

Conditions of Sale

1. DEFINITIONS

- 1.1 **"Agreement"** means the commercial trading account (if any), credit agreement (if any) and conditions of sale therein, these Terms and shall include any agreement formed between the Supplier and the Customer and/or Directors and Guarantor/s (as applicable).
- 1.2 **"Borg Group of Companies"** means including but not limited to Borg Manufacturing Pty Ltd ACN 003 246 357, its successors, subsidiaries, affiliates, associates or Related Body Corporate, related entities or assigns.
- 1.3 **"Claim"** means any judgment, claim, demand, action, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy, whether by original claim, cross claim or otherwise whether arising at common law, in equity, under statute or otherwise wherever arising, whether known or unknown at the time of this Agreement, whether presently in contemplation of the parties or not.
- 1.4 **"Consequential Loss"** means loss or damage, whether direct or indirect, in the nature of, among other things, loss of profits, loss of revenue, loss of production, liabilities in respect of third parties (whether contractual or not), loss of anticipated savings or business, pure economic loss, loss of opportunity and any form of consequential, special, indirect, punitive or exemplary loss or damages, whether or not a party was advised of the possibility of such loss or damage.
- 1.5 **"Customer"** means a person or entity whose order for the purchase of Goods is accepted by the Supplier.
- 1.6 **"Director"** means where the Customer is a corporation, all directors of that corporation and where the Customer is a trust that has a corporate trustee, all directors of the trustee.
- 1.7 **"Goods"** means Goods supplied by the Supplier to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.8 **"Guarantor"** means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer and includes all directors of the Customer where the Customer is a corporation and where the Customer is a trust all trustees of the trust and all directors of the trustee if there is a corporate trustee of the trust.
- 1.9 **"Loss"** means, in relation to any person, any damage, loss, cost, expense or liability incurred by the person or arising from any claim, action, proceedings or demand made against the person, however arising and whether present or future, fixed or ascertained, actual or contingent and includes Consequential Loss.
- 1.10 **"New Borg Group Entities"** means an entity that, after these Terms are entered into by the Supplier and Customer, becomes a successor, subsidiary, affiliate, associate, related entity, assignee or Related Body Corporate of the Borg Group of Companies or of which shares a director with a body corporate within the Borg Group of Companies.
- 1.11 **"Price"** means the cost of the Goods and/or the Services as agreed between the Supplier and the Customer subject to clause 5 of these Terms.
- 1.12 **"Promotional Material"** means sample or other material supplied to the Customer by the Supplier at the cost of the Supplier and includes but is not limited to display boards, samples, folders and advertising brochures.
- 1.13 **"Related Bodies Corporate"** has the meaning given to that term in the Corporations Act 2001 (Cth).
- 1.14 **"Services"** means all services supplied by the Supplier to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Services as defined supra).
- 1.15 **"Supplier"** means the Borg Group of Companies that has supplied or supplies Goods to the Customer.
- 1.16 **"Terms"** means these terms and conditions set out herein and, where the context so permits, shall include any agreement formed between the Supplier and the Customer and/or Directors and Guarantor/s.

2. INTERPRETATION

- 2.1 The headings used in this Agreement do not form part of these Terms and are for convenience only.
- 2.2 Words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and references to a person shall be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency.
- 2.3 A reference to statute, statutory instrument or any provision thereof is to be construed as a reference to that statute, statutory instrument or such provision thereof as it may be amended or re-enacted from time to time.

