

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Standard Terms, unless the context or subject matter otherwise requires:
- (a) **"Attaches"** has the meaning given to it in the PPSA;
 - (b) **"Australian Consumer Law"** means the Australian Consumer Law as contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
 - (c) **"Claim"** means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, Liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent and **"Claims"** has a corresponding meaning;
 - (d) **"Collateral Document"** means any Encumbrance, deed or instrument that is supplemental or collateral to the Standard Terms which is intended to provide collateral security (including, without limitation, by means of assignment) for the payment of the Secured Money;
 - (e) **"Company"** means RDO Equipment Pty Ltd ABN 58 060 286 759, its related bodies corporate as defined in the Corporations Act and includes the brands operated by RDO Equipment Pty Ltd and its related bodies corporate, including Vanderfield, Vermeer and RDO;
 - (f) **"Company's Agents"** means the employees, officers, contractors, subcontractors, servants, agents, representatives and related parties of the Company;
 - (g) **"Consequential Loss"** means any loss, damage or liability in contract, tort (including negligence) or under statute which is either consequential loss, indirect or remote or abnormal or unforeseeable loss, loss of revenue, loss of goodwill, loss of profits, loss of actual or anticipated savings, loss of reputation, lost opportunities, wasted overheads, business interruptions, loss of production, loss of product or loss of use, any exemplary or punitive damages of any kind or any similar loss whether or not in the reasonable contemplation of the parties;
 - (h) **"Consumer"** has the meaning given to it in section 3 of the Australian Consumer Law;
 - (i) **"Contract"** means these Standard Terms and the Order.
 - (j) **"Corporations Act"** means the *Corporations Act 2001* (Cth);
 - (k) **"Customer"** means any partnership, firm, body corporate, organisation, trust or other person or entity that purchases or otherwise acquires Goods from the Company;
 - (l) **"Customer's Agents"** means the employees, officers, contractors, subcontractors, servants, agents, representatives and related parties of the Customer;
 - (m) **"Customer's Premises"** means each of the following:
 - (i) any premises owned, used or occupied by the Customer for any purpose; and
 - (ii) any premises on which any Secured Property is stored or located;
 - (n) **"Default Event"** has the meaning given in clause 10.1;
 - (o) **"Delivery Costs"** means costs, expenses and charges incurred by the Company in connection with the delivery of Goods to the Customer, including but not limited to freight costs and insurance charges;
 - (p) **"Dispose of"** means:
 - (i) sell, transfer, assign, alienate, surrender, dispose of, sub-let, deposit, part with possession of, or lease; and
 - (ii) enter into any agreement or arrangement to do or allow any of the things referred to in subclause (i) of this definition;
 - (q) **"Eligible Products"** means any products that the Company offers to buy back or trade back from the Customer from time to time;
 - (r) **"Encumbrance"** means:

- (i) any Security Interest, mortgage, charge, debenture, bill of sale, lien, pledge, trust, writ, warrant, retention of title, security, pledge, deposit of title, security, option to acquire, lease, licence, caveat, preferential interest, preferential right, trust arrangement or other estate, interest, claim or arrangement (including, without limitation, any set-off or "flawed-asset" arrangement) having the same or equivalent commercial effect as a grant of security relating to property (whether real or personal); and
- (ii) any agreement or document to create or give any arrangement referred to in subclause (i) of this definition;
- (s) **"Event of Force Majeure"** means the occurrence of an event or circumstances beyond the reasonable control of the Company including (without limitation):
 - (i) a war (declared or undeclared), terrorist attack, insurrection, civil commotion, military action, or an act of sabotage;
 - (ii) a strike, lockout or industrial action, dispute or disturbance of any kind;
 - (iii) an act of a government or a Government Authority;
 - (iv) an act of God, flood, drought, earthquake or other natural disaster;
 - (v) a storm, tempest, fire, flood, earthquake or other natural calamity;
 - (vi) nuclear, chemical or biological contamination, or sonic boom;
 - (vii) collapse of buildings, fire, explosion or accident;
 - (viii) an epidemic or pandemic or public health crisis;
 - (ix) cybercrime, cyber incidents and data breaches; or
 - (x) accidents breakdowns and plant shutdowns;
- (t) **"Financing Statement"** has the meaning given to it in the PPSA;
- (u) **"Goods"** means goods, equipment and other items (in each case as described in the Order) which the Company has supplied (or has agreed to supply) to the Customer (including, without limitation, accessories and parts);
- (v) **"Government Authority"** means any local, State or Federal government, a Minister or government department of each of those governments, a corporation or authority constituted for a public purpose, the holder of an office for a public purpose, a local authority and any agent or employee of any of them;
- (w) **"GST"** means a tax imposed under the GST Law;
- (x) **"GST Law"** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or if that Act does not exist for any reason, means any Act imposing or relating to a GST and any regulation made under it and includes, where the context permits, any Australian Taxation Office ruling or determination;
- (y) **"Law"** means:
 - (i) the common law; and
 - (ii) the requirements of all statutes, rules, regulations, proclamations, ordinances, codes and by-laws, present or future, and whether state, federal or otherwise;
- (z) **"Liabilities"** means all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatsoever description;
- (aa) **"Order"** means an order placed by the Customer for the purchase of Goods as described in clause 2;
- (bb) **"Perfected"** has the meaning given to it in the PPSA;
- (cc) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth);
- (dd) **"Proceeds"** has the meaning given to it in the PPSA;
- (ee) **"Relevant Security Interest"** has the meaning given to it in clause 6.3;
- (ff) **"Returnable Goods"** means Goods that have been stated in writing by the Company as being returnable, but does not, for the avoidance of doubt, include parts of an electronic nature or whole goods;

