

**EZI ALUMINIUM SYSTEMS PTY LTD ACN 123 100 934  
TRADING TERMS AND CONDITIONS**

The Purchaser agrees to be bound by the **EZI ALUMINIUM SYSTEMS PTY LTD ACN 123 100 934 (Company)** Trading Terms and Conditions (**Trading Terms**) appearing below which govern the business relationship between the Purchaser and the Company.

1. **DEFINITIONS & INTERPRETATION**

1.1 In these Trading Terms, unless the context requires otherwise:

**Accession** has the meaning given to it in the PPSA.

**Assigned Product** means any Other Product for which title has been assigned to the Company by the operation of clause 6.7.

**Attaches** has the meaning given to it in the PPSA.

**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.

**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.

**Contract** means the contract for the supply of Products by the Company to the Purchaser which arises at the time of acceptance of an Order by the Company and which is governed by these Trading Terms, the Credit Account Application (if any) and any other terms as agreed by the parties in writing (from time to time).

**Credit Account Application** means the Credit Account Application (if any) under which the Purchaser requested the provision of credit by the Company to the Purchaser for the purposes of purchasing the Products.

**Dispose of** means:

- (a) sell, transfer, assign, alienate, surrender, dispose of, deposit, part with Possession of, or lease; and
- (b) enter into any agreement or arrangement to do or allow any of the things referred to in subclause (a) of this definition;

**Encumbrance** means:

- (a) any 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
- (b) any agreement or document to create or give any arrangement referred to in subclause (a) of this definition.

**Facility** means the facility of the Company where the Products are stored.

**Financing Statement** has the meaning given to it in the PPSA.

**Intellectual Property** means any intellectual property in relation to the Products including (without limitation) any: (a) patent or patent application or specification; (b) registered or common law trade mark or service mark; (c) copyright; (d) designs; (e) formula (including the active ingredients required for the manufacture of the Products or any specification relating to the quantity and type of ingredients to be included in the Products); (f) methodology or manner of manufacture; (g) know-how, trade secrets and any other industrial, commercial and intellectual property (current or future) relating to the Products and any enhancement or improvement of them; (h) intellectual property which resides in the Products or is derived from the performance by each party of their obligations under this Agreement; (i) moral rights; or (j) licence or other right to use or to grant the use of any of the above or to be the registered proprietor or user of any of them;

**Invoice**

determines.

**Invoice Price** means the total price (including GST) as set out in the Invoice to be paid by the Purchaser to the Company in consideration for the Products as listed in the relevant Invoice.

**Land** has the meaning given to it in the PPSA.

**Loss** means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Order** means the order placed by the Purchaser for the purchase of the Products as described in clause 4.2.

**Other Product** means:

- (a) Products which are not the subject of the Security Interest in favour of the Company;
- (b) Products in which title has passed to the Purchaser; and
- (c) other products or goods substantially similar to the Products that have been purchased or acquired by the Company from a person other than the Company.

**Perfected** has the meaning given to it in the PPSA.

**Possession** has the meaning given to it in the PPSA.

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

**Proceeds** has the meaning given to it in the PPSA.

**Product** means the products described in the Order.

**Purchase Money Security Interest** has the meaning given to it in the PPSA.

**Purchaser** means each person described as such on the Order, such persons being bound jointly and severally by these Trading Terms.

**Security Interest** has the meaning given to it in the PPSA.

**Security Interest Product** means:

- (a) Products which are the subject of the Security Interest in favour of the Company; and
- (b) Products in which title has not passed to the Purchaser

1.2 In the interpretation of these Trading Terms, unless the context or subject matter otherwise require:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) references to people include corporations, trusts, associations, partnerships, a government authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;
- (f) references to months mean calendar months;
- (g) 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;
- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Lease;
- (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (k) each clause or sub-clause in a list is to be read independently from the others in the list;

- (l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time; and  
(m) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

2. **GENERAL**

- 2.1 These Trading Terms constitute an exclusive statement of the agreement between the Company and the Purchaser with respect to the sales of the Products, despite any provision to a contrary effect in any Order or other documents. These Trading Terms supersede all prior arrangements written or oral.  
2.2 The Company may revise these Trading Terms at any time in writing in its absolute discretion. Any variation to these Trading Terms will apply to all transactions between the Purchaser and the Company occurring after written notice of the varied Trading Terms has been sent to the Purchaser.  
2.3 The Purchaser's acceptance of these Trading Terms in relation to any Contract for the sale of the Products is signified by the Purchaser making an Order for the purchase of the Products where the Purchaser has previously received a copy of these Trading Terms, whether such copy was contained in an invoice in relation to any previous Contract for sale of the Products, Credit Account Application or otherwise.

