



TRADE FINANCE AGREEMENT

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**THIS AGREEMENT** is made on the date specified in Item 1 of the Schedule  
**BETWEEN**

The person described in Item 2 of the Schedule ('Grantor')

**AND**

The company described in Item 3 of the Schedule ('Secured Party')

## 1. AGREEMENT

- (a) This Agreement shall apply to any Trade Finance Facility which the Secured Party, at its discretion, may agree to make available and in such manner as the Secured Party thinks fit.
- (b) The Grantor will from time to time request that the Secured Party provide a Credit to assist the Grantor in purchasing Goods (usually from overseas) and each request for Credit shall be dealt with on a transaction by transaction basis pursuant to the terms and conditions contained in this Agreement.
- (c) The terms and conditions in this Agreement shall be subject to such other terms and conditions which may be specified by the Secured Party in relation to the provision of any individual Credit and any particular Trade Finance Facility.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

**"Account"** - an existing or future right (which includes rights yet to come into existence) of the Grantor to any payment due and payable of an amount in Australian Dollars from an Account Debtor for Goods and/or services supplied or provided or to be supplied or provided and includes:

- (a) all present and after-acquired PPS Law personal property (including proceeds of that PPS Law personal property);
- (b) all rights related to the payment of that amount including rights under any guarantee, insurance policy, retention of title, security, instrument or any other right (including the right of the Grantor to take action permitted by the terms of the supply or provision of the goods to enforce it in relation to payment of the Account) of the Grantor in respect of the goods and/or services supplied and/or provided; and
- (c) all Taxes payable or reimburseable by the Account Debtor in respect of the goods and/or services supplied and/or provided or to be supplied and/or provided.

**"Account Debtor"** - any trading entity to whom the Goods financed under this Agreement are sold to and which owes an Account to the Grantor.

**"Agreement"** - this document, including any schedule or annexure to it.

**"Amount Owning"** - all moneys that the Grantor (whether alone or with another person) is, or at any time may, become, actually or contingently liable to pay to or for the account of the Secured Party and includes, without limitation;

- (i) Any moneys or financial accommodation mentioned or referred to in this Agreement, a Collateral Security or Transaction Document.
- (ii) Any guarantee, indemnity, bond, Account, Transaction Document, negotiable instrument, undertaking or other agreements in writing between the Secured party and the Grantor.
- (iii) Any matter or thing by which the Secured Party is or may become in any manner a creditor of the Grantor or any other Transaction Party.
- (iv) The Account of any person on the order, request, or under the authority of the Grantor, Borrower or any other Transaction Party;

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| <ul style="list-style-type: none"> <li>(v) Anything done or omitted to be done by the Grantor, Borrower or any other Transaction party which gives rise to a payment, expense or loss by the Secured Party;</li> <li>(vi) The Secured party drawing, accepting, endorsing, paying or discounting any order, draft, cheque, promissory note, bill of exchange or other negotiable instrument on behalf of the Grantor, Borrower or any other Transaction Party;</li> <li>(vii) Any bond, guarantee, letter of credit, undertaking or indemnity issued or given by the Secured Party on behalf of the Grantor.</li> <li>(viii) principal, interest and fees payable under Clause 3.4, costs, charges, duties, expenses or payment of liquidated or unliquidated damages for which the Grantor is or at any time becomes so liable under or in connection with this Agreement or a Collateral Security, as a result of a breach of or default under or in connection with this Agreement or a Collateral Security.</li> <li>(ix) stamp duties, financial institutions duties, bank account debits taxes and any other similar duties or taxes paid or payable by the Secured Party:             <ul style="list-style-type: none"> <li>(a) in respect of this Agreement, a Collateral Security or Transaction Document; and</li> <li>(b) in connection with any transactions entered into on account of or on the order, request or under the authority of the Grantor;</li> </ul> </li> <li>(x) Charges, expenses, fees, discounts, exchanges and commissions incurred or charged in accordance with the standard practice of the Secured Party;</li> <li>(xi) Fees and expenses including legal expenses on the higher of a full indemnity or solicitor and own client basis incurred by the Secured Party in connection with:             <ul style="list-style-type: none"> <li>a. The preparation, execution, registration and stamping of;</li> <li>b. Enforcement or attempted enforcement of;</li> <li>c. Variation, release or discharge of; or</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>d. The exercise of any Power under this Agreement, a Collateral Security or Transaction Document.</li> </ul> <p><b>“Australian Dollars”</b> or <b>“\$”</b> - the lawful currency for the time being of the Commonwealth of Australia.</p> <p><b>“Authorised Officer”</b></p> <ul style="list-style-type: none"> <li>(a) a director, company secretary or any class of manager of the Secured Party;</li> <li>(b) a corporate lawyer or a person authorised to act under any general power of attorney of the Secured Party;</li> <li>(c) a solicitor acting on behalf of the Secured Party in regard to the Agreement;</li> <li>(d) any other person whom the Secured Party declares in writing to be an Authorised Officer.</li> </ul> <p><b>“Bank Exchange Rate”</b> - the exchange rate used by the Secured Party to exchange and or convert any currency other than Australian Dollars into Australian Dollars (and vice versa) from time to time</p> <p><b>“Beneficiary”</b> - the recipient of the proceeds of money or benefit under a Credit. Also known as the supplier of the Goods.</p> <p><b>“Business Day”</b> - any day other than a Saturday, Sunday or public holiday in Brisbane.</p> <p><b>“Client Termination Notice Period”</b> - has the meaning given to it in the Letter of Offer.</p> <p><b>“Collateral Security”</b> - the agreements set out in the Letter of Offer and includes the General Security Agreement, Debtor Finance Facility Documents and all agreements which may or in the future be made and which are expressed to be a Collateral Security under this Agreement and all agreements expressed to be or defined as “Collateral Securities” or “Collateral Agreements” in any Collateral Security.</p> <p><b>“Contract of Sale”</b> - a contract entered into by the Grantor for the sale of Goods to the Account Debtor.</p> <p><b>“Corporations Act”</b> - the <i>Corporations Act 2001</i> (Cth).</p> |
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**“Credit”** - includes, without limitation any:

- (a) Documentary Credit or Documentary Collection; and
- (b) Drawdown,

issued or confirmed by the Secured Party or on its behalf at the request or for the account of the Grantor and any commitment by the Secured Party to issue, confirm or give an indemnity relating to such Credit (whether to the issuer of that Credit or otherwise) as such credit or commitment is extended or amended from time to time.

**“Credit Amount”** - the amount, converted to Australian Dollars (or any other currency that is agreed in writing by the Secured Party), which is payable by the Secured Party under a Credit.

**“Debtor Finance Facility Documents”** - Debtor Finance Agreement or any other agreement between the Secured Party and the Grantor concerning the assignment to the Secured Party of debts owing to the Grantor in consideration for the provision of financial accommodation by the Secured Party, dated on or about the date of this Agreement.

**“Documents”** - all drafts, bills, documents of title, transportation documents, insurance policies and other documents relating to Goods, including, without limitation air waybills, bills of lading, certificates of origin, certificates issued by any customs authorities, a certificate of currency of Marine Cargo Insurance, Grantor assessment notices or consignments, export bills and Documentary Credits.

**“Documentary Credit or Documentary Collection”** - an irrevocable letter of credit issued subject to UCP or other Documents issued via the international banking system.

**“Drawdown”** - any payment made by or on behalf of the Secured Party to a third party.

**“Encumbrance”**

- (a) a PPSA Security Interest; and
- (b) any interest held as security for payment of a monetary obligation or the performance of any other obligation, including a mortgage, charge, pledge, lien, encumbrance or hypothecation, security interest, assignment, title retention, preferential right, trust arrangement, contractual right or set-off.