- (gg) "**Secured Money**" has the meaning given to it in clause 6.3;
- (hh) "**Secured Property**" means any Goods in respect of which title has not passed to the Customer under clause 6.1 and any Proceeds derived from any dealing with such Goods (whether or not permitted under these Standard Terms);
- (ii) "**Security Interest**" has the meaning given to it in the PPSA;
- (jj) "**Standard Terms**" means these standard terms and conditions (as amended by the Company from time to time) and those terms, if any, which are implied and which cannot be excluded by Law;
- (kk) "**Supply**" has the meaning given to it in the GST Law; and
- (ll) "**Taxable Supply**" has the meaning given to it in the GST Law.

1.2 In these Standard Terms, unless the context or subject matter otherwise requires:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, government authorities, and other legal entities, and where necessary, include successor bodies;
- (d) references to months mean calendar months;
- (e) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (f) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of these Standard Terms;
- (g) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (h) each clause or subclause in a list is to be read independently from the others in the list;
- (i) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time; and
- (j) a reference to a party includes, and any obligation or benefit under this agreement will bind or take effect for the benefit of, that party's executors, administrators, substitutes, successors and permitted assigns.

1.3 These Standard Terms will apply to all Customer dealings with RDO Equipment Pty Ltd ABN 58 060 286 759 and its related bodies corporate as defined in the Corporations Act, including its brands Vanderfield, Vermeer and RDO and any other brands maintained by the Company and its related bodies corporate.

2. ORDERS

2.1 An Order constitutes an offer by the Customer to purchase the Goods specified in the Order on and subject to these Standard Terms.

2.2 The Customer acknowledges and agrees that, subject to clause 3.6, an Order is irrevocable once accepted by the Company and cannot be cancelled, either wholly or partially, by the Customer without the written consent of the Company (which consent may be given or withheld in the Company's absolute discretion).

2.3 The Company:

- (a) will not in any circumstances be under an obligation to accept the whole or any part of any Order; and
- (b) may in its sole discretion reject, cancel or terminate any Order made by the Customer at any time without being required to provide a reason for the rejection, cancellation or termination.

2.4 An Order is not binding on the Company unless it is accepted in writing by a duly authorised officer of

the Company.