3. GENERAL

- 3.1 These Terms constitute a legally binding agreement between the Customer and the Supplier governing the supply of the Goods and/or Services and replace any previous agreements or terms and conditions of sale or negotiation, understanding, or communication in relation to the supply of Goods.
- 3.2 Unless otherwise agreed in writing by the Supplier, any terms and conditions of the Customer's order deviating from or inconsistent with these Terms are expressly rejected by the Supplier. Any variations to these Terms not expressly agreed to in writing by the Supplier are expressly rejected by the Supplier.
- 3.3 A quotation shall not constitute an offer to sell Goods to the Customer. The Supplier may accept or refuse any order for Goods in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.
- 3.4 Once an order from a Customer has been accepted by the Supplier:
- a) the order cannot be cancelled by the Customer without the written consent of the Supplier; and
 - b) the order cannot be varied by the Customer after 4 hours of the Customer submitting the order to the Supplier.
- 3.5 The Supplier may vary these Terms by notice in writing to the Customer, including through notified variations made on the Supplier's website. The Customer agrees that the purchase of any Goods after the date of a notice of variation will be deemed to be an acceptance of such varied Terms.
- 3.6 Should there be any variation to any of the information supplied by the Customer to the Supplier concerning the structure or nature of the Customer's business (such as a conversion to or from a company or trust) the Customer shall forthwith notify the Supplier in writing. If this information is not provided, and the Supplier suffers loss as a result, the Customer agrees to compensate the Supplier for an amount that is no less than the amount of loss that the Supplier suffered.
- 3.7 Any order received by the Supplier from the Customer for the supply of Goods and/or the Customer's acceptance of Services and/or Goods supplied by the Supplier shall constitute acceptance of these Terms.
- 3.8 Upon acceptance of these Terms by the Customer the Terms are irrevocable and can only be varied in accordance with these Terms and shall prevail to the extent of any inconsistency with any other document or agreement between the Supplier and the Customer.
- 3.9 The Supplier's agents or representatives are not authorised to make any representations, or statements on behalf of the Supplier (including any purporting to vary these Terms) and the Supplier, to the extent permitted by law, shall not be liable for any unauthorised representations or statements made by the Supplier's agents or representatives.
- 3.10 The Supplier's agents or representatives are not authorised to enter into any agreement on behalf of the Supplier or vary these Terms.

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- 3.11 In the event that the whole or any part or parts of any provisions in these Terms should be held to be illegal, invalid, void or unenforceable in whole or in part such provision or part thereof shall to that extent be read down to the minimum necessary to achieve its validity or intent, if applicable, or else severed from these Terms but the validity and enforceability of the remainder of these Terms shall not be affected.
- 3.12 The Supplier reserves the right to sub-contract the manufacture and/or supply of the Goods or any part thereof to a third party.
- 3.13 The Customer agrees that a statement in writing signed by the Supplier's credit manager certifying that monies are payable by the Customer to the Supplier shall be prima facie evidence of the monies so payable.

4. GOODS

- 4.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms provided by the Supplier to the Customer.

5. PRICING AGREEMENT

- 5.1 The price of Goods and/or Services shall be indicated on any invoice, quotation, work authority or other commercial form provided by the Supplier to the Customer in respect of Goods supplied, plus any transportation, freight, postage, packaging, handling, insurance and GST (where applicable, GST will be charged at the appropriate rate at the date of invoice).
- 5.2 Where the price of the Goods and/or Services has been quoted by the Supplier that price shall be binding upon the Supplier provided that the Goods and/or Services are delivered to and accepted by the Customer within thirty (30) days of the invoice, quotation, work authority or other commercial form.
- 5.3 The price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that the taxes and duties are expressly included in any quotation given by the Supplier.
- 5.4 Notwithstanding any prior acknowledgment by the Supplier of the price of Goods and/or Services, the prices specified for Goods and/or Services may at the Supplier's option be subject to the Supplier's prices and charges in effect at the time of delivery.
- 5.5 The Supplier shall be entitled to alter the price of Goods and/or Services in the invoice or contract price as a consequence of currency fluctuations, taxes, customs duty or other government imposts.

6. ACCOUNT TERMS

- 6.1 Where the Supplier has agreed to extend credit to the Customer for the purchase of Goods, the Customer must pay for the Goods and/or Services within 30 days after the end of the calendar month in which the Goods and/or Services are supplied by the Supplier to the Customer.
- 6.2 Credit extended to the Customer for all Goods sold will be provided in the absolute discretion of the Supplier. Any credit limit approved by the Supplier shall be notified in writing to the Customer.
- 6.3 At the supplier's sole discretion, a non-refundable deposit (or full payment) may be required from the customer before manufacture of made to order goods.
- 6.4 The Supplier will be entitled to set off against any money owing to the Customer amounts owed to the Supplier by the Customer on any account whatsoever.
- 6.5 Payment for Goods and/or Services must be made by cash, or by cheque, or by bank cheque, or by direct credit, or by credit card, or by any other method as agreed to between the Customer and the Supplier. The Supplier reserves the right to charge a credit card handling fee at its discretion and at rates advised by the Supplier from time to time.

