutes and permitted assigns (and, where applicable, the party’s legal personal representatives).

## 2 Order for Goods and Services

**2.1** An order given to the Company is binding on the parties, if:

- a. a written acceptance is signed for or on behalf of the Company; or
- b. the Goods and Services are supplied by the Company in accordance with the Order.

**2.2** An acceptance of the Order by the Company is then to be an acceptance of this Supply Contract by the parties and will override any conditions contained in the Purchaser’s order. The Company reserves the right to accept a part only of any order by notifying the Purchaser in writing or by delivering the Goods to the Purchaser. No order is binding on the Company until accepted by it.

## 3 Delivery, Delay and Acceptance

**3.1** The Company will make all reasonable efforts to deliver the Goods to the Customer by the Delivery Date.

**3.2** The Company may make partial deliveries and separately invoice Goods.

**3.3** Notwithstanding any delay by the Company, the Customer shall be bound to accept and pay for delivered Goods in full provided that delivery is made by the Company within 30 days of the Delivery Date.

**3.4** If an act or omission of the Customer or the Customer’s Personnel or an event beyond the reasonable control of the Company causes delay to the Company, the time for performance of the Company’s obligations under this Supply Contract shall be extended for a period of time equal to the period of delay and the Company will notify the Customer of the resultant date.

## 4 Cancellations

**4.1** The Company reserves the right to cancel any Order.

**4.2** Subject to clauses 12 and 13, an Order may only be cancelled, or Goods returned for credit with the prior written approval of the Company (which may be withheld in the Company’s absolute discretion including where any Goods have been specifically manufactured, processed or purchased by the Customer to the Customer’s specifications). If the Company gives written approval for the Goods to be returned pursuant to this clause, the Goods must be returned in the same re-saleable condition as when they were originally sold, and all costs of return (including the Company’s costs and freight costs) must be borne by the Customer.

**4.3** Unless returns are due to the Company’s error, the Customer will incur a restocking fee of 30% of the invoice price or AUD\$150.00, whichever is the greater, and which Amount shall become due and payable on demand by the Company to the Customer.

**4.4** Notwithstanding clauses 4.1 and 4.2, but subject to clauses 12 and 13, any Goods specifically manufactured, processed or purchased on behalf of the Customer that meet the Customer’s specific request, may not be returned.

## 5 Storage

**5.1** The Company may charge the Customer its reasonable costs incurred in connection with the storage of Goods if delivery instructions are



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not provided by the Customer promptly and, in any event, within 5 Business Days of a request by the Company for such instructions. The parties agree that the Company may charge for storage from the first day after the Company requests the Customer to provide delivery instructions. The costs the subject of this clause shall become due and payable by the Customer upon demand by the Company.

### 6 Offloading Goods

- 6.1 The costs of unloading Goods at the Point of Delivery (including the provision of labour, materials and equipment, compliance with any restrictions on access to the Point of Delivery and insurance cover) shall be the sole responsibility of the Customer.
- 6.2 The Customer indemnifies and shall keep the Company indemnified from and against any and all Claims arising from the unloading of Goods.
- 6.3 The parties acknowledge and agree that an allowance of one and a half (1.5) hours free time is given by the Company to the Customer for unloading from the time of arrival of the Goods at the Point of Delivery. Any additional time is to the Customer's account at the Company's delivery rate charges, such amount to become due and payable by the Customer upon demand by the Company. Special equipment and any demurrage is to the Customer's account.

### 7 Frames

- 7.1 Frames in which Goods are delivered remain the property of the Company and must not be used for any other purpose. Upon the return of the Frames must be in good order and condition;
- 7.2 At all times, the Company retains the right of possession of any Frames used for delivery of the Goods and the Customer agrees to indemnify the Company in respect of any costs, loss or damage resulting from any containers and/or pallets not being returned in good order and condition upon request by the Company.
- 7.3 The Customer shall not part with possession of the Frames or allow any third party to take, move or otherwise deal with the Frames.

### 8 Risk

- 8.1 Risk in the Goods will pass to the Customer upon delivery of the Goods by the Company at the Point of Delivery or collection by the Customer from the Company.