**“Facility Limit”** - the maximum amount which the Secured Party may (but is not obliged to) advance to the Grantor whether pursuant to this Agreement and which is specified in the Letter of Offer.

**“Financial Indebtedness”** - money borrowed or raised (including rentals under finance leases) and interest thereon, any liability under any bill of exchange, debenture note or other security or under any acceptance credit facility, any liability in respect of the acquisition cost of assets or services to the extent payable after the time of acquisition or possession thereof; a guarantee or other assurance against financial loss in respect of any such money borrowed or raised, interest or liabilities and any other arrangement which achieves in substance the same equivalent effect as any of the foregoing.

**“Forward Exchange Cover”** - a forward exchange contract, a foreign currency option or any other foreign currency hedging product that the Secured Party may consider appropriate.

**“General Security Agreement”** - the deed or agreement of that name between the Grantor and the Secured Party entered into on or about the date of this Agreement.

**“Good(s)”** - the goods to which the Documents and the Trade Finance Facility relate.

**“Government Agency”** - any Commonwealth, State, Territory or local government or government of any other country or political subdivision thereof and any minister, department, commission, authority, tribunal, board, agency, or other organ thereof or any delegate or person deriving authority from any of the foregoing.

**“GST”, “GST Law”** - and any other terms used in clauses 14.2 and 14.3 which are defined in the A New Tax System (Goods & Services Tax) Act 1999 have the meanings set out in that Act, any regulations made under that Act and any applicable binding rulings issued by the Commissioner of Taxation.

**“Invoice”** - written evidence of an Account which complies in all regards with the provisions for Tax Invoices under the GST Law and includes, unless the context indicates otherwise, duplicates or other such multiple copies.

**“Issuing or Negotiating Bank”** - the bank that issues any Documentary Credit on behalf of the Secured Party or the bank that the Beneficiary presents the Documents to in the Beneficiary’s country.

**“Letter of Offer”** - the letter of offer between the Secured Party and the Grantor dated on or about the date of this Agreement in respect of the Financial Indebtedness.

**“Location of Records”** - has the meaning given to it in the Letter of Offer.

**“Minimum Term”** - the period which is specified in the Letter of Offer.

**“PPSA Security Interest”** - a security interest as defined in the PPS Act.

**“PPS Law”**

- (a) the Personal Property Securities Act 2009 (Cth) (**PPS Act**);
- (b) the regulations made under the PPS Act; and
- (c) where the context requires, any amendment made to any other legislation as a consequence of the PPS Act, including, without limitation, amendments to the Corporations Act.

**“Related Body Corporate”** - the meaning given in the Corporations Act.

**“Rollover Fee”** - a fee specified in the Letter of Offer and is charged by the Secured Party where part or all of a Trade Bill is allowed by the Secured Party to be rolled for a further specified period.

**“SWCS Base Rate”** - the rate of interest determined by the from time to time and usually published on the Secured Party’s web-site.

**“SWCS Termination Notice Period”** - has the meaning given to it in the Letter of Offer.

**“Secured Personal Property”** - All of the Grantor’s right, title and interest in any present and after acquired property in the following:

- (a) all Goods;
- (b) all Documents;
- (c) all property of the Grantor which come into possession or control of the Secured Party, for custody or any other reason and whether or not in the ordinary course of banking business; and
- (d) all proceeds of the Goods and the Documents.

**“Taxes”** - any tax, levy, charge, impost, duty, fee, deduction, withholding, stamp or transaction duty, financial institutions duty, debit tax, tax, charge or rate which is assessed, levied, imposed or collected by any Government Agency and any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the foregoing.

**“Trade Bill”** - a bill of exchange within the meaning contained in the *Bills of Exchange Act 1909 (Cth)*, s8 which is drawn by the Grantor in accordance with Clause 3.4 (c) and in the form prescribed by the Secured Party from time to time.

**“Trade Finance Fee”** - The amount as defined in the Letter of Offer.

**“Trade Finance Facility”** - the financial accommodation provided by the Secured Party to or at the request of the Grantor, from time to time on the terms and conditions set out in this Agreement and the Letter of Offer.

**“Trade Finance Higher Rate”** - has the meaning given to it in the Letter of Offer.

**“Trade Finance Interest Rate”** - the rate of interest calculated by adding the Margin Percentage specified in the Letter of Offer to the SWCS Base Rate as at the day on which the interest first becomes payable.

**“Transaction Document”** - this Agreement, each Collateral Security and any other document the Secured Party and the Grantor agree is a “Transaction Document” for the purposes of this Agreement.

**“Transaction Party”** - means the Grantor, the Borrower and any other person who gives a Collateral Security.

**“Trust”** - the trust or trusts (if any) of which the Grantor is the trustee, including (without limitation) any trust or trusts indicated in the Letter of Offer.

**“UCP”** - the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits current from time to time.

**“Unutilised Amount”** - any unused or unutilised amounts of the Facility Limit.

## 2.2

### Interpretation

In the Agreement:



- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) if there is more than one person identified as the Grantor, that expression will be construed to refer to, and the obligations of the Grantor under the Agreement will bind, each of them severally and every two or more of them jointly;
  - (c) the expression “**person**” includes an individual, the estate of an individual, a corporation, a Government Agency and an authority or association whether incorporated or unincorporated;
  - (d) a reference to any party includes that party’s executors, administrators, successors, substitutes and assigns, including any person taking by way of novation and, in the case of a trustee includes any substituted or additional trustee;
  - (e) a reference to the Agreement, any Collateral Security or to any other document includes respectively the Agreement, the particular Collateral Security or that other document as amended, varied, novated, supplemented, ratified or replaced from time to time;
  - (f) a reference to any legislation or to any section or provision of it includes any statutory modification or re enactment or any statutory provision substituted for it and all ordinances, by laws, regulations and other statutory instruments issued under it;
  - (g) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
  - (h) words appearing after the word “**including**” do not limit the scope or meaning of words appearing before the word “including”;
  - (i) a reference to a clause is a reference to a clause of the Agreement;
  - (j) a reference to a “**month**” is to a calendar month;
  - (k) where any word or phrase is given a defined meaning any other part of speech or other grammatical form in

respect of such word or phrase has a corresponding meaning;

- (l) all accounting terms used in the Agreement have the meaning given to them under Australian accounting standards and statements of accounting concepts;
- (m) whether or not a Trust is indicated in the Schedule, if the Grantor is the trustee of a Trust, the Grantor is liable under the Agreement in its personal capacity and in its capacity as trustee of the Trust, and every reference in the Agreement to any property, asset, undertaking, matter or thing held by or in any way relating to the Grantor will be construed as extending to and, unless the context indicates a contrary intention, binding on every such property, asset, undertaking, matter or thing that at any time is held by or relates to the Grantor either in its personal capacity or as trustee of the Trust;
- (n) any reference to Grantor or Secured Party is also reference to ‘transferor’ and ‘transferee’ respectively as used in the PPS Act; and
- (o) “after-acquired property” and “proceeds” have the same meaning given to them in the PPS Act.