3. **PRICE, PAYMENT AND GST**

- 3.1 Subject to these Trading Terms, prior to the Company delivering the Products to the Purchaser or the Purchaser being entitled to collect the Products from the Company (as the case may be), the Purchaser must pay to the Company the Invoice Price as set out in the Invoice.  
3.2 A quotation by the Company does not constitute an offer. Such quotations are provided as a pricing guide and are not binding. The Company cannot confirm the price of any Products until they are ordered by the Purchaser and accepted by the Company.  
3.3 The Company may publish a price list from time to time however the Purchaser acknowledges that such price list is not binding. The Company may vary the price list at any time without prior notice to the Purchaser.  
3.4 All sales are subject to such limits as to minimum quantity or cash value of order as the Company fixes from time to time.  
3.5 At its discretion, the Company may withdraw any credit or limit the credit extended to the Purchaser at any time.  
3.6 If the Products are supplied subject to credit, the Company must dispatch Invoices at regular intervals to the Purchaser.  
3.7 If the Products are supplied subject to credit, the Purchaser must make full payment of the Invoice Price to the Company (without set-off, counterclaim, abatement, analogous deduction or otherwise) within 30 days from the end of the month in which the Products were supplied (unless otherwise agreed in writing by the parties) (**Payment Date**).  
3.8 Any agreed discounts in respect of the Invoice Price or any quotation (if applicable) will not apply if full payment of the Invoice Price or relevant discount price is not received by the agreed Payment Date.  
3.9 The Purchaser acknowledges that the Invoice will include any applicable GST (without deduction or set off of any other amounts). Words defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning in this clause.  
3.10 Time for payment is of the essence. Any amount payable by the Purchaser to the Company or any amount to be borne by the Purchaser in connection with the Order may be offset by the Company against any amount owing by the Company to the Purchaser, and the Company may recover any net amount as a debt due to the Company. The Purchaser is not entitled to set off any amounts against its outstanding debts to the Company.  
3.11 Interest is payable on overdue accounts at the rate of 20% per annum (capitalised annually) from the Payment Date until receipt by the Company of the full amount (including any accrued interest) whether before or after judgement.  
3.12 Where the total mass or length of any item supplied includes a fraction of a kilogram or metre, the Purchaser will be invoiced for and must pay for that fraction as a whole metre or kilogram.

4. **ORDERS**

- 4.1 The Company will be under no obligation to accept the whole or any part of any Order, unless otherwise agreed.  
4.2 An Order constitutes an offer by the Purchaser to purchase the Products on and subject to these Trading Terms. If the Company does not notify the Purchaser in writing within 7 Business Days that it does not accept the Order, then on the 8<sup>th</sup> Business Day, a concluded Contract between the Purchaser and the Company for the purchase and sale of the Products specified in the Order on the terms and conditions contained in these Trading Terms will come into existence.  
4.3 The Purchaser acknowledges that Orders cannot be cancelled.  
4.4 If the Purchaser cancels or purports to cancel an Order at any time after a concluded contract has come into existence in accordance with clause 4.2 or an Order has been terminated in accordance with clause 13.1 then, without prejudice to or limiting the generality of any rights or remedies that the Company may have against the Purchaser for breach of contract, the Purchaser will pay to the Company by way of liquidated damages an amount determined by the Company that is equal to the sum of:  
(a) the cost of all materials that the Company has purchased or entered into an arrangement with a materials supplier to purchase as a result (whether directly or indirectly) of a Contract where the circumstances of such arrangement are such that it is sound commercial practice for the Company not to cancel that arrangement (whether or not the Company would commit a breach of contract by doing so); and  
(b) the cost of any and all services that the Company has acquired, or entered into an arrangement with a service supplier to acquire, as a result (whether directly or indirectly) of the Contract where the circumstances of such arrangement are such that it is sound commercial practice for the Company not to cancel that arrangement (whether or not the Company would commit a breach of contract by doing so); and  
(c) the full price of the Products in the Order.  
4.5 The parties acknowledge and agree that the amount determined in accordance with clause 4.4 is a genuine pre-estimate of the damages that the Company will sustain as a result of cancellation by the Purchaser of an Order.