### 9 Title and Recovery of Goods

- 9.1 Title and property in the Goods shall remain with the Company, and the Customer holds the Goods as the Company's bailee and fiduciary agent, irrespective of delivery of the Goods to the Point of Delivery until full payment is made to the Company for all amounts owing by the Customer under or in connection with this Supply Contract.
- 9.2 If the Customer fails to make payment for the Goods by the terms of this Supply Contract, then the Company shall have the right to enter the Customer's premises to effect recovery of any Goods for which title has not passed and use any means available and not prohibited by Law to effect recovery of the applicable Goods and the Company shall have the right to resell or otherwise dispose of the Goods so recovered without reference to the Customer.
- 9.3 Until the Customer has made payment for the Goods in full, the Customer must satisfy the Company that the Goods have been properly stored and protected and labelled the property of the Company and not mix the Goods with other materials.
- 9.4 If any of the Goods are incorporated into other property or used by the Customer as parts, components or materials in respect of any other product of the Customer or a third party before payment in full has been made for the Goods, then the title in the whole of the product into which the Goods have been incorporated shall be vested in the Company until payment for the Goods has been made in full by the Customer.

### 10 GST and Tax

- 10.1 The Price is exclusive of Tax (including GST), which is payable for supplying and delivering the Goods. The Customer must pay any such Taxes.
- 10.2 If GST is payable in relation to a Taxable Supply, the amount payable for that Taxable Supply will be per this Contract plus GST. The Company and the Customer must provide each other with all documentation, including a Tax Invoice required to claim any Input Tax Credit, set-off, rebate or refund for or in relation to any GST included in any payment made under the Contract.
- 10.3 In this clause 10, the expressions "GST", "Input Tax Credit", "Tax Invoice", and Taxable Supply have the meaning given to those expressions in the GST Act.

### 11 Payment

- 11.1 Payment of the Price and any Additional Charges must be made on commencement of this Supply



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Contract unless the Company has extended Credit Terms in writing to the Customer.

**11.2** Where the Company has extended Credit Terms to the Customer, accounts are due and payable 30 days from the end of the month in which the invoice is dated and issued by the Company to the Customer.

**11.3** Credit Terms will only be available, at the Company's absolute discretion, upon approval of a written application by the Customer (Application for Credit Terms). The form of the Application for Credit Terms will be determined by the Company and will contain or annex such financial information and documents of the Customer as the Company may require (including, without limitation, the provision of personal guarantees or other forms of security).

**11.4** The parties acknowledge and agree that:

- a. the Company incurs fees from financial institutions when the Customer chooses to pay for Goods using a Credit Card Transaction; and
- b. a surcharge at the prevailing rate for each type of credit card will be added to the total amount of any payments made to the Company using a Credit Card Transaction.

**11.5** The Customer must indemnify the Company against all losses, expenses and costs (including legal fees on an indemnity basis) incurred or suffered by the Company under or in connection with the Customer's failure to make a payment by the Due Date.

**11.6** Any payments that are not otherwise due and payable shall become immediately due and payable upon the Customer suffering an Insolvency Event.

**11.7** The Company may charge interest on overdue amounts calculated daily at 2% above the benchmark rate set by the Australia Taxation Office from the next Business Day after payment becomes due until the Customer pays the full amount of outstanding monies together with any interest payable. Any payment by the Customer shall be credited first against any interest so accrued, and the balance of payment, if any, shall be applied to reduce the outstanding balance of the Price.

## 12 Warranty and Defects

**12.1** Subject to clause 13, the following are conditions precedent to the Company's liability concerning Defective Goods:

- a. the Customer notifying the Company in writing of the alleged Defect within 3 Business Days

of receipt of the Goods, providing the invoice for the applicable Good and, where possible, a sample of the Good to enable the Company to carry out a proper examination and test of the Good, within thirty (30) days of delivery of the Goods;

- b. the alleged Defective Goods having been properly handled and used following any instructions issued by Company or if no instructions have been issued, following good industry practice;
- c. such alleged Defects not being caused or contributed to by the use of equipment and/or material supplied by the Customer or any of the Customer's Personnel; and
- d. such alleged Defects not being caused due to fair wear and tear or improper storage by the Customer or the Customer's Personnel.

**12.2** The Customer acknowledges and accepts that whilst the Company will make every effort to match the Goods, the Goods may vary between batches of product and/or between sales samples and the actual product supplied.

**12.3** The Customer acknowledges that Goods supplied may:

- a. fade or change colour over time; and
- b. expand, contract or distort as a result of exposure to heat, cold, weather; and
- c. mark or stain if exposed to certain substances; and
- d. be damaged or disfigured by impact or scratching.

**12.4** The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, rating and weights stated in the Company's fact sheets, price lists or advertising material are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description and does not form part of this Supply Contract unless expressly stated as such in writing by the Company.

**12.5** To the extent permitted by law and subject to clause 13:

- a. all representations, warranties and conditions of any kind, whether express or implied (including any warranties and conditions of merchantability and fitness for a particular purpose or arising from a course of dealing or usage or trade) relating to the Goods and delivery (if applicable) that are not contained in this Supply Contract are excluded; and
- b. the Company's obligation to rectify Defects under this clause 12 shall be the Customer's



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sole and exclusive remedy and represents the full extent of the Company's liability for Defects.