### 3. CREDIT FOR IMPORTS

#### 3.1 Application for Credit

- (a) The Grantor will, from time to time, request the Secured Party to provide the Grantor with a Trade Finance Facility and issue a Credit on behalf of the Grantor.
- (b) The Grantor acknowledges that any application for a Credit, unless stated to the contrary by the Secured Party will be governed by the terms and conditions of this Agreement.
- (c) The Grantor acknowledges that certain costs, fees and charges, including, without limitation an Establishment Fee in the amount specified in the Letter of Offer, will be incurred by the Secured Party upon the Grantor making an application for Credit and the Grantor undertakes to pay and if applicable, reimburse the Secured Party on demand for all costs, fees, charges and expenses incurred by the Secured



<p>Party under or in connection with an application for Credit by the Grantor notwithstanding that the Secured Party may decline to issue such Credit or does not propose to do so.</p> <p>(d) The Secured Party may in its sole and absolute discretion, increase the Facility Limit upon written application being made by the Grantor. The Grantor agrees that should the Secured Party increase the Facility Limit as requested by the Grantor, the Grantor, must pay to the Secured Party a new Establishment Fee calculated at 1% of the increased Facility Limit less the previous Establishment Fee.</p> <p>(e) The Secured Party may, in its sole and absolute discretion, decrease the Facility Limit at any time, for any reason whatsoever by any Unutilised Amount.</p> <p>3.2 Issue of Credit by the Secured Party</p> <p>(a) The Grantor acknowledges and agrees that:</p> <p>(i) any Credit which the Secured Party may issue on the Grantor's behalf will be issued in accordance with this Clause 3 and subject to such conditions as the Secured Party in its absolute discretion may prescribe; and</p> <p>(ii) nothing in this Agreement obliges the Secured Party to issue any Credit on the Grantor's behalf.</p> <p>(b) If the Grantor requires any form of Credit, the Grantor must complete an application in the form required by the Secured Party from time to time. The application must include all information and documentation referred to in the application form.</p> <p>(c) On receipt of the application, the Secured Party, may, if it is satisfied:</p> <p>(i) as to the information, documentation and terms of the request;</p> <p>(ii) as to the terms of conditions of the Contract of Sale and the purchase contract with the Beneficiary;</p> <p>(iii) that the Debtor Finance Facility Documents is in force and effect and that there are no defaults under the Debtor Finance Facility Documents; and</p>	<p>(iv) that the Amount Owing at the time of the application does not exceed the Facility Limit</p> <p>arrange by itself for a third party bank to issue or pay the Credit</p> <p>(d) The Grantor acknowledges and agrees that the Secured Party has an absolute and unfettered discretion to determine whether or not to arrange the Credit on the basis of the information and documentation provided.</p> <p>3.3 Payments by the Secured Party</p> <p>(a) The Grantor authorises and entitles the Secured Party to pay or give any undertaking to pay at a future date, accept and pay on maturity, or negotiate any amount under the Credit that it believes in good faith to have been properly demanded under the Credit.</p> <p>(b) The Secured Party may restrict negotiations under any Credit to its own offices or to any correspondent or agent of its choice and in such case, the Secured Party is authorised to accept and pay all Documents drawn or purported to be drawn on any such office, correspondent or agent.</p> <p>(c) Subject to the terms of any particular Credit, the presentation of Documents under a Credit will be deemed to be in compliance with their terms if the Documents are accepted by the Issuing or Negotiating Bank.</p> <p>(d) The Grantor acknowledges that the Secured Party is not obliged to notify the Grantor or to seek the Grantor's waiver of any discrepancies before refusing the Documents on a discrepancy. The Grantor further acknowledges that any decision by the Secured Party to seek a waiver at any time does not oblige the Secured Party to seek a waiver at any other time in respect of any other discrepancies.</p> <p>(e) Without limiting clause 3.3 (d), if the Secured Party notifies the Grantor of a discrepancy in the Documents and the Grantor requests the Secured Party or agents or correspondents to:</p> <p>(i) comply with its payments obligations under the Credit, notwithstanding the discrepancy; or</p>
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- (ii) countersign or issue any guarantee or indemnity covering those discrepancies,

the Grantor must comply with its payment obligations notwithstanding the discrepancy.

- (f) The Grantor acknowledges that the Credit is by its nature a separate transaction from any contract between the Grantor and any other party on which the Credit may be based. As such, the Grantor acknowledges that the Secured Party is not obliged to notify the Grantor prior to making a payment or accepting drafts, claims or drawings under the Credit. The Grantor further acknowledges that the Secured Party is entitled to make any payment or accept any draft, claim or drawing under the Credit if it determines that the Documents comply with the terms of the Credit notwithstanding notice from the Grantor of any claim or defence the Grantor may have against the Beneficiary of the Credit.

#### 3.4 Release of Documents and Payment

- (a) The Grantor agrees that the Secured Party will not be required at any time to release any Documents or Goods to the Grantor unless the Grantor has fully discharged its obligations and liabilities to the Secured Party in respect of any Credit, including, without limitation its obligations under Clause 3.4 (b) and 3.4 (c).
- (b) On the same day as the Secured Party pays or is required to pay under or in relation to a Credit (the “**Due Date**”), the Grantor shall become liable to pay to the Secured Party:
  - (i) the Credit Amount;
  - (ii) interest on the Credit Amount from the Due Date until the Credit Amount is paid in full, at the Trade Finance Interest Rate per annum calculated daily;
  - (iii) all costs of and incidental to the transportation and storage of the Goods;
  - (iv) all costs, fees, expenses and charges levied on the Secured Party by any third party in respect of the Credit; and

- (v) a Trade Finance Fee equal to the amount specified in the Letter of Offer;

- (c) If the Grantor does not make payment under Clause 3.4 (b), the Grantor must, if requested to do so by the Secured Party, execute a Trade Bill in favour of the Secured Party as the drawee to pay itself either forthwith or at some other time as may be specified by the Secured Party (the “**Maturity Date**”), by withholding from funds which are available to the Grantor pursuant to the Debtor Finance Facility Documents, the following amounts:

- (i) the Credit Amount;
- (ii) interest on the Credit Amount from the Due Date until the Maturity Date, at the Trade Finance Interest Rate per annum calculated daily;
- (iii) all costs of and incidental to the transportation and storage of the Goods;
- (iv) all costs, fees, expenses and charges levied on the Secured Party by any third party in respect of the Credit; and
- (v) a Trade Finance Fee equal to the amount specified in the Letter of Offer.

- (d) The Grantor agrees that in the event that the Trade Bill referred to in Clause 3.4 (c) above is not paid by the Maturity Date for whatever reason, including, without limitation, the unavailability of funds to the Grantor pursuant to the Debtor Finance Facility Documents, the Secured Party may, in its absolute, unfettered discretion decide to roll-over such Trade Bill and thereby extend its Maturity Date to a future date which the Secured Party shall determine. The Grantor agrees that in the event that the Secured Party rolls-over any unpaid Trade Bill, then the Grantor shall immediately become liable to pay the following:

- (i) a Rollover Fee; and
- (ii) interest on the Credit Amount at the Trade Finance Higher Rate, per annum calculated daily.

- (f) All payments by the Grantor under this Agreement are to be made to the Secured Party in immediately available funds in Australian Dollars not later than 10:00 am (Melbourne time) on the due date to such account as the Secured Party may from time to time designate, or as otherwise agreed between the Secured Party and the Grantor in writing. If the due date for payment is not a Business Day, the relevant payment must be made on the preceding Business Day.
- (g) Unless this Agreement provides otherwise, the Grantor will pay any amount which is due from it to the Secured Party on demand.
- (h) All payments by the Grantor to the Secured Party under this Agreement shall be:
  - (i) free of any set-off or counterclaim; and
  - (ii) without deduction or withholding for any present or future Taxes, unless the Grantor is compelled by law to deduct or withhold the same, in which event payments to the Secured Party shall include such additional amounts as are necessary to enable the Secured Party to receive, after all deductions and withholdings for such Taxes, a net amount equal to the full amount which would otherwise have been payable under this Agreement had no such deduction or withholding been required to be made.