5. **DELIVERY**

- 5.1 Unless otherwise agreed, the Company will deliver the Products to the address the Purchaser specifies at the time of placement of the relevant Order (**Delivery Point**). Such address may include the address of the Purchaser's nominated transport company or the Purchaser's nominated agent.  
5.2 If the Purchaser requests, at the time of placement of the relevant Order, for the Products to be delivered to the Delivery Point using the Company's nominated carrier, then such freight and other charges associated with the delivery will be at the sole cost of the Purchaser, with such cost to be determined by the Company.  
5.3 If specifically agreed that the Products are sold ex Company's store, at its cost and risk, the Purchaser must collect the Products from the Company's Facility, within the time agreed or, if no time is agreed, within a reasonable time. The Purchaser or its nominated carrier or agent (as the case may be) must ensure that its drivers and vehicles comply with:  
(a) all statutory requirements and other reasonable requirements imposed by the Company from time to time concerning health, safety and environment; and  
(b) any other reasonable operational requirements imposed by the Company from time to time, while at the Facility.

- 5.4 The Products that the Company delivers to the Delivery Point will be taken to be delivered immediately after they are unloaded from the delivery vehicle and will be unloaded at the Purchaser's cost and risk.
- 5.5 The Purchaser's representative must be present at the Delivery Point at the time the Products are delivered. The Purchaser's representative must sign the delivery advice that the driver of the delivery vehicle presents.
- 5.6 The Company's obligation to deliver the Products will be discharged on arrival of the Products at the Delivery Point. The Purchaser (or its nominated agent, contractor, employee or authorised representative) must unload the Products upon delivery, provided that if the Purchaser (or its nominated agent, contractor, employee or authorised representative) is unable or unwilling to accept physical delivery of the Products when the Products are ready for delivery, the Company will be entitled to charge a fee for any delay experienced or arrange for the storage of the deliveries and each partial delivery will be a separate sale pursuant to these Trading Terms.
- 5.7 The Company may, in its sole and absolute discretion, elect to deliver the Product by separate instalments. If delivery is by instalments, each instalment will be treated as a separate contract. If the Company fails to deliver an instalment by the estimated date or to deliver it at all, the Purchaser is not entitled to terminate the Contract as to any further instalments.
- 5.8 If the Company fails to deliver any Products to the Purchaser on time or at all, the Company's only obligation is to refund to the Purchaser any amount received from the Purchaser for the Products not delivered. The Company will not be liable for any costs, damage or other Loss the Purchaser or any other party suffers arising (whether directly or indirectly) from the Company's failure to deliver the Products on time or at all, whether or not due to the negligence of the Company or the Company's agents, contractors, employees or authorised representatives.
- 5.9 The Company will complete the Order and deliver the Products in a good and workmanlike manner as soon as is reasonably practicable. However, delivery time is not guaranteed and might be delayed by circumstances beyond the reasonable control of the Company (for example, industrial disputes, accidents, transport delays, default of sub-contractors etc.). Time for delivery is not of the essence.
- 5.10 If the Company determines (in its sole and absolute discretion) that it is (or may be) unable to deliver the Products within a reasonable time or at all, the Company may elect to cancel the relevant Contract (and corresponding Order) by written notice to the Purchaser.