3. PRICING, PAYMENT AND FINANCE

- 3.1 The Company may (but is not obliged to) provide a quotation or price list to the Customer in respect of certain Goods, however any such quotation or price list:
- (a) does not constitute an offer by the Company of any kind; and
 - (b) is provided as a pricing guide only and is not binding.
- 3.2 Unless otherwise agreed between the Company and Customer in writing:
- (a) all Delivery Costs will be at the Customer's cost in addition to the purchase price for the relevant Goods; and
 - (b) prices are subject to any variations to currency exchange rates and Delivery Costs occurring prior to the time of delivery.
- 3.3 The Customer acknowledges and agrees that:
- (a) the Customer must pay the amount of each invoice issued by the Company on or before the due date for payment (without set-off, counterclaim, abatement, deduction or otherwise); and
 - (b) time is of the essence in respect of payment by the Customer of amounts owing to the Company under or in connection with any Contract.
- 3.4 Without in any way affecting the Company's other rights, if the Customer does not pay any amount which is payable to the Company by the due date for payment, the Customer must pay to the Company interest:
- (a) calculated at the rate of 14% per annum on the amount remaining unpaid from the due date or dates for payment until those amounts are actually received as clear funds by the Company;
 - (b) on any judgement which the Company obtains against the Customer (or any person who has guaranteed the Customer's obligations under these Standard Terms) (at the rate set out in clause 3.4(a) or, if higher, fixed by or payable under that judgement) from the date of the judgment until the judgment has been satisfied.
- Any such interest may, at the Company's option, be capitalised monthly.
- 3.5 Where an Order is subject to finance, the Buyer must:
- (a) pay the deposit specified in the Order to the Company (the **Deposit**) on the date specified in the Order;
 - (b) immediately make application for such finance and do all things reasonable and necessary to obtain finance approval; and
 - (c) notify the Company on or before the approval date specified in the Order (the **Approval Date**) whether it has been able to obtain finance. The Approval Date must be a date which is before the Delivery Date.
- 3.6 If the Buyer is unable to obtain approval for finance and notifies the Company of that fact:
- (a) on or before the Approval Date:
 - (i) the Contract will be at an end; and
 - (ii) the Company will:
 - A. not be bound to complete the supply; and
 - B. be entitled to reimburse itself (out of the Deposit) for all expenditure incurred by it in connection with the Contract and will pay the balance of the Deposit to the Buyer; or
 - (b) after the Approval Date:
 - (i) the Buyer shall be bound to complete the purchase and will not be entitled to any refund of the Deposit; and
 - (ii) the Company will be entitled to apply the Deposit towards any Liabilities owed by the Buyer

to the Company.

- 3.7 Where an Order is placed:
- (a) for a Good that is not in stock and non-returnable; or
 - (b) that exceeds the Customer's trading account limit with the Company or other acceptable value determined by the Company,
- a non-refundable deposit may be requested by the Company that must be paid by the Customer before the Order is accepted.
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4. G.S.T. and other taxes

- 4.1 Unless otherwise agreed between the Company and Customer in writing, any consideration payable for any Supply under these Standard Terms is exclusive of GST.
- 4.2 If any Supply made by one party (the "**Supplier**") to the other party (the "**Recipient**") under or in connection with these Standard Terms is a Taxable Supply:
- (a) the amount payable by the Recipient for that Supply will be increased by the amount of GST payable for that Supply so that the net amount retained by the Supplier after payment of that GST is the same as if the Supplier was not liable to pay any GST in respect of that Supply; and
 - (b) the Supplier must issue a GST invoice to the Recipient.
- 4.3 The Customer must promptly pay all stamp duty, transaction, registration and similar taxes, including fines and penalties which may be payable to, or required to be paid by, any appropriate government authority or determined to be payable in connection with the execution, delivery, performance or enforcement of the Contract or any payment, receipt or other transaction contemplated by the Contract.
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5. DELIVERY

- 5.1 Any scheduled time for dispatch and delivery of Goods is an estimate only and the Customer releases the Company from any Liabilities and all Claims which the Customer suffers, incurs or is liable for in connection with any failure or delay in dispatch or delivery.
- 5.2 Any delay in dispatch or delivery of Goods does not extinguish, reduce or limit the Customer's obligation to:
- (a) accept the Goods on delivery; or
 - (b) pay for the Goods by the relevant due date for payment.
- 5.3 The risk of loss of or damage to the Goods will pass to the Customer from the earlier of:
- (a) the time that the Goods are delivered to the Customer;
 - (b) the time that the Goods are collected by or on behalf of the Customer; or
 - (c) the time that the Customer otherwise takes possession of the Goods.
- 5.4 If the Goods are delivered by or on behalf of the Company to the Customer, the signature, order or acknowledgement of delivery of any manager, operator, employee or person appearing to be in charge of the location at which delivery is made is prima facie evidence of the fact of delivery of the Goods to the Customer and the quantity of Goods delivered.
- 5.5 If:
- (a) the Goods are delivered by or on behalf of the Company to the Customer, collected by or on behalf of the Customer or the Customer otherwise takes possession of the Goods; and
 - (b) the Customer forms the reasonable opinion that the Goods are improper, defective or damaged (whether in transit or not), the Customer must give the Company a written notice containing reasonable details of the alleged damage or defect ("**Damage Notice**").