### 3.5 Interest on Overdue Amounts

- (a) Subject to Clause 3.5 (b), the Grantor shall pay the Trade Finance Higher Rate on all amounts which are due and payable by it under or in respect of this Agreement for each day and, if not paid at the end of a 30 day period, shall itself be capitalized and bear interest in accordance with this clause.
- (b) This Clause 3.5 shall not apply to the calculation of interest under Clause 3.4 (b) and Clause 3.4 (c) which shall be payable in accordance with those clauses.

### 3.6 Set-Off

- (a) The Secured Party may set off against any debt due and owing by the Grantor to the Secured Party, including debts due and owing under any Transaction Document, any debt due and owing by the Secured Party to the Grantor, including any money in any currency held by the Secured Party for the account of the Grantor in any place.
- (b) Any of the Grantor's obligations to the Secured Party in a currency other than Australian Dollars may be converted into Australian Dollars at any time at the Secured Party's discretion. The Secured Party may then demand payment from the Grantor using the Bank Exchange Rate for the date of such demand, debit or set-off.

## 4. FORWARD EXCHANGE COVER

The Grantor agrees:

- (a) that in the Secured Party's opinion should the Grantor not have a sufficient foreign exchange risk policy in place the Secured Party may, if the Grantor requires, or if the Secured Party in its sole unfettered discretion elects, procure at any time for the benefit of the Secured Party and at the cost of the Grantor Forward Exchange Cover on any Credit to reduce or obviate the risk involved in a fluctuation in a rate of exchange between the Australia dollar and the currency of the Credit;
- (b) that in the event that the Secured Party procures a contract of forward exchange pursuant to Clause 4(a), the Secured Party may in its absolute discretion, select a date upon which the rate of exchange is determined in respect of such contract;
- (c) that the Secured Party has no liability to the Grantor for any loss or damage of any kind sustained at any time by the Grantor, however arising out of the Forward Exchange Cover or the failure or neglect by the Secured Party for any reason to obtain any contract of forward exchange; and
- (d) to indemnify and keep the Secured Party indemnified from any loss or damage arising from or connected with any Forward Exchange Cover procured by the Secured Party under this Clause.

## 5. TRADE GENERAL TERMS

- (a) Upon payment of a Credit by the Secured Party pursuant to this Clause 3, the Grantor must:
  - (i) without delay, perform any obligations under the Contract of Sale, the fulfilment of which are necessary for the Grantor to acquire a right to payment from the Account Debtor in respect of the Goods;
  - (ii) immediately, upon the Grantor acquiring a right to payment referred to in Clause 5.(a)(i), assign such right to the Secured Party in accordance with the provisions of the Debtor Finance Facility Documents and submit to the Secured Party the Invoice or any other document which evidences such right;
  - (iii) ensure, at the very least, within 30 days of the goods arriving in Australia there is a binding obligation on the Account Debtor to pay for such Goods pursuant to the terms of a legally enforceable Contract of Sale; and
  - (iv) ensure that if there is a cancellation or non take up of the Goods by the Account Debtor for whatever reason, that any future Invoice relating to a sale to any and all Account Debtors pertaining to those Goods must be offered to the Secured Party for purchase under the Debtor Finance Facility Documents.
- (b) The Grantor must reimburse the Secured Party on demand for advances made against any Documents that have not been duly taken up on presentation or in respect of which payment has not been duly made to the Secured Party.
- (c) The Grantor acknowledges that the Secured Party may disclose information about the Grantor to any person making a claim under a Credit.
- (d) The Grantor undertakes to reimburse on demand the Secured Party for the amount of the consignor's or any carrier's invoices in relation to the Goods in Australian Dollar equivalent of the currency of the relevant invoice.

- (e) The Secured Party will not be liable to the Grantor or any other person for any act, delay, or failure to act, on the part of the Secured Party or any other person, in respect of the Documents or the Goods or otherwise for the condition, quantity or value of the Goods.

## 6. GRANT OF PPSA SECURITY INTERESTS

- (a) The Grantor grants in favour of the Secured Party, a PPSA Security Interest in the Secured Personal Property and assign all of its present and after-acquired interests in the Accounts to secure the payment of the Amount Owing to the Secured Party and/or to secure the performance of all of the Grantor's other obligations to the Secured Party at any time.
- (b) The Grantor agrees, that Secured Personal Property now or at any time delivered to or deposited with the Secured Party have been or will be so delivered or deposited by way of pledge as security for payment on demand to the Secured Party of the Amount Owing. In addition, the Grantor assigns to the Secured Party any rights that it may have as the unpaid seller of Goods as security for payment to the Secured Party of the Amount Owing. This pledge and security will be a continuing security, in addition to, not affected by and enforceable despite the existence of any other security held by the Secured Party.
- (c) The Goods must be dealt with by the Grantor in accordance with such instructions as the Secured Party may give to the Grantor from time to time for the protection of the Secured Party's interest in them including, without limitation, keeping the Goods separate from any other property of the Grantor. The Grantor must give the Secured Party such periodical reports and other particulars concerning the Goods or the Documents as the Secured Party may require from time to time.



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| <p>(d) The Grantor authorises the Secured Party to, at the Secured Party's discretion, at any time without notice to the Grantor to enter any premises for the purpose of inspecting or securing possession or custody of the Goods and also to take such steps as it considers necessary or desirable to protect its interests in the Goods. The Secured Party must act reasonably in exercising its rights under this clause.</p> <p>(e) The Grantor authorises the Secured Party to, at any time without notice or demand to the Grantor (and without prejudice to any of its other rights and remedies), cause the Goods (or any part of the Goods), to be landed, stored, transported, insured, or sold (or sold without landing) or otherwise disposed of on such terms and for such consideration, or negotiate or otherwise dispose of the Documents, as the Secured Party considers appropriate, in which circumstance:</p> <ul style="list-style-type: none"> <li>(i) the Secured Party is not liable for any loss suffered by the Grantor as a consequence of such action;</li> <li>(ii) the Grantor must pay to the Secured Party on demand the costs and expenses incurred by the Secured Party in respect of any actual or attempted landing, storage, transportation, insurance, docking, sale or other disposal of the Goods;</li> <li>(iii) the Grantor must do any thing, including endorse, assign, sign, execute and deliver any transfers, deeds or documents (or arrange any such matters) that the Secured Party requires in order to perfect the Secured Party's title to the Goods or otherwise give effect to any proposed landing, storage, insurance, sale or other disposal; and</li> <li>(iv) the Grantor will remain liable for and must pay any deficiency that may remain owing to the Secured Party after the sale or disposal of the Goods.</li> </ul> | <p>(f) The Grantor authorises the Secured Party to, at the Secured Party's discretion, register its interest under this Agreement, or the transaction contemplated by this Agreement, including its interest in the Secured Personal Property, on any registers of security interests, as a purchase money security interest and/or other PPSA Security Interest.</p> <p>(g) The Grantor acknowledges that the Secured Party has given value for that security interest, including by its promises under this Agreement or by providing any financial accommodation such as the Credit to the Grantor.</p> <p>(h) The PPSA Security Interest in the Secured Personal Property referred to in clause 6(a) is effective and attaches to:</p> <ul style="list-style-type: none"> <li>(i) presently existing property when the Grantor signs this Agreement or any earlier time as specified in section 20(2) of the PPS Act; and</li> <li>(ii) after-acquired property, as soon as the Grantor acquires any right or interest in that property.</li> </ul> |
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## 7. TRADE UNDERTAKINGS

The Grantor undertakes that:

- (a) the Documents and the Goods will at all times be in the sole beneficial ownership of the Grantor, free from any Encumbrances and claims, except for the pledge in favour of the Secured Party;
- (b) it will insure the Goods for their full value against all insurable risks and in such manner as the Secured Party may require and, if so requested by the Secured Party, will arrange for the Secured Party's interest in the Goods to be endorsed on the relevant policy and direct the insurer to make payment directly to the Secured Party in respect of any damage or loss;
- (c) it will make payment to the Secured Party of all insurance proceeds received by it in respect of Goods and, pending payment, will hold such proceeds on trust for the Secured Party;