#### **TITLE AND RISK**

- 6.1 The Company retains full legal and equitable ownership and title to any Product delivered to the Purchaser until payment in full for those Products has been received by the Company.
- 6.2 Payment by cheque or by bill of exchange is not effected until the cheque or bill has been cleared in full.
- 6.3 Without limiting any other remedies that the Company may have, if payment is not made by the Payment Date, the Company reserves the right to do all or any of the following:
- (a) retake Possession of the Products;
  - (b) resell any of the Products; and
  - (c) sue the Purchaser for the amount by which the Invoice Price of the Products exceeds the resale (or scrap) value of the Products.
- 6.4 The risk of loss of or damage to the Products will pass to the Purchaser from:
- (a) the time that the Products are collected from the Facility; or
  - (b) the time of delivery of the Products by the Company or its nominated carrier to the Delivery Point, (as the case may be).
- 6.5 Until such time as all payments have been made by the Purchaser for the Products, the Purchaser:
- (a) acknowledges that it is in a fiduciary relationship with the Company and is bailee only of the Products;
  - (b) must ensure that the Products remain clearly identifiable as property of the Company;
  - (c) must not remove any identifying marks placed on the Products by the Company;
  - (d) must not part with Possession of the Products otherwise than in accordance with these Trading Terms (or as otherwise agreed by the Company in writing);
  - (e) must store the Products in a designated area that separate from all other products; and
  - (f) must keep the Products free from any Encumbrance.
- 6.6 The Purchaser hereby irrevocably grants to the Company (and its agents, contractors, employees, representatives and servants), an unrestricted right and licence, without notice to enter the premises occupied by the Purchaser at any time to identify and remove any of the Products the property of the Company in accordance with these Trading Terms, without in any way being liable to the Purchaser or any person claiming through the Purchaser. The Company will have the right to sell or dispose of any such Products removed or otherwise in its sole discretion and will not be liable for any Loss occasioned thereby.
- 6.7 If contrary to these Trading Terms the Purchaser allows any Security Interest Products to become mixed or Commingled with any Other Product, the Purchaser is deemed to have assigned title to the Other Products to the Company and title to those Other Products will pass back to the Purchaser only when all money owing to the Company by the Purchaser has been paid in full.
- 6.8 If the Purchaser fails to pay any amount owing to the Company for Products supplied to the Purchaser by the Payment Date then the Company may, without in any way affecting its other rights and without prior notice to the Purchaser, recover and sell any Assigned Products. The Purchaser grants to the Company (and its agents, contractors, employees, representatives and servants), an irrevocable licence to enter any premises occupied by the Purchaser at any time and without prior notice to identify, remove and take possession of the Assigned Products for that purpose.
- 6.9 If the Purchaser sells or purports to sell any Security Interest Product or Assigned Product then:
- (a) the Purchaser does so as a fiduciary for the Company;
  - (b) the Proceeds will remain the property of the Company to the extent of the money owed to the Company by the Purchaser and the Purchaser must account to the Company on demand for that portion of the Proceeds; and
  - (c) the Purchaser stands possessed of those Proceeds on a fixed and specific trust for the Company.
- 6.10 To the maximum extent permitted by law, the Purchaser indemnifies the Company in respect of all Losses and Claims which the Company suffers, incurs or is liable for in connection with the exercise of its rights under clause 6.6 or clause 6.8.

#### **HANDLING AND STORAGE**

- 7.1 In relation to the Products, the Purchaser must:
- (a) store the Product properly (including safe from heat, moisture, compression, impact damage and odours) and in accordance with the Company's reasonable requirements and security standards as notified from time to time;
  - (b) observe and perform all usual and reasonable storage and handling requirements and safeguards, and take all reasonable steps to prevent any damage to or deterioration in the Products; and
  - (c) observe and perform all of the Company's requirements in relation to handling and storage irrespective of the manner in which such requirements are communicated to the Purchaser.
- 7.2 The Purchaser is aware that while aluminium products will not rust, moisture trapped between articles when stored may lead to staining or soiling which is not easily removed.
- 7.3 The Company will not be liable for any Loss or damage the Purchaser sustains arising out of anything referred to in this clause 7 and will not be required to remove any stains or soiling.

#### **TOLERANCES**

- 8.1 Unless otherwise stated by the Company in writing, the Products will be supplied within the tolerances as to quantity, weight, dimensions, gauge, chemical composition, physical properties, finish, shearing and degree of flatness specified:
- (a) by the Australian Aluminium Council Limited; and
  - (b) in the Company's published brochure/product detail current at the date of the Contract (and if none are specified, those tolerances normally regarded as being commercially acceptable).

9. **STOCKING**

- 9.1 If the Purchaser does not request delivery of the Products within 60 days of the Contract or the Products becoming available for delivery, the Company may, at its option:
- deliver the Products to the Purchaser, in which case the delivery will be taken to be a delivery pursuant to the Contract; or
  - treat the Purchaser as having cancelled the Contract and Invoice the Purchaser for an amount determined in accordance with clause 4.4.