- 6.6 If the Customer does not pay the Supplier by the due date, the Customer shall pay interest on monies due, charged on a daily basis at 20% per annum from the date of the invoice until the actual date of payment. If the Customer has a credit account with the Supplier, the Supplier may debit the Customer for any interest that accrues at such other times that it chooses.
- 6.7 If the Customer does not pay the Supplier by the due date, the Customer shall pay to the Seller an administration fee which shall be the greater of \$50.00 or 10.00% of the amount overdue on an unpaid invoice. The Customer and the Supplier agree that the administration fee is a reasonable liquidated cost of administering an abnormal payment and the Supplier may debit the Customer at such other times that it chooses for such administration fees.
- 6.8 If the Customer owes the Supplier any money, the Customer shall pay any legal costs (on a solicitor/client indemnity basis), stamp duties and other expenses payable on these Terms or any credit application, guarantee or other security documents signed by the Customer together with all collection costs including legal fees (on a solicitor/client indemnity basis) and dishonoured cheque fees suffered or incurred by the Supplier in connection with the supply of Goods and/or Services by the Supplier.
- 6.9 The Supplier may withdraw the Customer's credit facilities at any time or vary the Customer's credit limit, without notice to the Customer or any guarantor of the Customer.
- 6.10 The Customer must pay the Price in full without any deduction, set off or counter claim.
- 6.11 In the event that:
- a) the Supplier retains possession or control of the Goods; and
 - b) payment of the Price is due to the Supplier; and
 - c) the Supplier has made a demand in writing to the Customer for payment of the Price and the Supplier has not received the Price for the Goods,

then whether property in or title to the Goods has passed to the Customer or has remained with the Supplier, the Supplier may dispose of the Goods and may claim from the Customer any Loss to the Supplier on such disposal.

7. INTELLECTUAL PROPERTY

- 7.1 Where the Supplier has designed, drawn, written or prepared Goods for the Customer, then the copyright (or any other attaching intellectual property right) in those designs and drawings, prototypes, productions and documents shall remain vested in the Supplier, and shall only be used by the Customer at the Supplier's discretion.
- 7.2 Where the Customer has supplied drawings, designs or concepts for Goods to be supplied by the Supplier, the Customer warrants that all designs or instructions provided to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark, moral rights or intellectual property rights in the execution of the Customer's order, and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

8 DELIVERY

- 8.1 Goods will be delivered or deemed to be delivered when they are delivered to the delivery place nominated by the Customer, included to any third party's address. If no such address is nominated then delivery will be deemed to occur at the time when the Goods are ready for collection at the Supplier's premises.
- 8.2 The Customer shall pay to the Supplier packing, crating and delivery charges in accordance with the Supplier's current rates, as at the date of dispatch. If there is no current rate, then a reasonable delivery charge shall be paid by the Customer.
- 8.3 The Supplier reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Supplier for such information.