- 5.6 If the Customer does not give the Company a Damage Notice within 3 days of delivery, collection or possession of the Goods, or within 180 days for Goods that have concealed damage, then to the maximum extent permitted by Law:
- (a) the Customer will be deemed to have accepted the Goods as received in a proper condition and free of damage and defects; and
 - (b) the Customer releases the Company from any Liabilities and all Claims in respect of any actual or alleged damage or defects relating to the Goods.
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6. TITLE

- 6.1 Title to any Goods will remain with the Company until the Company has received payment in full and in clear funds for:
- (a) those Goods; and
 - (b) all Liabilities and other amounts that are then due and payable by the Customer to the Company.
- 6.2 Until such time as it obtains title to any Goods under clause 6.1, the Customer:
- (a) acknowledges that it is in a fiduciary relationship with the Company;
 - (b) acknowledges that it holds those Goods as bailee for the Company;
 - (c) must ensure that those Goods remain clearly identifiable as property of the Company;
 - (d) must not remove any identifying marks placed on those Goods by the Company;
 - (e) must not part with possession of those Goods otherwise than in accordance with these Standard Terms (or as otherwise agreed by the Company in writing);
 - (f) must store those Goods in a designated area that is separate from all other goods;
 - (g) must ensure those Goods are kept in a good and merchantable condition;
 - (h) must comply with all requirements of the Company in relation to the storage, maintenance and preservation of those Goods; and
 - (i) must not grant, create, give or allow to come into existence any Encumbrance over those Goods (other than an Encumbrance in favour of the Company).
- 6.3 The Customer and the Company agree that these Standard Terms give rise to a Security Interest in favour of the Company over the Secured Property (the **Relevant Security Interest**) and that that Relevant Security Interest:
- (a) is a "purchase money security interest", with that term given the same meaning as in the PPSA; and
 - (b) secures payment of the purchase price of the Goods and of all other amounts payable by the Customer to the Company (including, without limitation, the Liabilities and any amount payable to the Company by the Customer under and in connection with any Collateral Document) (the **Secured Monies**) and the performance by the Customer of the Customer's obligations under the Standard Terms.
- 6.4 If the Customer sells or Disposes of (or purports to sell or Dispose of) any Secured Property (with or without the prior consent of the Company) then:
- (a) the Customer does so as a fiduciary for the Company;
 - (b) the Proceeds must be kept separate from other money of the Customer;
 - (c) the Proceeds will remain the property of the Company to the extent of the money owed to the Company by the Customer and the Customer must account to the Company on demand for that portion of the Proceeds; and
 - (d) the Customer holds those Proceeds as agent for the Company and shall immediately (and in any event within 2 business days of their receipt) pay them to the Company.
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7. RETURNS

- 7.1 The Company will accept a return of Returnable Goods and provide a refund to the Customer for the amount paid for the Returnable Goods, subject to the conditions of this clause 7.