10. **DIES AND OTHER EQUIPMENT**

- 10.1 The Purchaser must bear the cost of tooling/die development in accordance with the Company's charges in effect at the time of manufacture. Tooling, dies and other equipment remain the Company's property and will not be released to the Purchaser. Any amount the Purchaser pays in relation to them will be treated as a charge for their use.
- 10.2 Any Order the Purchaser places which require using tools, dies or other equipment which have been scrapped will be treated as a new request. The Purchaser must pay for any tools, dies or other equipment made to supply that Order at the Company's then current charges.
- 10.3 If the Purchaser (or any person on behalf of the Purchaser) provides tools, dies or other equipment for use by the Company in connection with the manufacture of Products (**Purchaser Equipment**):
- the Purchaser warrants to the Company that the Purchaser Equipment is fit for the purpose of manufacturing Products and is in good working condition;
  - the Company accepts no responsibility and makes no warranty in respect of the shape, measure, capacity, fitness or otherwise of the Purchaser Equipment;
  - the Company is not liable for any Loss or Claim of any kind that the Purchaser or any other person may suffer or incur (or which may be brought against the Purchaser or any other person) arising (directly or indirectly) out of or in connection with the use of the Purchaser Equipment; and
  - the Purchaser fully indemnifies the Company in respect of any Loss or Claim of any kind that the Company may suffer or incur (or which may be brought against the Company) arising (directly or indirectly) out of or in connection with the use of the Purchaser Equipment.

11. **THIRD PARTIES SERVICES COMPANY PROCEDURES AT PURCHASER'S REQUEST**

- 11.1 If at the Purchaser's request the Company arranges for any Products or services to be provided by a third party in relation to a Contract:
- the Purchaser must indemnify and keep indemnified the Company respect of any Claims, Losses, actions, suits, demands, orders for costs or damages relating to or arising out of the arrangement (whether directly or indirectly); and
  - the Products and or services the subject of the Contract between the Purchaser and Company will be taken to be delivered by the Company to the Purchaser when the Company delivers them to the third party.

12. **PROHIBITIONS**

- 12.1 If the Purchaser on sells the Products delivered to it by the Company to third parties, it agrees to observe and perform the terms and conditions set out in these Trading Terms, and in particular will:
- follow or comply with all reasonable directions and instructions of the Company in relation to the Products;
  - ensure that its premises comply with all applicable laws, including all legal requirements in Australia concerning the storage and distribution of goods such as the Products;
  - purchase the Products as an independent contractor and will sell the Products in its own name, for its own account and at its own risk;
  - not incur any liability on behalf of the Company or in any way pledge or purport to pledge the Company's credit or accept any order or make any contract binding upon or purporting to bind the Company;
  - use every effort to safeguard the rights and interests of the Company (including any Security Interest of the Company) and will assist the Company at the request of the Company in taking all steps to defend the rights of the Company;
  - use every efforts to safeguard the rights and interests in any of the Company's branding, products, intellectual property;
  - not make any promises, representations, warranties or guarantees in relation to the Products except such as are consistent with those expressly authorised by the Company in writing;
  - not engage in any misleading or deceptive conduct or conduct that is likely to mislead or deceive in particular, in respect of any labelling, advertising or promotion of the Products; and
  - not make any promises or guarantees (beyond those contained in the promotional material supplied by the Company), or any exaggerated claims or misleading or deceptive statements about the Products to third parties.

13. **DEFAULT EVENT**

- 13.1 If:
- the Company considers the Purchaser's creditworthiness has become unsatisfactory (in its absolute discretion);
  - the Purchaser fails to pay the Company any payment due by the Payment Date;
  - the Purchaser commits a breach of these Trading Terms and fails to remedy such breach after being given seven (7) days written notice by the Company to do so;
  - the Company considers (in its absolute discretion) that the Purchaser is or will be unable to make any payment required under any Invoice;
  - the Purchaser does not comply with any one or more of its obligations under any Contract or Invoice; or
  - the Purchaser (1) has become insolvent or bankrupt; (2) has a controller as defined in the *Corporations Act 2001* (Cth) or an analogous person appointed to it or to any of its property; (3) is taken under section 459F(1) of the *Corporations Act* to have failed to comply with a statutory demand; (4) enter into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or (5) is affected by any analogous event,
- then without prejudice to the Company's other rights, the Company may:
- require immediate payment of all amounts outstanding (whether or not then due and payable) and sue for all unpaid amounts irrespective of the date of performance of the Order and the due date for payment of such amounts;
  - terminate any Order with immediate effect;
  - suspend any Order until the default has been remedied; or
  - pass on any outstanding account matters to a collection agent and charge the Purchaser an additional 20% over and above the Invoice Price in the event that this action is taken.