- (d) it will endorse the Documents in favour of the Secured Party, deposit the Documents with the Secured Party or to its order and note in its records the interest of the Secured Party in the Documents and the Goods;
- (e) it will inform the Secured Party of any event of which it become aware that can adversely affect the ability of a buyer to complete the purchase of Goods;
- (f) it will procure the prompt release of the Secured Party from any guarantee, indemnity or other commitment that the Secured Party may have provided in respect of the Documents and/or Goods;
- (g) it will not nor will it attempt to encumber, transfer, sell, dispose of, part with possession or control of, or otherwise deal with any Secured Personal Property except as directed by or with the prior written consent of the Secured Party;
- (h) it will keep the Goods separate from any other property of the Grantor or other persons;
- (i) it will not permit the Goods to be processed or altered without the prior written consent of the Secured Party;
- (j) it will not take any action that might prejudice the value of the Goods or the effectiveness of this Agreement;
- (k) it will comply with all laws and pay all charges, duties and Taxes relating to the Goods and the export or import of Goods as well as all storage charges or freight and other amounts payable under any contract of carriage. The Grantor indemnifies the Secured Party in respect of any costs or other liabilities that may arise as a consequence of the importation of the Goods that may be prohibited by law from import into the country of destination;
- (l) it will not cause or permit any person other than the Secured Party to have possession or control of any Secured Personal Property unless otherwise agreed to by the parties;

- (m) if required by the Secured Party, it will ensure that the holder of any other Encumbrance enters into a priority agreement regulating the priority of this Agreement and the other Encumbrance on terms acceptable to the Secured Party;
- (n) it will take all steps to ensure that any Encumbrance over or relating to the Secured Personal Property granted in favour of the Grantor is protected and validly registered on any relevant register; and
- (o) it will perfect and maintain continuous perfection of any PPSA Security Interests that it may at any time hold over or relating to the Secured Personal Property.

## **8. AUTHORISATIONS and APPOINTMENTS**

### **8.1 Authorisations**

The Grantor authorises the Secured Party:

- (a) to appoint any other person as its correspondent, nominee or agent in connection with the Trade Finance Facilities and the Secured Party may delegate any of its powers under this Agreement to such person;
- (b) to take such steps and to make such payments as it considers necessary, at the cost of the Grantor, to remedy any default by the Grantor in compliance with any of its obligations under this Agreement;
- (c) to land, store and insure the Goods and to arrange for their shipment and to inspect the Goods at any time;
- (d) to notify any other person of its interest in the Documents and the Goods; and
- (e) to make payment immediately when due or on demand under any Documentary Credit, guarantee, indemnity, or other commitment that the Secured Party may have provided in respect of Documents or Goods without reference to or further authority from the Grantor or any other person and without enquiry as to the validity or otherwise of any document, claim or demand, (irrespective of any dispute by the Grantor), and payment by the Secured Party will be binding on the Grantor.



## 9. LIMITATION ON LIABILITY AND INDEMNITIES

### 9.1 Limitation of liability

The Secured Party shall not be liable to the Grantor or any other person (including consequential loss or damage) for any act, delay or failure to act, on the part of the Secured Party or any other person, in respect of the Documents or the Goods or otherwise for the condition, quantity or value of the Goods unless due to the negligent or wilful default of the Secured Party, its officers, or employees.

## 10. REPRESENTATIONS AND WARRANTIES BY THE GRANTOR

The Grantor represents and warrants to the Secured Party that:

- (a) **(power and authority)**: the Grantor has full power and authority to enter into and perform its obligations under the Agreement;
- (b) **(internal authorisations)**: the Grantor has taken all action necessary to authorise the execution, delivery and performance of the Agreement and no further approval or consent from any person is required;
- (c) **(legal obligations)**: the Agreement constitutes legal, valid and binding obligations of the Grantor and are enforceable against the Grantor in accordance with its terms;
- (e) **(no breach of law)**: the signing and performance of the Agreement by the Grantor does not, and will not violate, in respect of any provision of:
  - (i) any law, regulation, authorisation, ruling, consent, order, decree or requirement of any Government Agency; or
  - (ii) any Encumbrance, any document setting out the terms of any Financial Indebtedness or any other document which is binding upon the Grantor or any of its assets;
- (f) **(no breach of other documents)**:
  - (i) the Grantor is not in breach of any Encumbrance, any document setting-out the terms of any Financial Indebtedness or any other document binding on the Grantor or any of its assets; and
  - (ii) nothing has occurred which is or with the giving of notice, lapse of time, satisfaction of some other condition, or any combination of the above, will be, an event (whatever called) which will cause or enable the acceleration of any payment to be made under, of the enforcement, termination or rescission of, any Encumbrance, any document setting-out the terms of any Financial Indebtedness or any other document binding on the Grantor or its assets;
- (g) **(supply of information)**: the Grantor has disclosed fully to the Secured Party all information which the Grantor has and which the Secured Party may regard as being relevant to the Secured Party's decision of whether or not to enter into the Agreement or any application for Credit;
- (h) **(information correct)**: all information, documents, agreements, schedules, certificates, statements or other materials provided to the Secured Party by the Grantor or the Grantor's servants or agents for any purpose under or related to the Agreement including for the purpose of obtaining credit approval or any application for Credit from the Secured Party is and will remain true and correct in all material respects and will not be misleading;
- (i) **(solvency of Grantor)**: the Grantor is not insolvent and will remain solvent and no application or order has been made or effective resolution passed for the winding-up of the Grantor and no receiver, manager, receiver and manager, trustee, controller, administrator or similar officer has been appointed over the Grantor's undertaking, property or assets or any part thereof;
- (j) **(accounts)**: the most recent accounts of the Grantor:
  - (i) have been prepared in accordance with Australian accounting standards; and

- (ii) give a true and fair view of the financial position of the Grantor as at the date to which such accounts relate and the results of the Grantor's operations for the accounting period ending on that date and since that date there has been no material change in the financial condition of the Grantor; and

- (k) **(conduct of business):** the Grantor will during the currency of the Agreement, properly, efficiently, lawfully and diligently conduct its business, providing and dedicating such resources and retaining such personnel and employing such agents as may be necessary to enable its business to be successfully and lawfully operated.

## 10.2 Repetition

Each representation and warranty of the Grantor contained in this clause 10 is repeated to the Secured Party on each day during the term of the Agreement with reference to the facts and circumstances then existing, as if made on each such day.