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- 8.4 The Customer authorises the Supplier to deliver Goods to the place nominated by the Customer and to leave the Goods at such place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery of the Goods to the nominated delivery place.
- 8.5 The Supplier shall not be obliged to obtain a signed receipt or other acknowledgement from any person at the nominated place for delivery but if a signed receipt or other acknowledgement is obtained from someone believed by the Supplier to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgement shall be conclusive evidence of the Customer's acceptance of the Goods delivered.
- 8.6 Any notified times for delivery are estimates only and the Supplier shall not be liable to the Customer for any failure to deliver or for delay in delivery of Goods occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion, pandemic, epidemic or any other cause whatsoever whether or not beyond the control of the Supplier.
- 8.7 The Customer shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.
- 8.8 The Supplier reserves the right to deliver Goods by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment or deliver any instalment on time shall not be a repudiation of the contract and will not entitle the Customer to determine the contract in whole or in part.
- 8.9 On notification to the Customer, the Supplier reserves the right to extend the date for delivery of the Goods and the Supply of Services.
- 8.10 The Supplier shall not be liable to the Customer for any Loss attributable to failure by the Supplier to deliver the Goods.
- 8.11 Where the Supplier cannot access the Customer's address to deliver the Goods, the Goods shall be delivered and left as close as practicable to the Customer's address. In the event the Customer requests the Supplier to enter a property to deliver the Goods, then the Supplier accepts no responsibility for any damage caused by the Supplier in doing so.
- 8.12 Unless agreed otherwise in writing, prior to delivery, the unloading of Goods is the Customer's responsibility. The Supplier is not responsible for any damage resulting from the unloading of Goods by the Customer, or by anyone on its behalf.
- d) the Supplier may require the Customer to return the Goods to the Supplier or its authorised representative on demand and the Supplier may enter upon the premises of the Customer or any other premises occupied or controlled by the Customer to inspect or repossess the Goods.
- 9.4 The Customer shall insure the Goods against theft or any damage until the Price and all other amounts owed to the Supplier by the Customer have been paid for in full and the Customer has complied with these Terms, or until the Goods are sold by the Customer, whichever occurs first and the Supplier will be entitled to request for all documentation and details of the insurance policy. If the Customer does not insure the Goods or fails to supply any documentation and details of its insurance policy as requested by the Supplier, the Supplier may arrange such insurance and the Customer will reimburse the Supplier for all costs associated with the arranging of such insurance.
- 9.5 If any of the Goods are damaged or destroyed prior to property in and title to the Goods passing to the Customer, the Customer hereby assigns to the Supplier all insurance proceeds payable to the Customer for the loss or damage to the Goods. The Customer shall at the time that it makes any claim on an insurer in connection with the loss or damage to the Goods notify that insurer of the assignment of rights pursuant to this clause.
- 9.6 The Customer agrees to store the Goods in good and serviceable condition, and in such a manner as to identify that the Goods remain the property of the Supplier until the conditions in clause 9.3 are met, and the Customer agrees to keep complete records as to the use and sale to third parties of such Goods.

10. RETURN OF GOODS

- 10.1 The Customer acknowledges and agrees that any Promotional Material provided to the Customer by the Supplier remains the property of the Supplier at all times and the Customer must return the Promotional Material to the Supplier immediately on demand.
- 10.2 Subject to clause 9, unless agreed in writing by the Supplier, the Supplier will not accept any return of Goods.
- 10.3 Goods accepted for return by the Supplier will attract a charge to the Customer to cover restocking and repackaging charges. Such charge shall be deducted from the amount or credit allowed or, alternatively, shall be payable on demand made by the Supplier. The original invoice number and a copy of the original invoice must accompany all Goods returned to the Supplier. The Supplier, in its sole discretion, may request immediate payment of this charge by the Customer upon return of the Goods.

11. CLAIMS FROM CUSTOMER

- 11.1 Subject to clauses 11.2 and 11.3:
- a) all warranties, descriptions, representations, guarantees or conditions, whether express or implied by law, trade, custom or otherwise, and all specific conditions, even though such conditions may be known to the Supplier, are, to the fullest extent, expressly excluded;
- b) the Supplier are not liable for any delay or Loss arising from the supply of or failure to supply the Goods and/or Services or comply with an order of the Customer whether due to shortfall, defect, incorrect delivery or otherwise for any reason whatsoever including breach of contract (including fundamental breach), negligence, breach of duty as bailee, or the wilful act or default of the Supplier;
- 11.2 These Terms shall not exclude, or limit the application of any provisions of any statute including any implied condition or warranty the exclusion of which would contravene any statute (including the Competition and Consumer Act 2010 (Cth)) or cause any part of this clause 11 to be illegal, invalid, void or unenforceable.
- 11.3 If the exclusion of liability in clause 11.1 is reduced, void or not available, the Supplier's liability for any Claims arising out of these Terms, including liability for breach of these Terms, in negligence or in tort or for any other common law or statutory action, shall:

9. PROPERTY AND RISK

- 9.1 The Goods shall be at the sole risk of the Customer at the time of delivery to the Customer in accordance with clause 8.1
- 9.2 The Supplier may mark or label the Goods to identify the Goods in any manner which the Supplier considers appropriate.
- 9.3 Property in and title to the Goods will not pass to the Customer until the Price and all other amounts owed to the Supplier by the Customer have been paid for in full and the Customer has complied with these Terms and until then:
- a) the Customer will hold the Goods as trustee and agent for the Supplier;
- b) the Goods must be stored separately and in a manner enabling them to be identified as Goods of the Supplier and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix the Goods with other products or items such that the Goods are no longer separately identifiable then the Customer and the Supplier will be owners in common of the new product;
- c) the Customer may sell the Goods in the ordinary course of its business as trustee and agent of the Supplier and must hold the proceeds of sale in a separate account on trust for the Supplier and account to the Supplier for those proceeds; and

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- a) be limited to the extent the Loss the subject of the Claim was caused directly by the Supplier; and
- b) in all events, exclude Loss relating to any delay in supply of Goods and/or Services and for any Consequential Loss. 11.4 Unless the Goods and/or Services supplied by the Supplier are of a kind ordinarily acquired for domestic household or personal use or consumption, the Supplier's liability under clause 11.2 for breach of a non-excludable condition or warranty is limited at the Supplier's option, to any one of the following:
- A) in the case of Goods:
- (1) the replacement of the Goods or the supply of equivalent Goods;
 - (2) the repair of the Goods;
 - (3) the payment of the cost of providing replacement Goods or of acquiring equivalent Goods; or
 - (4) the payment of the cost of having the Goods repaired.
- B) in the case of Services:
- (1) the supplying of the Services again; or
 - (2) the payment of the cost of having the Services supplied again.
- 11.5 The Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- a) The Customer failing to properly maintain or store any Goods;
 - b) The Customer using the Goods for any purpose other than that for which they were designed;
 - c) The Customer continuing the use of any the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - d) The Customer failing to follow any instructions or guidelines provided by the Supplier; or
 - e) Fair wear and tear, any accident or act of God.
- 11.6 Subject to any statutory rights and remedies, all Claims by the Customer must be made by written notice to the Supplier within seven (7) days of the date of delivery. If the Customer fails to provide such notice within seven (7) days then the Customer shall be deemed to have accepted the Goods and/or Services and shall not be entitled to make any Claim against the Supplier.

12. INDEMNITY

- 12.1 The Customer agrees:
- a) to indemnify and keep indemnified the Supplier against all Claims, Loss and Consequential Loss that may be brought against the Supplier or which the Supplier may pay, sustain or incur as a direct or indirect result of any negligence, mis-described Goods, breach or non-performance of these Terms by the Customer, or noncompliance with any law or regulation. The Supplier may enforce this right of indemnity at any time, including before it has incurred the Loss; and
 - b) that to the extent permitted by law, the indemnity referred to in clause 12.1(a) will operate irrespective of whether any Loss and/or Consequential Loss arises from or is contributed to by negligence, contractual breach, or a wilful, deliberate or unauthorised act or omission by the Supplier or by any of its sub-contractors, agents or servants.
- 12.2. To the extent that the indemnity in clause 12.1 is by law void, read down or not available, the indemnity will apply but be reduced to the extent the Loss arises from or is contributed to by negligence, contractual breach, or a wilful, deliberate or unauthorised act or omission by the Supplier or by any of its sub-contractors, agents or servants.

- 12.3 The Customer agrees it will keep the Supplier informed at all times of any Claim it is aware has been made, is likely to be made, or will be made with respect to the Agreement, these Terms and/or the Goods and/or Services supplied by the Supplier to the Customer.

13. FIT FOR PURPOSE

- 13.1 The Customer agrees that it does not rely on the skill or judgment of the Supplier in relation to the suitability of any Goods and/or Services for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever.

14. GST

- 14.1 In this clause the expressions "GST", "Input tax credit", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
- 14.2 With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable by Customer under these Terms are exclusive of GST.
- 14.3 If GST is imposed on any supply made under or in accordance with these Terms, the recipient of the taxable supply must pay the Supplier an additional amount equal to the GST payable on or for taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply subject to the provision of a tax invoice.