14. **WARRANTIES AND CONDITIONS**

- 14.1 To the maximum extent permitted by law, all implied warranties and conditions are excluded and the Company limits its liability (under any conditions or warranty that cannot legally be excluded) to the:
- replacement of the Product or the supply of equivalent Product;
  - payment of the costs of replacing the Product; or
  - payment of the costs of having the Product repaired;
- (as determined by the Company in its absolute discretion).
- 14.2 To the maximum extent permitted by law, the Company is not liable for any Loss or Claim (including, without limitation, any loss or damage to the Products) resulting from any act or omission on the part of the Purchaser, or the employees, contractors or agents of the Purchaser.
- 14.3 Subject to clause 14.1, the Purchaser expressly acknowledges that the Company makes no warranty or representation:
- as to the suitability or fitness for ordinary or special use or purpose of the Product; or
  - as to the correspondence of the Product to any non specific description of the Product.

- 14.4 The Company, its employees or agents will not be liable for, and the Purchaser agrees to release, hold harmless and indemnify the Company in respect of, any Loss or damage arising as a result of third party Claims, any exemplary, special, indirect, incidental or Consequential Loss or damage (including any or actual prospective lost revenue or profits, opportunity cost, or loss of goodwill) of any kind whatsoever, whether for negligence, breach of contract, misrepresentation or otherwise.
- 14.5 The Purchaser acknowledges that it has exercised its independent skill and judgment in acquiring the Products and has not relied on any advice or representations by the Company or any descriptions, illustrations or specifications contained in any document produced by the Company, which have not been stated expressly in these Trading Terms.
- 14.6 The Company is not liable for any statements or guarantees made by any manufacturer or distributor in respect of the Products.
- 14.7 Without limiting the obligations of the Company at law:
- (a) Products alleged by the Purchaser to be defective, if notified to the Company within fourteen (14) days after receipt by the Purchaser (time being of the essence) and accepted by the Company as defective, will at the discretion of the Company be replaced free of charge (to the original delivery point) or credited to the account of the Purchaser. The Company reserves the right to inspect Products alleged by the Purchaser to be defective prior to determining whether to replace the Products or credit the account of the Purchaser. If the Products are in the custody of the Company for investigation or repair they will be at the risk of the Purchaser and no liability will attach to the Company its servants or agents for any damage occasioned to the Products howsoever arising;
  - (b) if the Purchaser fails to notify the Company of any Products alleged by the Purchaser to be defective within the timeframe stipulated in clause 14.7(a), the Purchaser will be deemed to be satisfied with the Products;
  - (c) it is the responsibility of the Purchaser to inspect the Products within 48 hours after delivery. Inspection procedures should have due regard to the nature of the Products and their intended application;
  - (d) the Purchaser will not have any Claim against the Company for any reason after the Products are used, sold or otherwise altered by the Purchaser or if the Purchaser is in default of any of the payment terms in these Trading Terms; and
  - (e) in no case will any Claim exceed the Invoice Price of the Products in respect of which that Claim is made. Only one Claim may be made with respect to any particular Product.
- 14.8 In relation to Product the subject of an Order for less than \$40,000 (**ACL Product**):
- (a) the Company acknowledges that ACL Products come with guarantees that cannot be excluded under the Australian Consumer Law;
  - (b) the Purchaser is entitled to a replacement or refund for a major failure of ACL Products and for compensation for any other reasonably foreseeable Loss; and
  - (c) the Purchaser is entitled to have ACL Products repaired or replaced if the ACL Products fail to be of acceptable quality and the failure does not amount to a major failure.
15. **PURCHASER'S WARRANTIES**
- 15.1 The Purchaser warrants that it will be party to a Contract for the sale of the Products as a principal in its own right. If the Purchaser acts as agent or trustee of a trust, it must inform the Company in writing of the details of this relationship before entering into a Contract.