- 7.2 The Customer must:
- (a) provide sufficient proof of the Order relating to the Returnable Goods to the reasonable satisfaction of the Company;
 - (b) pay for all costs associated with the return of the Returnable Goods to a location nominated by the Company; and
 - (c) return the Returnable Goods to the nominated location within 60 days from the date that the Order relating to the Returnable Goods was made.
- 7.3 The amount refunded to the Customer:
- (a) will be limited to the actual amount paid by the Customer for the Returnable Goods;
 - (b) will not include any amounts deducted from the original purchase price of the Returnable Goods, including discounts and pricing benefits;
 - (c) will not include any Delivery Costs or packaging costs incurred by the Customer in relation to the Returnable Goods; and
 - (d) will be subject to a deduction for any restocking fees charged or incurred by the relevant manufacturer for the return of the Returnable Goods to the manufacturer by the Company.
- 7.4 The Company will not be required to accept the return of a Returnable Good if it:
- (a) is not returned in the same condition as it was delivered to the Customer;
 - (b) has been damaged in any way;
 - (c) is not in saleable condition;
 - (d) was identified as a non-returnable Good when sold to the Customer;
 - (e) was identified as a 'special order' or 'custom made to order' in the Order;
 - (f) was altered at the request of the Customer prior to being delivered; or
 - (g) has been fitted or programmed to a machine.
- 7.5 The Customer acknowledges and agrees that the policies, terms and conditions of the relevant manufacturer may apply to the return of Returnable Goods by the Customer, and may alter the rights and obligations of the parties under this clause.
- 7.6 Nothing in this clause operates to limit or exclude the obligations of the Company under the Australian Consumer Law. Where you are a Consumer for the purposes of the Australian Consumer Law, the Goods come with guarantees that cannot be excluded and, to the maximum extent permitted by law, the Company's liability in respect of Goods supplied will be limited to the options set out at clause 12.4.
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8. TRADE IN

- 8.1 Where the Company agrees to accept a trade in of Eligible Products, the conditions of this clause 8 will apply in addition to the terms and conditions in any offer submitted by the Company to the Customer.
- 8.2 The Customer must deliver the Eligible Products to the Company free from any Encumbrance.
- 8.3 The Customer acknowledges and agrees that:
- (a) the Customer is the sole beneficial owner of the Eligible Products;
 - (b) title to the Eligible Products passes to the Company on delivery;
 - (c) any Encumbrance over the Eligible Products, whether discovered before or after

delivery, entitles the Company to:

- (i) reduce the value of Eligible Products by the amount of the Encumbrance or return the Eligible Products without liability to the Customer; and
- (ii) recover any amount due as a result of the reduction or return.

8.4 The Eligible Products must:

- (a) be in good repair and condition having regard to their age;
- (b) be in satisfactory working order and have been regularly and properly maintained; and
- (c) be returned with all applicable documentation, manuals and maintenance records.

8.5 If there is any inconsistency between this clause 8 and the terms and conditions in any offer, this clause 8 prevails to the extent of any inconsistency.

9. SECURITY FOR PAYMENTS

9.1 The Customer:

- (a) acknowledges that if the Company accepts any Order from the Customer or otherwise supplies Goods to the Customer, it does so on the basis that it is obtaining the benefit of the Relevant Security Interest; and
- (b) must promptly do all acts, matters and things required by the Company to:
 - (i) procure the grant of any Encumbrance as requested by the Company from time to time to provide more effective security to the Company over the Secured Property for the payment of the Secured Money; and
 - (ii) enable the Company to protect and exercise its rights under the Standard Terms or in respect of the Relevant Security Interest, including, without limitation, obtaining consents, signing and producing documents, completing documents and supplying information;
- (c) must not Dispose of any Secured Property without the Company's prior written consent; and
- (d) must not grant, create or give any Encumbrance or other interest inconsistent with or in priority to the Relevant Security Interest without the Company's prior written consent (which may be withheld by the Company in its absolute discretion).

9.2 The Customer:

- (a) authorises the Company to:
 - (i) register all Financing Statements (and other documents); and
 - (ii) do all things (including completing and adding schedules to this document to further identify the Secured Property), which the Company considers, in its sole and absolute discretion, to be necessary or desirable for the purposes of:
 - (A) protecting and preserving the Secured Property;
 - (B) ensuring the Relevant Security Interest is Attached, enforceable, Perfected and otherwise effective;
 - (C) enabling the Company to apply for registration, or give any notification, in connection with the Relevant Security Interest so that the Relevant Security Interest has the priority required by the Company; or
 - (D) enabling the Company to exercise its rights in connection with the Relevant Security Interest;
- (b) agrees to promptly do anything which the Company requires for the purposes of:

- (i) protecting and preserving the Secured Property;
 - (ii) ensuring the Relevant Security Interest is Attached, enforceable, Perfected and otherwise effective;
 - (iii) enabling the Company to apply for registration, or give any notification, in connection with the Relevant Security Interest so that the Relevant Security Interest has the priority required by the Company; or
 - (iv) enabling the Company to exercise its rights in connection with the Relevant Security Interest, including, without limitation, obtaining consents, signing and producing documents, completing documents and supplying information; and
- (c) agrees to, upon demand, pay all of the Company's expenses and legal costs (on a solicitor/client basis) in relation to or in connection with the registration of the Relevant Security Interest and all other costs associated with protection and enforcement of the Relevant Security Interest or by undertaking an audit under the provisions of the PPSA, or the repossession, removal and re-sale of the goods the subject of these Standard Terms or the exercise, enforcement or preservation of any right or interest under these Standard Terms or any contract that the Company has with you.
- 9.3 To the extent that Chapter 4 of the PPSA applies to a Relevant Security Interest and to the extent permitted by Law, for the purposes of:
- (a) section 115(1) and 115(7) of the PPSA:
 - (i) the Company need not comply with:
 - (A) section 95 (notice of removal of accession);
 - (B) section 96 (retention of accession);
 - (C) section 121(4) (enforcement of liquid assets – notice to grantor);
 - (D) section 125 (disposal or retention of collateral);
 - (E) section 129 (disposal by purchase);
 - (F) section 130 (notice of disposal);
 - (G) section 132(3)(d) (contents of statement of account after disposal);
 - (H) section 132(4) (statement of account if no disposal);
 - (I) section 135 (notice of retention)
 - (ii) sections 142 (redemption of collateral) and 143 (reinstatement of security agreement) of the PPSA are excluded; and
 - (b) section 115(7) of the PPSA, the Company need not comply with sections 132 (statement of account) or 137(3) (objection to collateral) of the PPSA.
- 9.4 To the extent the Law permits, the Customer waives its rights to receive any notice that is required by any provision of the PPSA (including notice of any verification statement). Nothing in this clause prohibits the Company from giving a notice under the PPSA or any other Law.
- 9.5 The Company and the Customer agree not to disclose information of the kind referred to in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if the Company approves. Nothing in this clause will prevent any disclosure by the Company that it believes is necessary to comply with its other obligations under the PPSA.
- 9.6 The Customer will immediately notify the Company in writing if it changes its name, ABN, ACN, ARBN or ARSN.
- 9.7 The Customer irrevocably appoints the Company and each of its directors jointly and each of them severally to be the Customer's duly constituted lawful attorney for the purpose of:
- (a) drawing, executing, registering and enforcing any Relevant Security Interests as required by the Company from time to time including, without limitation, a mortgage or caveat and any ancillary documents necessary to perfect such mortgage or caveat;
 - (b) executing on behalf of and in the name of and as the act and deed of the Customer, any

- document required by the Company under clause 9; and
 - (c) doing all other things and sign all other documents required by the Company to give effect to clause 9.
- 9.8 The Customer must:
- (a) ratify and confirm all acts of each attorney done or made under clause 9.7; and
 - (b) pay to the Company on demand the costs, expenses or other liabilities incurred by or on behalf of the Company or an attorney appointed under clause 9.7.
- 9.9 Each attorney appointed under clause 9.7 has the power at any time to appoint a substitute as the attorney of the Customer.
- 9.10 The Customer and the Company agree that each attorney appointed under clause 9.7 may exercise powers notwithstanding that the exercise may or will involve or result in a conflict between the duty of that attorney to the Customer and the interests of that attorney.
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10. DEFAULT EVENT

- 10.1 A **Default Event** occurs if:
- (a) the Customer fails to pay the Company any payment within 3 days after the due date for payment;
 - (b) the Company considers (in its sole and absolute discretion) that the Customer is or will be unable to make any payment required in accordance with the Standard Terms;
 - (c) the Customer does not comply with any one or more of its obligations under the Standard Terms or any Collateral Document; or
 - (d) the Customer:
 - (i) becomes insolvent, insolvent under administration or bankrupt or commits an act of bankruptcy as defined by the Corporations Act and the *Bankruptcy Act 1966* (Cth);
 - (ii) is presumed to be insolvent under an applicable law including under section 459C(2) or section 585 of the Corporations Act;
 - (iii) otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
 - (iv) has a controller, liquidator, provisional liquidator, administrator, trustee or receiver as defined in the Corporations Act or the *Bankruptcy Act 1966* (Cth) or an analogous person appointed to the Customer or to any of its property;
 - (v) an application is made to a court for an order, or an order is made, that a party may be wound up, declared bankrupt or that a provisional liquidator, receiver or receiver and manager be appointed to that party, and that application is not withdrawn, struck out or dismissed within 14 days of it being made;
 - (vi) proposes winding-up, dissolution or reorganisation, moratorium, a deed of company arrangement or other administration involving one or more of its creditors;
 - (vii) is the subject of a creditor's petition or debtor's petition under the Bankruptcy Act and that petition is not withdrawn, struck out or dismissed within 14 days of it being made;
 - (viii) a notice is issued to a party under section 601AA or section 601AB of the Corporations Act;
 - (ix) is taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
 - (x) enters into a compromise or arrangement with, or assignment for the benefit of, any of the Customer's members or creditors;
 - (xi) a party ceases to carry on business or threatens to do so; or
 - (xii) is affected by any analogous event.
- 10.2 If a Default Event occurs, then, without in any way affecting the Company's other rights, the Company