15. DEFAULT BY CUSTOMER

- 15.1 In the event of:
- a) any default or failure by the Customer in making due and punctual payment to the Supplier of any moneys owing by the Customer;
 - b) an administrator, liquidator or provisional liquidator is appointed in respect of the Customer;
 - c) a receiver and manager, administrator or controller is appointed in respect of any assets or groups of assets of the Customer;
 - d) the Customer goes into bankruptcy or is wound up;
 - e) the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due;
 - f) there is a breach by the Customer of any of these Terms;
 - g) the Customer offers the Goods for sale through the internet on eBay or any like website or
 - h) the Customer without the written approval of the Supplier sells Promotional Material,

then all monies payable by the Customer to the Supplier shall become immediately due and payable notwithstanding the due date of payment shall not have expired, and the Supplier may, without prejudice to any other rights it may have, do any or all of the following:

- (1) withdraw any credit facilities which may have been extended to the Customer;
- (2) withhold any further deliveries of Goods;
- (3) in respect of Goods with which property in and title to has not passed to the Customer and already delivered onto the Customer's premises, enter onto those premises and recover and resell the Goods;
- (4) recover from the Customer the cost of materials or Goods acquired for the purposes of future delivery;

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- (5) withdraw or cancel any discount, markdown, reduction or special price, previously offered by the Supplier to the Customer, and the Price shall become the Supplier's standard Price as at the date of the original sale; and/or
- (6) cease to supply Goods and/or Services to the Customer.

16. TRUST AND TRUSTEES

16.1 Where the Customer is a trustee:

- a) the Customer agrees to produce a stamped copy of the trust deed (with all amendments) and accounts of the trust if and when requested by the Supplier;
- b) the Customer warrants that it has full power and authority to enter into this Agreement on behalf of the trust and that it shall be bound by these Terms both personally and in their capacity as trustee irrespective of whether or not it discloses to the Supplier that it is a trustee at the time of entering into any credit agreement with the Supplier;
- c) the Customer warrants that the trust has agreed to indemnify the trustee in respect of all liability incurred by the trustee pursuant to this Agreement; and
- d) the trustee of the trust acknowledges that it has entered into this Agreement in its capacity as trustee of the trust and also in its own capacity.

17. COVENANTS BY THE CUSTOMER

17.1 Guarantee

- a) The Customer has requested that Supplier extend credit terms to the Customer and acknowledges that the Customer will receive a valuable commercial benefit as a result of the extension of credit terms.
- b) The Customer guarantees that it will pay all amounts payable to the Supplier from time to time under these Terms when they are due and this guarantee continues until the payment in full of those amounts.
- c) The Customer must pay the Supplier's costs of administering (including the enforcement of) this guarantee.
- d) The Customer remains liable to the Supplier under this guarantee and the Customer's obligations under this guarantee will not be affected by any refusal by a Supplier to provide further credit to the Customer or a variation in the terms of any agreement between the Supplier.
- e) The Supplier may at any time release or discharge the Customer from this guarantee and give time for payment, accept any composition from or make any other arrangements with the Customer without releasing or discharging any other guarantor or otherwise prejudicing the Supplier's rights and remedies against the Customer.
- f) As long as this guarantee remains in existence, the Customer may not, without the Supplier's consent, reduce the Customer's liability under this guarantee by claiming that the Customer or any other person has a right of set-off or counterclaim against the Supplier.
- g) Where the Customer is a partnership, no change in the constitution of the partnership shall affect, impair or discharge the liability of the Customer under this guarantee notwithstanding any legislation or statute to the contrary.
- h) The Customer's obligations to the Supplier under this document is a primary obligation and the Supplier is not required to proceed against or enforce any security or other right against the Customer or demand payment from the Customer before those amounts become due for payment.

17.2 Fixed and Floating Charge

- a) in consideration of the Supplier selling to the Customer Goods on credit, the Customer as beneficial owner does hereby charge all and every undertaking and all of its assets (including rights, titles and interests) of whatsoever nature and wheresoever situate both present and future with the payment to the Supplier of all moneys now or hereafter to become owing or payable to the Supplier by the Customer or enforcement of these Terms.
- b) the charge hereby created ("the Charge") shall operate as:
 - (1) a fixed charge as regards to freehold and leasehold property, uncalled capital, engines, machinery, plant, stock, books of account, debts, vouchers and other documents relating in any way to the business transactions of the Customer and all securities negotiable or otherwise, shares and documents evidencing title to or right to possession of any property and whether or not deposited with the Supplier by the Customer and the property mentioned in any such documents; and
 - (2) as a floating charge in respect of all other assets hereby charged.
- c) the Customer shall immediately upon demand made on it by the Supplier execute in favour of the Supplier a deed of fixed and floating charge containing such covenants as the Supplier may reasonably require including without limitation the provisions of the Supplier's standard form of deed of fixed and floating charge.