- 15.2 The Purchaser covenants that any financial information the Company may require the Purchaser to give is true and accurate and the Purchaser will keep the Company informed of any material adverse change to its financial performance.
16. **INDEMNITY**
- 16.1 The Purchaser must fully indemnify the Company against all Loss and Claims (including Consequential Loss or damage) of any kind that the Company may suffer or incur (or which may be brought against the Company) arising (directly or indirectly) out of or in connection with any act or omission of the Purchaser under these Trading Terms or under any statute, regulation, by-law or order of any government authority or any alleged fault or defect (howsoever arising) in the Products or the manufacture of the Products or the material supplied by the Purchaser (including, without limitation, all Losses, liabilities and costs incurred as a result of defending or settling any Claim alleging any such liability).
- 16.2 To the maximum extent permitted by law, the aggregate liability of the Company to the Purchaser in respect of any and all Claims made against the Company (whether in contract, tort (including negligence), under statute or otherwise) under or arising out of these Trading Terms will not exceed the Invoice Price of the Products in respect of which that Claim is made.
17. **INTELLECTUAL PROPERTY**
- 17.1 The Purchaser acknowledges and agrees that:
- (a) all current future and existing Intellectual Property and any goodwill attaching to that Intellectual Property will vest exclusively in the Company;
  - (b) these Trading Terms does not operate to vest any right or interest in the Intellectual Property in the Purchaser;
  - (c) the Company, as owner of the Intellectual Property, has the right to use, exploit and permit others to use the Intellectual Property at its sole and absolute discretion;
  - (d) the Company is and will remain, the owner of all Intellectual Property;
  - (e) it must not remove, alter or obscure any ownership, copyright, trade mark, confidentiality or other marks or legends on or in the Intellectual Property; and
  - (f) it must not create (or allow to exist) any Encumbrance over the Intellectual Property.
- 17.2 The Purchaser must indemnify the Company against all damages, Losses and expenses which the Company may incur arising out of any Claim made against the Purchaser or the Company that the Products, their method of manufacture or their design infringe any industrial or intellectual property rights.
18. **FORCE MAJEURE**
- 18.1 The Company will not be liable for any failure or delay in supply or deliver of the Products where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of the Company including but not limited to war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.
19. **GST**
- 19.1 If any Supply (as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (the '**GST Act**') made by one party (the '**Supplier**') to the other party (the '**Recipient**') under these Trading Terms is a Taxable Supply (as defined in the GST Act), then in addition to any consideration payable by the Recipient to the Supplier under these Trading Terms, the Supplier will be entitled to recover from the Recipient an additional amount on account of GST (as defined in the GST Act), such amount to be equal to the amount of the Supplier's GST liability in respect of the Supply calculated in accordance with the GST Act and on the basis that the consideration otherwise payable under these Trading Terms is the Value (as defined in the GST Act) of the Taxable Supply and shall be recoverable at the same time as any other consideration payable under this Agreement.
20. **GENERAL**
- 20.1 The laws of the State of Queensland govern these Trading Terms and the Contract and the Company and the Purchaser agree to submit to the non-exclusive jurisdiction of the courts of Queensland and any courts which may hear appeals from those courts in respect of any proceedings in connection with that Contract or these Trading Terms.
- 20.2 Any provision of these Trading Terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make the Contract enforceable.
- 20.3 The Purchaser must not sub-contract, transfer, assign, charge, otherwise encumber, declare a trust over or otherwise create an interest in or dispose of any rights under a Contract without the prior written consent of the Company.
- 20.4 The Purchaser and the Company are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by these Trading Terms.