may:

- (a) require immediate payment of all amounts outstanding (whether or not then due and payable) and sue for all unpaid amounts irrespective of the due date for payment of such amounts;
- (b) reject, cancel or terminate any Order made by the Customer;
- (c) retake possession of all Secured Property without prior notice to the Customer;
- (d) resell any Secured Property without prior notice to the Customer and recover any loss or shortfall on resale from the Customer;
- (e) collect, realise and sell the Charged Property to satisfy the Customer's indebtedness to the Company (or appoint a receiver, administrator or appropriate person to do so);
- (f) recover from the Customer all Liabilities, costs and expenses (including legal costs on an indemnity basis) incurred or suffered by the Company as a result of the Default Event (including Liabilities, costs and expenses incurred in the recovery or attempted recovery of any overdue amounts or the exercise of the Company's other rights);
- (g) exercise or enforce all or any of the Company's rights, powers or remedies:
 - (i) conferred by any Law;
 - (ii) under or arising in connection with the Standard Terms, the Charge or a Security Interest; or
 - (iii) arising in any other way whatsoever; or
- (h) engage in any combination of the above.

10.3 The Customer grants to the Company and the Company's Agents an irrevocable licence to enter the Customer's Premises at any time and without prior notice for the purposes of:

- (a) inspecting the Secured Property;
- (b) verifying compliance by the Customer with its obligations under these Standard Terms;
- (c) identifying, removing and taking possession of any Secured Property in the exercise of its rights under these Standard Terms;
- (d) satisfying the Company's obligations under these Standard Terms or at Law; and
- (e) exercising the Company's other rights under these Standard Terms or at Law,

and the Customer agrees to indemnify and keep indemnified the Company (and the Company's Agents) against all Liability and Claims suffered or incurred by the Company (and the Company's Agents) in connection with the entry by the Company (and the Company's Agents) into or upon the Customer's Premises.

11. INDEMNITY

11.1 The Customer indemnifies the Company and the Company's Agents against any Liabilities and all Claims which the Company and the Company's Agents suffer, incur or are liable for in connection with:

- (a) the use or misuse of the Goods by any person;
- (b) the storage or handling of the Goods by any person;
- (c) any act, omission, negligence or default of the Customer (or the Customer's Agents);
- (d) a breach of any Law by the Customer (or the Customer's Agents);
- (e) the occurrence of a Default Event; or
- (f) any injury to or death of any person or any damage to or loss of property resulting from any negligence, wrongful act or omission, or breach of statutory duty by the Customer (or the Customer's Agents).

12. LIMITATION OF LIABILITY

12.1 To the maximum extent permitted by Law, the Customer acknowledges and agrees that:

- (a) it has exercised and relied solely on its own independent skill and judgment in acquiring Goods from the Company;
- (b) no advice or representations (other than those given or implied by Law which cannot be

excluded) are or have been given (or shall be implied) and the Customer has not relied on any advice or representation made or given by or on behalf of the Company with respect to:

- (i) the acceptable quality, the condition, state of repair, suitability or sufficiency or fitness for purpose of the Goods;
 - (ii) the nature or condition of the Goods; or
 - (iii) compliance by the Goods with any Laws or any requirements of any government authorities; and
- (c) the Company does not make any guarantees or warranties (whether statutory, express or implied) other than those which are deemed to be given by the Company by virtue of the Australian Consumer Law in respect of the supply of Goods to the Customer under these Standard Terms.