17.3 Mortgage

- a) the Customer shall immediately upon demand being made upon it by the Supplier execute in favour of the Supplier as mortgagee, a mortgage payable on demand in registrable form over all or any part of the freehold or leasehold land of the Customer referred to in clause 17.4 hereof ("the Mortgage") containing such covenants as the Supplier may require including without limitation the covenants contained in Memorandum 2447323 presently filed in the New South Wales Land Titles Office in respect of real property situated in New South Wales or in the case of real property in other jurisdictions, the provisions of the Supplier's standard form of mortgage which is available on the Supplier's website or on request by the Customer.
- b) the Supplier shall be entitled to lodge a caveat in respect of the agreement to grant a mortgage contained in Clause 17 or the Mortgage or in respect of all or any of the real property of the Customer charged to the Supplier under clause 17. The Customer shall not object to the lodgement of the said caveat or take any steps to have any such caveat removed from the Land Titles Office register.

17.4 Future Assurances

At the cost of the Customer, the Customer shall from time to time at the written request of the Supplier execute any deed, dealing, assurance or other document which the Supplier shall in its absolute discretion require the Customer to execute and do all such other acts, matters and things as the Supplier shall consider reasonable for the purpose of preserving, perfecting or protecting the Charge and the Mortgage or more effectively securing the powers, remedies, rights, declarations and authorities of the Supplier under the Charge and/or the Mortgage.

- 17.5 The Customer indemnifies the Supplier from and against all of the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause 17.

- 17.6 The Customer hereby acknowledges and agrees that the Supplier has a lien over all Goods in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.

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17.7 Power of Attorney

The Customer hereby irrevocably appoints the Supplier and every authorised officer of the Supplier jointly and each of them severally the attorney of the Customer for the purpose of doing either in the Customer's name or in the name of the attorney and in either cases as the Customer's act and deed all such acts, matters and things as the attorney from time to time considers necessary or expedient for the purpose of carrying into effect all the powers and authorities herein contained and without limiting the power and authority:

- a) do any act including the execution of the Charge and/or the Mortgage and the execution of such documents as may be necessary to register the Charge and/or the Mortgage in the Customer's name as mortgagor pursuant to this application;
- b) to execute and deliver on behalf of the Customer a lease of the said freehold or leasehold land of the Customer or any part thereof for such period as the Supplier may think fit;
- c) to bring, proceed with, defend or compromise any legal proceedings on behalf of the Customer in connection with the said land or property the subject of the Mortgage and to execute and appeal from any judgment or judgments in connection therewith.

18. PERSONAL PROPERTY SECURITIES ACT 2009 (Cth) (PPSA)

18.1 In this clause:

- a) "financing statement" has the meaning given to it by the PPSA;
- b) "financing change statement" has the meaning given to it by the PPSA;
- c) "security agreement" means the security agreement under the PPSA created between the Customer and the Supplier by these Terms;
- d) "security interest" has the meaning given to it by the PPSA; and
- e) "PPSR" means the Personal Property Securities Register.

18.2 Upon assenting to Terms in writing the Customer acknowledges and agrees that these Terms:

- a) constitute a security agreement for the purposes of the PPSA;
- b) constitutes the grant of a purchase money security interest by the Customer in favour of the Supplier in respect of all present and after acquired goods supplied to the Customer by the Supplier; and
- c) create a security interest in:
 - (1) all Goods previously supplied by the Supplier to the Customer (if any); and
 - (2) all Goods that will be supplied in the future by the Supplier to the Customer,

and to perfect any security interest the Supplier may register a financing statement on the PPSR.

18.3 The Customer undertakes to:

- a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
 - (1) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (2) register any other document required to be registered by the PPSA; or
 - (3) correct a defect in a statement referred to in clause 18.1(a) or 18.1 (b).