- 20.5 The non-exercise of or delay in exercising a right of the Company will not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by written notice, signed by the party to be bound by the waiver.
21. **DISPUTE RESOLUTION**
- 21.1 Any dispute arising in connection with these Trading Terms which cannot be settled by negotiations between the parties within a period of 28 days will be submitted to arbitration in accordance with the Rules for the Conduct of Commercial Arbitrations for the time being of the Institute of Arbitrators Australia. During such arbitration both parties may be legally represented.
- 21.2 Nothing in this clause will prevent a party from seeking urgent equitable relief before an appropriate court.
22. **PERSONAL PROPERTY SECURITIES ACT**
- 22.1 If the Company determines (in its sole and absolute discretion) that these Trading Terms, the Credit Account Application (if any), any Order or any Contract (or any agreement or document related to or associated with these Trading Terms, any Credit Account Application, any Order or any Contract) is, creates or contains a Security Interest for the purposes of the PPSA, the Purchaser:
- (a) authorises the Company to:
- (i) file all Financing Statements (and other documents); and
- (ii) do all things (including completing and adding schedules to any Order or other document to further identify the Products which are the subject of the Security Interest (such Products being 'Security Interest Products'),
- which the Company considers necessary or desirable (in its sole and absolute discretion) for the purposes of:
- (iii) protecting and preserving all Security Interest Products and its Security Interest;
- (iv) ensuring the Security Interest is Attached, Perfected, enforceable and otherwise effective;
- (v) enabling the Company to apply for registration, or give any notification, in connection with the Security Interest so that the Security Interest has priority required by the Company (including, where relevant, a Purchase Money Security Interest); or
- (vi) enabling the Company to exercise its rights in connection with the Security Interest;
- (b) agrees to promptly do anything which the Company requires for the purposes of:
- (i) protecting and preserving all Security Interest Products and its Security Interest;
- (ii) ensuring the Security Interest is Attached, Perfected, enforceable and otherwise effective;
- (iii) enabling the Company to apply for registration, or give any notification, in connection with the Security Interest so that the Security Interest has priority required by the Company (including, where relevant, as a Purchase Money Security Interest); or
- (iv) enabling the Company to exercise its rights in connection with the Security Interest,
- including, without limitation:
- (v) obtaining consents;
- (vi) delivering Possession of all Security Interest Products to the Company (and doing anything else required by the Company) for the purposes of Perfecting the Company's Security Interest or to defeat the Security Interest of any third party;
- (vii) signing and producing documents; and
- (viii) completing documents and supplying information;
- (c) must not allow any Security Interest Products to become:
- (i) an Accession to, or commingled with, property that is not the subject of the Company's Security Interest; or
- (ii) affixed to any Land;
- (d) must not move or transfer, or allow to be moved or transferred, any Security Interest Products outside of Australia; and
- (e) must not Dispose of any Security Interest Product except in the ordinary course of its ordinary business;
- (f) acknowledges that if the Purchaser sells or purports to sell any Security Interest Product prior to the Company receiving full payment for that Security Interest Product in accordance with clause 3:
- (i) the Purchaser does so as a fiduciary for the Company and must hold the Proceeds received in respect of that Security Interest Product in a separate account on trust for the Company; and
- (ii) the Company will have a Security Interest over the Proceeds received in respect of that Security Interest Product:
- 22.2 The Purchaser must:
- (a) not grant, create, give or allow to come into existence any Encumbrance, Security Interest or other interest inconsistent with or in priority to any Security Interest or other rights of the Company under or in respect of these Trading Terms, the Credit Account Application (if any), any Order or any Contract (or any agreement or document related to or associated with these Trading Terms, any Credit Account Application, any Order or any Contract) without the prior written consent of the Company (which may be withheld by the Company in its absolute discretion); and
- (b) promptly notify the Company in writing of the existence or creation of any Encumbrance or Security Interest or other interest of the kind referred to in clause 22.2(a).
- 22.3 The Purchaser irrevocably appoints the Company (and each of its directors and officers) jointly and each of them severally to be the lawful attorney of the Purchaser to:
- (a) execute on behalf of and in the name of and as the act and deed of the Purchaser, any document required by the Company under clause 22.1; and
- (b) do all other things and sign all other documents required by the Company to give effect to clause 22.
- 22.4 The Purchaser must:
- (a) ratify and confirm all acts of each attorney done or made under clause 22.3; 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 22.3.
- 22.5 Each attorney appointed under clause 22.3 has the power at any time to appoint a substitute as the attorney of the Purchaser.
- 22.6 The Purchaser agrees that in respect of any Security Interest Product that is not used predominantly for personal, domestic or household purposes, the following sections of the PPSA do not apply:
- (a) section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Purchaser;
- (b) section 121(4) (enforcement of liquid assets – notice to grantor);
- (c) section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Purchaser;
- (d) section 132(3)(d) (contents of statement of account after disposal);
- (e) section 132(4) (statement of account if no disposal);
- (f) section 135 (notice of retention);
- (g) section 142 (redemption of collateral); and
- (h) section 143 (reinstatement of security agreement).