12.2 Any non-genuine parts, accessories, products or additional items provided in relation to the Goods have been supplied or fixed to the Goods upon the Customer's request and the Customer acknowledges and agrees that some or all of the non-genuine parts, accessories, products or additional items may not be or are not approved by the manufacturer of the Goods for use on the Goods. As such, they may not be covered by the Goods' manufacturer's warranty and may affect the warranty provided by the Goods' manufacturer to the extent that the Goods' manufacturer considers that any non-approved products or their installation may affect the specifications or quality of the Goods.

12.3 To the maximum extent permitted by Law, the Customer releases the Company from any Liabilities and all Claims which the Customer suffers, incurs or is liable for in connection with these Standard Terms (or any transaction contemplated by them), including without limitation, any Liabilities and all Claims arising out of or in connection with:

- (a) the rejection, cancellation or termination of any Order by the Company;
- (b) the supply of goods or services by the Company; or
- (c) the exercise by the Company of any of its rights under or in connection with these Standard Terms.

12.4 To the maximum extent permitted by Law, the Company's liability (under any conditions, guarantee or warranty which cannot legally be excluded) in respect of goods supplied to the Customer is limited to one of the following (at the Company's option):

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired.

12.5 To the maximum extent permitted by Law, the Company's liability (under any conditions, guarantee or warranty which cannot legally be excluded) in respect of any services supplied to the Customer is limited to one of the following (at the Company's option):

- (a) supplying the services again; or
- (b) the payment of the cost of having the services supplied again.

12.6 To the maximum extent permitted by Law, the Company will not be liable for Consequential Loss of any kind whatsoever and the Customer agrees to indemnify and keep indemnified the Company in respect of any such liability.

12.7 If:

- (a) the Company supplies goods or services to the Customer; and
- (b) the Customer is taken to have acquired those goods or services

as a Consumer under the Australian Consumer Law, then:

- (c) certain statutory guarantees are (or may be) deemed to be given by the Company under the Australian Consumer Law (which cannot be excluded) in relation to those

- goods or services; and
- (d) the Customer has (or may have) certain rights under the Australian Consumer Law in respect of any guarantee that is deemed to be given by the Company by virtue of the Australian Consumer Law in relation to those goods or services.

12.8 Any exclusions of warranties, guarantees, representations or liability by the Company under these Standard Terms do not (and do not purport to) exclude statutory rights of the Customer which cannot lawfully be excluded.

13. FORCE MAJEURE

13.1 If the Company is prevented, hindered or delayed from performing its obligations under these Standard Terms by an Event of Force Majeure, then as long as that situation continues, the Company shall be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation shall be extended accordingly.

14. GENERAL

14.1 The Company's right to require strict performance of these Standard Terms will not be affected by any indulgence, waiver of course of dealing, and any waiver will be deemed not to be a continuing waiver.

14.2 Any assignment of rights or obligations under these Standard Terms by the Customer will be void unless the written consent of the Company is first obtained. The Company may assign any of its rights, benefits or obligations under or connection with these Standard Terms without the Customer's consent.

14.3 The laws that apply in Queensland govern these Standard Terms and any supply made under these Standard Terms. The parties submit to the jurisdiction of the Courts of Queensland.

14.4 An obligation of two or more persons under these Standard Terms binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in terms of this agreement will take effect for the benefit of those persons jointly and severally.

14.5 Notices may be given by the Company to the Customer by way of post, fax or delivery. In the event of a posted item, it shall be deemed to have been received by the Customer on the second business day after the Company posts it.

14.6 The Customer will sign and complete all further documents and do anything else that may be reasonably necessary to effect, perfect or complete the provisions of these Standard Terms and the transactions to which they relate.

14.7 If any provision of these Standard Terms should be for any reason invalid or unenforceable, the validity and enforceability of all other provisions will not be affected.

14.8 The Company is entitled to offset any amount owing to it by the Customer against any amount owed to the Customer by the Company.

14.9 These Standard Terms shall apply to the supply of Goods by the Customer to the exclusion of any other terms and conditions contained in any document submitted by the Customer to the extent that such last mentioned terms and conditions are inconsistent therewith or with any rights of the Company (whether express or implied).

14.10 By placing an Order with the Company for the supply of the Goods, the Customer is deemed to have accepted these Standard Terms.