- b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
- d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier; and
- e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

18.4 The Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.

18.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4) and 135 of the PPSA.

18.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA and that the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) is contracted out of if that part would apply by virtue of section 116(2) of the PPSA.

18.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

18.8 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 18.3 to 18.7.

19. ACKNOWLEDGEMENT

19.1 Each of the Customer and the Directors hereby acknowledge, affirm and agree that:

- a) this application has been provided to each of the Customer and its Directors to enable them to take it away and read it so that they may fully understand and comprehend the terms conditions and provisions contained herein;
- b) they have read, fully understand and comprehend the terms, conditions and provisions contained in this application;
- c) they have been advised by the Supplier prior to the execution of this application that a copy of this application form containing the forms of this application has been provided to the Customer and each Director to enable them to obtain independent legal advice and they have taken such advice is seemed appropriate;
- d) they have full power and authority to enter into this Agreement;
- e) this Agreement is signed, sealed and delivered as a Deed and
- f) the Supplier will rely on all information given to the Supplier by the Customer and the Directors and this information is true and correct.

20. ASSIGNMENT AND NOVATION

20.1 The Supplier may at any time assign, novate or otherwise dispose of or deal with its rights and obligations under these Terms by notice in writing to the Customer and the Customer gives prospective authority to a future assignment and/or novation to be effectuated by the Supplier unilaterally.

21. LAWS TO GOVERN PROVISIONS OF AGREEMENT

21.1 These Terms and the supply of the Goods by the Supplier to the Customer shall be governed by and construed in accordance with the laws of New South Wales.

Conditions of Sale

22. NOTICES

- 22.1 Notice to be given by the Customer to the Supplier may be delivered personally or sent to the Supplier at its current business address at 2 Wella Way, Somersby, New South Wales. Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post.

23. GENERAL PROVISIONS

- 23.1 In the event of any breach of these Conditions by the Supplier, the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 23.2 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic, epidemic or other event beyond the reasonable control of either party.
- 23.3 A failure by the Supplier to exercise any right, power, remedy nor any delay in the exercise of any such right, power or remedy under the Agreement and/or these Terms nor the granting of any time or other indulgence the Supplier to the Customer will not operate as a waiver of the Supplier's rights under the Agreement and/or these Terms. Waiver of a the Supplier's rights may only occur in writing.
- 23.4 Each party must execute any document and perform any action necessary to give full effect to these terms, whether before, or after performance of these Terms.
- 23.5 The Supplier and/or Customer and/or Guarantor agree and acknowledge that this Application may be completed by the Customer utilising the Supplier's online application process through the Supplier's website. This may include the insertion of the Customer's and/or Guarantor's electronic signature. Once this Application is completed in this method and if the Application is deemed acceptable by the Supplier, the Supplier and/or Customer and/or Guarantor agree that the Supplier may rely on this Application (and any accompanying Guarantee) as if it had been executed in writing by the Customer and/or Guarantor in writing. To be clear, once the Application is accepted by the Supplier, if Goods and/or Services are supplied by the Supplier to the Customer, the Customer and/or any Guarantor agree that such supply of Goods and Services are made on the basis of these Terms as if the Terms had been executed by the Supplier and/or Customer and/or Guarantor in writing.
- 23.6 New Borg Group Entities
- a) The Customer and the Supplier intend for all New Borg Group Entities to have the benefit of these Terms.
 - b) The Customer covenants that it will only order Goods and/or Services from a New Borg Group Entity on the condition that these Terms apply to such an order and that the New Borg Group Entity will have the benefit of and may enforce these Terms irrespective of the fact that the New Borg Group Entity may not have been in existence or an entity within the Borg Group of Companies at the time of initial acceptance by the Customer of these Terms.
 - c) The Customer acknowledges that, in consideration of facilitation of an extension of credit by a New Borg Group Entity to the Customer, the Supplier as at the date of this Agreement holds the benefit of the promises made under clause 23.7(b) as trustee on behalf of that entity.

24. PRIVACY STATEMENT

- 24.1 In accordance with the Privacy Act 1988 as amended, the Customer agrees to the Supplier collecting and dealing with our personal information in line with the privacy policy found at www.borgs.com.au/privacy-policy.