## 11. EVENTS OF DEFAULT

An Event of Default will occur, whether or not the occurrence of that event is beyond the control of the Grantor or any other person, if, in actual fact or in the reasonable opinion of the Secured Party:

- (a) **(failure to pay):** the Grantor does not pay at or before the due time on the due date and in the specified manner, any amount payable by it under this Agreement or a Collateral Security;
- (b) **(failure to sell and assign):** the Grantor defaults in fully performing, observing and fulfilling Clause 5(a) of this Agreement;
- (c) **(failure to comply):** the Grantor defaults in fully performing, observing and fulfilling any provision of this Agreement or a Collateral Security other than a provision requiring the payment of money as described in paragraph (a) and if, in the opinion of the Secured Party, that default is capable of remedy, it has not been remedied within ten (10) Business Days of the occurrence of the default;

- (d) **(representation and warranty):** any representation, warranty or statement made, repeated or deemed to be made or repeated by the Grantor or any other party under or in connection with the Agreement or any Collateral Security is proved to be untrue in any material respect when made, repeated or deemed to be made or repeated;

- (e) **(default under transactions):**

- (i) any Financial Indebtedness of the Grantor becomes, or becomes capable of being declared, prematurely due and payable as a result of a default or an event of default (howsoever described) thereunder;
- (ii) any Financial Indebtedness of the Grantor or any sum payable in respect thereof is not paid when due;
- (iii) the Grantor fails to respond adequately to a statutory demand made under Part 5.4 of the Corporations Act;
- (iv) the Grantor defaults in fully performing, observing or fulfilling any of the terms, covenants and conditions of any Encumbrance relating to any of its assets (including the General Security Agreement) and such default is not rectified within any applicable grace period provided for under the Encumbrance or any Encumbrance relating to any asset of the Grantor otherwise becomes enforceable;
- (v) any Encumbrance which is a floating security over any asset of the Grantor crystallises into, or otherwise becomes, a fixed or specific security; or
- (vi) a mortgagee takes possession of any of the property or assets of the Grantor;
- (f) **(default under Collateral Security):** there is a default under any Collateral Security;
- (g) **(appointment of receiver, administrator, etc):** a receiver, manager, receiver and manager, trustee, controller, administrator or similar officer is appointed in respect of the Grantor or any asset of the Grantor;

- (h) (**appointment of liquidator**): a liquidator or provisional liquidator is appointed or is proposed to be appointed in respect of the Grantor;
- (i) (**application or resolution for winding up**): any application (not being an application withdrawn or dismissed within five (5) Business Days) is made to a court for an order, or an order is made, or a meeting is convened, for the purpose of:
- (i) appointing a person referred to in paragraph (g) or (h) above;
  - (ii) winding up of the Grantor; or
  - (iii) proposing or implementing a scheme of arrangement in respect of the Grantor;
- (j) (**moratorium or assignment**): a moratorium of any debts of the Grantor or an official assignment or a composition or an arrangement (formal or informal) with the Grantor's creditors or any similar proceedings or arrangement by which the assets of the Grantor are subjected conditionally or unconditionally to the control of the Grantor's creditors is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within five (5) Business Days;
- (k) (**deemed insolvency**): the Grantor becomes, or admits in writing that it is, or is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts;
- (l) (**execution or order**): any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the Grantor for an amount of \$50,000 or greater and is not discharged in full by payment by the Grantor within five (5) Business Days of it being made, levied or issued;
- (m) (**cessation of business**): the Grantor ceases, or threatens to cease, to carry on all or a substantial part of its business;
- (n) (**trading at a loss**): the Grantor trades at a loss and as a result the rights of the Secured Party under the Agreement or the General Security Agreement are put at risk;
- (o) (**void or voidable**): the Agreement, the General Security Agreement or any Collateral Security is, becomes or is claimed by a person (other than the Secured Party) to be, void, voidable or unenforceable in whole or in part;
- (p) (**illegality**): at any time it is unlawful for:
- (i) the Grantor to perform any of its obligations under the Agreement or the General Security Agreement;
  - (ii) any party (other than the Secured Party) to perform any of that party's obligations under a Collateral Security;
- (q) (**transfer**): the Grantor transfers or purports to transfer:
- (i) any of its rights and/or obligations under the Agreement or any Collateral Security without the prior written consent of the Secured Party; or
  - (ii) any Transferred Accounts, Documents, Goods or the proceeds thereof to a person other than the Secured Party;
- (r) (**Encumbrance**): the Grantor creates or purports to create an Encumbrance over or in respect of a Transferred Account, Documents, Goods or the proceeds thereof or any assets of the Grantor without obtaining the prior written consent of the Secured Party;
- (s) (**material adverse effect**): the Grantor does anything or fails to do anything which has a material adverse effect upon the value or collectability of a Transferred Account, Documents, Goods or the proceeds thereof; or
- (t) (**accounting records**): any of the accounting records which the Grantor is obliged to keep under the Agreement and which the Secured Party may inspect and copy under clause 16.19 prove to be inaccurate in a material particular.

## 12. TERMINATION

### 12.1 Termination At or After Minimum Term

Subject to clauses 12.2 and 12.4, at any time at or after the Minimum Term:

- (a) (**The Secured Party**): the Secured Party may terminate the Agreement by giving a written notice which equates to at least the SWCS Termination Notice Period to the Grantor; and

<p>(b) <b>(Grantor):</b> the Grantor may terminate the Agreement by giving a written notice which equates to at least the Client Termination Notice Period to the Secured Party.</p>	<p>(b) render accounts to Account Debtors in respect of the Documents or Goods;</p>
<p>12.2 Event of Default</p> <p>(a) the Secured Party may terminate the Agreement at any time following the occurrence of any of the following:</p> <ul style="list-style-type: none"> <li>(i) an Event of Default; or</li> <li>(ii) Encumbrance in favour of the Secured Party arising under this Agreement or any Collateral Security becomes immediately enforceable.</li> </ul> <p>(b) If the Secured Party terminates the Agreement under clause 12.2(a), the Secured Party will provide notice of termination to the Grantor.</p>	<p>(c) in respect of the Documents or Goods:</p> <ul style="list-style-type: none"> <li>(i) demand payment from an Account Debtor;</li> <li>(ii) take steps preliminary to the commencement of proceedings against an Account Debtor;</li> <li>(iii) initiate and conduct proceedings against an Account Debtor before any Court or Tribunal (including appeals);</li> <li>(iv) defend any action brought by an Account Debtor;</li> <li>(iv) discontinue proceedings;</li> <li>(v) enter into any kind of settlement or compromise; and</li> <li>(vii) receive the proceeds from any of the above,</li> </ul>
<p>12.3 Accrued Obligations</p> <p>The termination of the Agreement under this clause 12 will not relieve the Grantor of its obligations in respect of the Agreement. To this end, the Grantor will be liable in respect of those obligations as if the terms and conditions of the Agreement remained in full force and effect (including the obligation to pay the Amount Owing).</p>	<p>and otherwise act as though the Secured Party were the Grantor and the Transferred Account had not been assigned to the Secured Party;</p>
<p>12.4 Acknowledgement by the Grantor</p> <p>Notwithstanding any other provision of this Agreement or any Collateral Security to the contrary, the Grantor and each other signatory to this Agreement, acknowledge and agree that the Secured Party has an absolute and unfettered discretion to:</p> <ul style="list-style-type: none"> <li>(a) issue or arrange any Credit;</li> <li>(b) decrease the Facility Limit by any Unutilised Amount;</li> <li>(c) to refuse to allow utilisation under the Trade Finance Facility; and</li> <li>(d) issue a Trade Bill.</li> </ul>	<p>(d) endorse the name of the Grantor on any remittance (if payable to the Grantor) and to sign in and indorse the name of the Grantor on any Invoice, freight bill, bill of lading, storage receipt, warehouse receipt, or any other document in respect of the Goods, and to sign in the name of the Grantor on any notice which the Secured Party may give to the Account Debtors; and</p>
<p><b>13. POWER OF ATTORNEY</b></p> <p>13.1 Grant</p> <p>The Grantor irrevocably appoints the Secured Party and each of its Authorised Officers, severally, as the Grantor's attorney with the power to:</p> <ul style="list-style-type: none"> <li>(a) resolve or attempt to resolve any dispute between the Grantor and an Account Debtor which the Secured Party has been notified of;</li> </ul>	<p>(e) if the Grantor fails to perform any of its agreements, undertakings or obligations under the Agreement, to itself perform or cause performance of such agreement, undertaking or obligation.</p> <p>(f) endorse the name of the Grantor on any remittance (if payable to the Grantor) and to sign in and indorse the name of the Grantor on any Invoice, freight bill, bill of lading, storage receipt, warehouse receipt, or any other Document;</p> <p>(g) if the Grantor fails to perform any of its agreements, undertakings or obligations under the Agreement, to itself perform or cause performance of such agreement, undertaking or obligation, including, without limitation, the execution of a Trade Bill in accordance with Clause 3.4</p>



### 13.2 Grantor Will Assist

In furtherance of the powers granted under this clause 13:

- (a) the Grantor will assist and co-operate fully with each attorney and provide such facilities which an attorney may reasonably request;
- (b) each attorney will have the full power and authority to use and to act in the Grantor's name;
- (c) every act or omission of an attorney made pursuant to this power of attorney will be at the Grantor's financial expense;
- (d) the Grantor ratifies and confirms now and for the future all actions lawfully undertaken by or on behalf of any attorney under this power; and
- (e) the Grantor declares that this power will continue in force until all actions taken under it have been completed, notwithstanding the termination of the Agreement or any of the agreements or arrangements to which it refers.