### 13 Where Customer is a Consumer

**13.1** If any supply of Goods under these Conditions to the Customer is a supply to a Consumer, then the following applies:

- a. the Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a Major Failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a Major Failure;
- b. if the Customer is a Consumer or deemed to be a "consumer" under the Australian Consumer Law and the Goods to be supplied by the Company are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the Company's liability for breach of any condition, guarantee or warranty implied by such law shall to the extent permitted by such laws be limited to the repair of the Goods, or, at the Company's option, the replacement of the Goods or the supply of equivalent Goods or to the payment of the cost of repair, replacement or supply of equivalent Goods.

### 14 Liability of the Company

**14.1** Notwithstanding any other provision of this Supply Contract and except to the extent that liability cannot legally be limited or excluded:

- a. the Company's total liability arising out of or in connection with this Supply Contract or the performance or non-performance of, or anything incidental to this Supply Contract shall not exceed the Price (as adjusted strictly in accordance with this Supply Contract);
- b. the Company shall under no circumstances be liable for loss, damage or costs incurred by a party or any other person that is indirect or consequential including, but not limited to loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings; loss or denial of opportunity and/or loss of contract or liability arising out of the re-supply, use or

re-use of the Goods whether alone or together with other materials or any alleged defects in the Goods; and

- c. any advice, recommendation, information, assistance or service provided by the Company in relation to the Goods or their use or application is given in good faith and is believed by the Company to be appropriate and reliable but is otherwise provided without any warranty as to its accuracy and without any liability on the part of the Company.

**14.2** The parties agree that the United Nations Convention on the International Sale of Goods does not apply to this Supply Contract.

### 15 Intellectual Property Rights

**15.1** The Intellectual Property Rights in the Goods shall remain the exclusive property of the Company and the Company's third-party suppliers or licensors. The Customer shall not remove or alter any trademark or other proprietary notices appearing on the Goods.

### 16 Governing Law and Jurisdiction

**16.1** This Supply Contract is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of that State and courts entitled to hear appeals from those courts.

### 17 Termination and Suspension

**17.1** Without limiting the entitlements of the Company under any Master Supply Agreement, the Company may terminate this Supply Contract by notice in writing with immediate effect if:

- a. the Customer has not paid an amount due and payable under this Supply Contract;
- b. the Customer commits a material breach of this Supply Contract; or
- c. the Customer suffers an Insolvency Event.

**17.2** If this Supply Contract is terminated pursuant to subclause 17.1, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the Supply Contract had the Customer repudiated the Supply Contract and the Company elected to treat the agreement as at an end and recover damages. Unless directed otherwise by the Company, termination of this Supply Contract or its expiry shall not affect the rights and obligations of parties under a Supply Contract created prior to such termination or expiry.





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**17.3** If at any time and for any reason, the Company in its sole discretion wishes to terminate this Supply Contract for its sole convenience, or if a Force Majeure Event occurs in connection with it, the Company may terminate this Supply Contract by notice in writing to the Customer with immediate effect. Neither party shall have any other liability to the other in connection with a termination effected pursuant to this clause 17.3 but nothing in this clause 17.3 shall affect any accrued right of the Company to payment under a Supply Contract.

### 18 Confidential Information

**18.1** The Customer shall keep confidential all information of the Company which is disclosed in connection with the supply of Goods by the Company to the Customer under these Conditions that is identified as confidential or that is of a confidential nature.

### 19 PPSA

**19.1** The parties contract out of the provisions of the PPSA allowed by section 115 of the PPSA to the following extent:

- a. an exercise by the Company of any right, power or remedy will be taken not to be under a provision mentioned in that section to the extent that the right, power or remedy is granted under any other law or statute or under these conditions unless the Company so elects; and
- b. any restriction on the exercise by the Company of a right, power or remedy, or any obligation of the Company to give notice, will not apply to the extent that the section so allows.

**19.2** The Customer waives its right to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive.

**19.3** The Customer waives its rights to receive anything from the Company under section 275 of the PPSA and agrees not to make any request of the Company under that section.

**19.4** The Customer consents to the Company perfecting its interest in any Goods provided by the Company to the Customer by registration under the PPSA and agrees to do anything reasonably requested by the Company to enable it to do so.

### 20 Dispute Resolution

**20.1** Any dispute or difference between the parties arising out of or in connection with this Supply

Contract (“Dispute”) shall be notified to the other party by written notice of that Dispute, giving details of the subject matter of the dispute (“Notice of Dispute”).