## 14. EXPENSES AND TAXES

### 14.1 Expenses

The Grantor will reimburse the Secured Party, on demand, and keep the Secured Party indemnified against, all expenses (including legal costs and disbursements on a solicitor/own client basis) incurred by the Secured Party in connection with:

- (a) **(preparation)**: the preparation and execution of the Agreement, the Collateral Securities, statutory declarations and all other related or ancillary documents and any subsequent documents; and
- (b) **(enforcement)**: the enforcement, attempted enforcement, exercise or preservation of any rights under the Agreement and the Collateral Securities, including any expenses incurred in the evaluation of any matter of material concern to the Secured Party.

### 14.2 Taxes (excluding GST)

- (a) **(Payment of all Taxes (excluding GST))**: The Grantor agrees to pay all (excluding GST) Taxes which may be payable to or required to be paid by any Government Agency or determined to be payable in connection with the execution, delivery, performance or enforcement of the Agreement, the Collateral Securities or any Transferred Account.
- (b) **(Indemnity)**: The Grantor shall indemnify and keep indemnified the Secured Party against any loss or liability incurred or suffered by the Secured Party as a result of the delay or failure by the Grantor to pay such Taxes.

### 14.3 Goods & Services Tax

If any supply made under the Agreement is or is deemed to be a taxable supply, the party providing any consideration for that taxable supply under provision of the Agreement ("**Agreed Amount**") will at the same time pay a separate, additional amount equal to the GST payable on that taxable supply, taking into account that the Agreed Amount is exclusive of GST.

## 15. GENERAL INDEMNITY

### 15.1 Indemnity

The Grantor shall indemnify and keep indemnified the Secured Party, its Authorised Officers, agents and employees on demand against any loss, liabilities, claims, costs and damages of any kind which may be incurred by any of them and all actions or proceedings which may be brought by or against them, arising:

- (i) as a result of the Grantor's breach of any of its obligations under the Agreement; and/or
- (ii) directly or indirectly out of this Agreement and the exercise of the powers and rights of the Secured Party under this Agreement, unless due to the negligence or wilful default of the Secured Party, its officers or employees.

## 15.2 Currency indemnity

If a judgment or order is rendered by any court or tribunal for the payment of any amounts owing to the Secured Party under any Transaction Document or for the payment of damages in respect of any breach of any Transaction Document or under or in respect of a judgement or order of another court or tribunal for the payment of such amounts or damages and the judgment or order is expressed in a currency ("**Judgment Currency**") other than Australian Dollars ("**Domestic Currency**") the Grantor must indemnify and hold harmless the Secured Party against any deficiency in terms of the Domestic Currency in the amounts received by the Secured Party arising or resulting from any variation as between:

- (i) the rate of exchange at which the Secured Party bona fide at the time the judgment or order is rendered is able in accordance with its usual market practice to purchase the Domestic Currency with the Judgement Currency; and
- (ii) the rate of exchange at which the Secured Party is able in accordance with its usual market practice to purchase the Domestic Currency with the amount of the Judgment Currency actually received by the Secured Party.

## 16. MISCELLANEOUS

### 16.1 Governing Law

The parties agree that the laws of Queensland governs the Agreement, the security interest created under the Agreement, the validity, the perfection and the effect of perfection or non-perfection of the Security Interest created under the Agreement. The parties also agree to submit to the jurisdiction of the Courts of the State of Queensland and any Court which may hear appeals from them.

### 16.2 Moratorium Legislation

To the fullest extent permitted by law, the provisions of all legislation whether existing now or in the future operating directly or indirectly:

- (a) to lessen or otherwise to vary or affect in favour of the Grantor or the another party to a Collateral Security, any obligation under the Agreement or a Collateral Security (as the case might be); or
- (b) to delay or otherwise prevent, prejudicially or affect the exercise of any rights or remedies conferred on the Secured Party under the Agreement or a Collateral Security (as the case might be),

are hereby expressly waived, negated and excluded.

### 16.3 Certificate of the Secured Party

A certificate in writing signed by an Authorised Officer of the Secured Party certifying the amount payable by the Grantor under the Agreement or a Collateral Security or stating any other fact, matter or thing relating to the Amount Owing or the Agreement is prima facie correct and binding on the Grantor.

### 16.4 Variation

- (a) (**Variation**): Subject to clause 16.4(c), the Secured Party may at any time and without the prior consent of the Grantor vary the terms and conditions of the Agreement in any way and such variation will be binding upon the Grantor.
- (b) (**Notice**): the Secured Party will provide written notice to the Grantor of any variation of the Agreement which the Secured Party makes under clause 16.4(a) and, subject to clause 16.4(c), that variation will take effect from the time that the Grantor receives the notice.
- (c) (**Termination**): However, the variation will be of no effect if, within five (5) Business Days of receiving the notice referred to in clause 16.4(b), the Grantor sends a notice of termination of the Agreement to the Secured Party. This notice of termination (which the Secured Party may treat as being irrevocable) is to be treated as if it were a notice of termination issued by the Grantor under clause 12.1.



<p><b>16.5 Notices</b></p> <p>Every notice or other communication to be given or made under or arising from the Agreement:</p> <ul style="list-style-type: none"> <li>(a) must be in writing (including electronically);</li> <li>(b) must be signed by a person duly authorised to do so by the sender;</li> <li>(c) will be deemed to have been duly given or made to a person if delivered or posted by prepaid post to the addresses in the Schedule or sent by facsimile to the facsimile number (or email address) detailed in the Letter of Offer (or to any other address or facsimile number as is notified in writing by that person to the other parties from time to time); and</li> <li>(d) will be deemed to be given or made: <ul style="list-style-type: none"> <li>(i) (in the case of prepaid post) on the fifth (seventh, if posted to or from outside Australia) day after the date of posting;</li> <li>(ii) (in the case of delivery by hand) on delivery;</li> <li>(iii) (in the case of facsimile) on receipt of a transmission report confirming successful transmission; and</li> <li>(iv) (in the case of email) upon acknowledgement of receipt by the addressee.</li> </ul> </li> </ul> <p><b>16.6 Continuing Obligation</b></p> <p>The Agreement constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation, or any other matter or thing. Without limiting the generality of the foregoing each indemnity in the Agreement is a separate additional and continuing obligation and will survive the discharge of the Agreement.</p> <p><b>16.7 Severability</b></p> <p>Any provision of the Agreement that is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions.</p>	<p><b>16.8 Assignments by the Secured Party</b></p> <p>The Secured Party may at any time assign, grant an Encumbrance over or otherwise transfer all or any part of its rights or obligations under the Agreement to another person and may disclose to a proposed assignee or transferee information in the possession of the Secured Party relating to the Grantor and, subject to compliance with any privacy laws.</p> <p><b>16.9 Assignments by the Grantor</b></p> <p>The Grantor cannot assign any of its rights under the Agreement without the prior written consent of the Secured Party.</p> <p><b>16.10 Successors and Assigns</b></p> <p>The Agreement is binding on and enures to the benefit of each party to it and that party's respective successors and permitted assigns.</p> <p><b>16.11 Waiver</b></p> <p>A failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, remedy, power or privilege under the Agreement will not in any way preclude or operate as a waiver of any further exercise or enforcement thereof or the exercise or enforcement of any other right, remedy, power or privilege under the Agreement or provided by law.</p> <p><b>16.12 Consents and Approvals</b></p> <p>Where any act, matter or thing referred to in the Agreement depends on the consent or approval of the Secured Party, then unless expressly provided otherwise such consent or approval may be given or withheld in the absolute and unfettered discretion of the Secured Party and may be given subject to such conditions as the Secured Party thinks fit in its absolute and unfettered discretion.</p> <p><b>16.13 Waivers, Consents and Approvals to be in Writing</b></p> <p>Any waiver, consent or approval given by the Secured Party under the Agreement will only be effective and will only bind the Secured Party if it is given in writing, or given verbally and subsequently confirmed in writing.</p> <p><b>16.14 Complete Blanks and Date Documents</b></p> <p>The Secured Party may complete any blanks in and date any document that is relevant to the Agreement (including, without limitation, the Agreement).</p>
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<p>16.15 No Inferences Against Drafting Party</p> <p>In the interpretation of the Agreement, no rules of construction will apply to the disadvantage of a party on the basis that that party, or another person on behalf of that party, drafted the Agreement or any part of the Agreement.</p> <p>16.16 Attorneys</p> <p>Each attorney who executes the Agreement on behalf of a party declare that he or she has no notice of:</p> <ul style="list-style-type: none"> <li>(a) the revocation or suspension of the power of attorney granted to him or her;</li> <li>(b) the revocation or suspension of the power of attorney granted to every other attorney who executes the Agreement on behalf of a party; and</li> <li>(c) the death of the party.</li> </ul> <p>16.17 Time of the Essence</p> <p>Time is of the essence in respect of the Grantor's obligations under the Agreement.</p> <p>16.18 Counterparts</p> <p>This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same document.</p> <p>This Agreement is binding on a party (the <b>Bound Party</b>) upon the receipt by any other party (the <b>Recipient</b>) of a counterpart executed by the Bound Party and sent by facsimile machine or any other electronic means.</p> <p>The Recipient may treat an executed copy of a counterpart sent by facsimile machine or any other electronic means as an original executed counterpart.</p> <p>In this clause, the phrase "receipt by any other party" includes receipt by that party's solicitors.</p> <p>16.19 Inspection</p> <ul style="list-style-type: none"> <li>(a) The Secured Party may, from time to time, inspect, check, make copies of or extracts from the accounting books and records, orders and original correspondence relating to the Documents or Goods, and the Grantor must make available to the Secured Party its accounting books and records, orders, original correspondence and files relating to the Documents or Goods at any time for the purpose of inspection and copying.</li> </ul>	<ul style="list-style-type: none"> <li>(b) For the purposes of clause 16.19(a), the Grantor permits the Secured Party and any person authorised by the Secured Party to enter, without notice at all reasonable times, upon any land and/or building which the Grantor may occupy.</li> <li>(c) The Grantor agrees to keep all records concerning the Documents or Goods at the Location of Records and if such place of record keeping is changed to promptly notify the Secured Party of details of that new place.</li> </ul> <p>16.20 Exchange Rate</p> <p>If for the purposes of the Transaction Documents it is necessary to determine the equivalent of one currency ("<b>Second Currency</b>") in another currency ("<b>Original Currency</b>") the equivalent amount will be determined as the amount in the Original Currency that would be required to purchase the face amount of the Second Currency at the spot rate of exchange for the purchase of the Second Currency with the Original Currency quoted by the Secured Party for equivalent amounts at or about 11.00am in Brisbane on the day or one day before the date the payment is made or received by the Secured Party.</p> <p>16.21 Contracting out of certain PPS Act provisions</p> <ul style="list-style-type: none"> <li>(a) The Grantor waives all of its right to receive and the requirements for the Secured Party to provide the Grantor any notice or document under the PPS Act (including notice of a verification statement) unless the notice or document concerned cannot be excluded under the PPS Act.</li> <li>(b) To the extent it is lawful to do so the Grantor waives any right to be given or any obligation of the Secured Party to give any information, notice or document under any legislation that applies to the Secured Personal Property, this Agreement or the Grantor.</li> </ul> <p>16.22 Disclosure and confidentiality</p> <ul style="list-style-type: none"> <li>(a) Subject to clause 16.22(b), neither party may disclose: <ul style="list-style-type: none"> <li>(i) information of a kind referred to in section 275(1) of the PPS Act; or</li> <li>(ii) the existence or content of any Transaction Document.</li> </ul> </li> </ul>
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- (b) A party may disclose information or documents referred to in clause 16.22(a) as follows:
- (i) in the case of the Secured Party:
    - a. in assigning, transferring, enforcing or otherwise contracting with another in connection with this Agreement or a Transaction Document (or seeking to do any of the foregoing);
    - b. in a proceeding arising out of or in connection with this Agreement or a Transaction Document;
    - c. to the extent that disclosure is regarded by the Secured Party as necessary to protect its interests; or
    - d. If an Event of Default has occurred and is subsisting:
  - (ii) if required under a binding order of a Government Agency or any procedure for discovery in any proceedings;
  - (iii) if required under any law or any administrative guideline, directive, request or policy whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the practice of responsible bankers or financial institutions similarly situated;
  - (iv) as required or permitted by a Transaction Document;
  - (v) to its legal advisers and its consultants;
  - (vi) to a ratings agency or to a potential assignee, transferee or sub-participant or to any person with whom the Secured Party may enter into a transaction, including a securitisation; or
  - (vii) with the prior consent of the other party, which must not be unreasonably withheld.
- (c) The Grantor consents to any disclosure of information or documents made in accordance with this clause 16.22.

- (d) Clause 16.22(a) does not require the Secured Party to disclose any information of the kind referred to in section 275(a) of the PPS Act.
- (e) This clause 16.22 survives the termination of this document.

#### 16.23 Further assurances

- (a) The Secured Party may, by notice to the Grantor at any time, require the Grantor to do any or all of the following things:
  - (i) take all steps, provide information (including without limitation serial numbers relating to any of the Goods), produce documents and obtain consents;
  - (ii) execute any notice, consent, document or amendment to this document or a Transaction Document;
  - (iii) execute and deliver to the Secured Party, transfer forms in relation to any of the Secured Property (undated and blank as to transferee and consideration); or
  - (iv) do any other thing, that the Secured Party considers necessary or desirable to:
  - (v) ensure that this document or any Transaction Document or any Security Interest arising under it, is enforceable;
  - (vi) effect or complete the provisions of each Transaction Document;
  - (vii) stamp, protect, perfect, record, or better secure the position of the Secured Party under this Agreement or any Transaction Document in any relevant jurisdiction;
  - (viii) obtain or preserve the priority position of the Secured Party contemplated by this Agreement; or
  - (ix) overcome any defect or adverse effect arising from the PPS Law.
- (b) The Grantor must:
  - (i) comply with the requirements of a notice under clause 16.23(a) within the time stated in the notice at the cost and expense of the Grantor;

- (ii) reimburse the costs of the Secured Party in connection with anything the Grantor is required to do under this clause 16.23; and
  - (iii) promptly notify the Secured Party of any change to information that it provides to the Secured Party under this clause 16.23.
- (c) Any new document that the Grantor is required to sign under this clause 16.23 constitutes a Transaction Document.