**20.2** Upon the giving of a Notice of Dispute, the following shall apply:

- a. the Dispute shall be submitted for negotiation by each party to a senior manager or officer of that party who has the authority to resolve the Dispute; and
- b. if within 21 days of the giving of the Notice of Dispute (or such further period agreed by the parties) the Dispute has not been resolved between the senior managers or officers of each party, the Dispute shall be referred to mediation by a mediator agreed to by the parties, or failing agreement by a mediator appointed by the President of the Law Institute of New South Wales, or if they are unable or unwilling to appoint a mediator, then by the Australia Branch of the Chartered Institute of Arbitrators; and
- c. if the dispute is not resolved at the completion of the mediation, either party may commence litigation proceedings.

### 21 Entire Agreement

**21.1** This Supply Contract supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties in respect of its subject matter.

### 22 Notices

**22.1** Any notice to be given under this Supply Contract shall be given in writing and delivered personally or sent by pre-paid post (airmail if to or from a place outside Australia) or emailed to the other party at such address or email address listed in an Order or as a party subsequently notifies the other for the purposes of this clause 22. Any notice shall be deemed to be served:

- a. in the case of delivery in person, when delivered;
- b. in the case of delivery by post, 3 days (7 if to or from a place outside Australia) after the date of posting; and
- c. in the case of delivery by email, when the email (including any attachment) is sent to the receiving party at that email address unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.



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### 23 Waiver

**23.1** A failure to exercise, a delay in exercising, or a partial exercise of a right created under or arising from a breach of this Supply Contract does not result in a waiver of that right.

### 24 Assignment

**24.1** The Company may assign or replace all or any part of its rights and obligations under this Supply Contract. Unless otherwise provided in this Contract, the Customer must not assign, create an interest in or otherwise deal with its rights or obligations under this Supply Contract without the Company's prior written consent (in its absolute discretion).

### 25 Survival of Clauses

**25.1** All clauses capable of surviving the expiration or earlier termination of this Supply Contract shall do so. For the avoidance of doubt, clauses 1, 17, 18, 19, 20, 23, and this clause 25 shall survive any expiration or earlier termination of this Supply Contract.

### 26 New Zealand Specific Clauses

**26.1** If the Customer is resident in New Zealand or operating in New Zealand, the following Conditions will apply in addition to the above Conditions.

**26.2** Where there is any inconsistency or contradiction to the Conditions, the below will apply:

#### a. Definitions and Interpretations

- i. Consumer** has the meaning in section 2 of the New Zealand Consumer Law. If the Goods are being purchased for a business purpose, then the Customer acknowledges that the Consumer Guarantees Act 1993 will not apply.
- ii. Failure of a Substantial Character** in respect of goods has the meaning defined in section 21 of New Zealand Consumer Law.
- iii. GST Act** means the Goods and Services Tax Act 1985 (NZ).
- iv. New Zealand Consumer Law** means the Consumer Guarantees Act 1993 (NZ).
- v. PPSA** means the Personal Properties Securities Act 1999 (NZ).

#### b. When Customer is a Consumer

- i.** If any supply of Goods under these Conditions to the Customer is a supply to a Consumer, then the following applies:
  - (A)** the Goods come with guarantees that cannot be excluded under the New

Zealand Consumer Law. The Customer is entitled to a replacement or refund for a Failure of a Substantial Character and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a Failure of a Substantial Character;

- (B)** if the Customer is a Consumer or deemed to be a "consumer" under the New Zealand Consumer Law and the Goods to be supplied by the Company are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the Company's liability for breach of any condition, guarantee or warranty implied by such law shall to the extent permitted by such laws be limited to the repair of the Goods, or, at the Company's option, the replacement of the Goods or the supply of equivalent Goods or to the payment of the cost of repair, replacement or supply of equivalent Goods;
- (C)** no other warranties, either express or implied by law, are made concerning the Goods.

#### c. PPSA

- i.** The parties contract out of the provisions of the PPSA allowed by section 107 of the PPSA to the following extent:
  - (A)** an exercise by the Company of any right, power or remedy will be taken not to be under a provision mentioned in that section to the extent that the right, power or remedy is granted under any other law or statute or under these conditions unless the Company so elects; and
  - (B)** any restriction on the exercise by the Company of a right, power or remedy, or any obligation of the Company to give notice, will not apply to the extent that the section so allows.
- ii.** The Customer waives its rights to receive anything from the Company under section 148 of the PPSA and agrees not to make any request of the Company under that section.
- iii.** The Customer consents to the Company perfecting its interest in any Goods provided by the Company to the Customer by registration under the PPSA and agrees to do anything reasonably requested by the Company to enable it to do so.