



Conditions of Trade

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 **"Bins"** means waste receptacles the Supplier provides to the Customer for use during the term of the Agreement.
- 1.3 **"Claim"** means any judgment, claim, demand, action, suit or proceeding for any remedy, whether: by original claim, cross claim or otherwise; arising at common law, in equity, under statute or otherwise; known or unknown at the time of this Agreement; presently in contemplation of the parties or not.
- 1.4 **"Consequential Loss"** means loss or damage, whether direct or indirect, including loss of: opportunity; profits; revenue; production; or anticipated savings or business, liabilities in respect of third parties, pure economic loss, 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 Services or 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 products supplied by the Supplier to the Customer and as the context requires, includes Bins.
- 1.8 **"Guarantor"** means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer and includes the Customer's directors.
- 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 made against the person, however arising and whether present or future, fixed or ascertained, actual or contingent and includes Consequential loss.
- 1.10 **"New Supplier Group Entity"** 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 Supplier Group or which shares a director with a body corporate within the Supplier Group.
- 1.11 **"Non-Accepted Waste"** means combustible, corrosive, contaminated, toxic, reactive, radioactive, volatile, highly flammable, explosive or other waste not approved by the Supplier for disposal in the Bins OR acceptance at the Supplier's premises (as the context requires) including but not limited to fuels, oils, asbestos, PCBC, treated wood waste, arsenic, heavy metals, biosolids, manures, grease trap waste, plastics, metal, glass, rubbish, septic.
- 1.12 **"Order"** means an order from the Customer to the Supplier for Goods and/or Services.
- 1.13 **"Price"** means the cost of the Goods and/or the Services as agreed between the Supplier and the Customer subject to and calculated in accordance with clause 5 of these Terms.

- 1.14 **"Related Body Corporate"** and "Related Entities" have the meaning given to those terms in the Corporations Act 2001 (Cth).
- 1.15 **"Services"** means all services supplied by the Supplier to the Customer and includes any advice or recommendations.
- 1.16 **"Supplier"** means the company within the Supplier Group that has supplied or supplies Goods and/or Services to the Customer.
- 1.17 **"Supplier Group"** means including but not limited to Bettergrow Pty Ltd (ACN 062 888 11; ABN 71 062 888 117) its successors, subsidiaries, affiliates, associates, Related Body Corporate, Related Entities, assigns and any further acquisitions.
- 1.18 **"Supplier's Policies and Procedures"** means the policies and procedures at www.bettergrow.com.au (Policies and Procedures) as amended from time to time.
- 1.19 **"Quotation"** means a written quotation setting out the price of the supply of Goods and/or Services, addressed to the Customer and provided to the Customer by the Supplier.
- 1.20 **"Terms"** means the terms and conditions set out in this document as varied from time to time under clause 3.6 and where the context permits includes the agreement formed between the Supplier and the Customer and/or Directors and Guarantor/s.
- 1.21 **"Waste"** means waste types (excluding Non-Accepted Waste) which the Customer requires the Supplier to collect or accept and which the Supplier approves for disposal in the Bins or acceptance at the Supplier's premises.

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 include the plural and vice versa, words importing a gender include other genders and references to a person is to 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 The words "includes" or "including" are not to be construed as terms of limitation.

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, terms and conditions of sale, negotiation, or communication in relation to the supply of Goods and/or Services and prevail over any terms and conditions of the Customer's order inconsistent with these Terms.
- 3.2 An Order (and not a Quotation) constitutes an offer for the Supplier to sell Goods and/or provide the Services to the Customer on these Terms.



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- 3.3 The Supplier may accept or refuse any Order 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 No contract will exist between the Supplier and the Customer unless and until the Supplier accepts the Customer's Order, following which the parties will be bound by these Terms.
- 3.5 The Supplier will permit the Customer to cancel its order in writing by the Customer any time prior to the order being prepared for delivery or collection as the context requires.
- 3.6 The Supplier may vary these Terms by notice in writing to the Customer and shall prevail to the extent of any inconsistency with any other document or agreement between the Supplier and the Customer. The Customer agrees that such notice may be by way of amended Terms being published on the Supplier's website ("Notice"). The Customer agrees that placing an Order after the date of a Notice will be deemed to be an acceptance of such varied Terms.
- 3.7 The Customer will notify the Supplier of any material change in the structure or nature of the Customer's business as soon as practicable following that change.
- 3.8 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, will not be liable for any unauthorised representations or statements made by the Supplier's agents or representatives.
- 3.9 The Supplier reserves the right to sub-contract the manufacture and/or supply of the Goods and/or Services or any part thereof to a third party.
- 3.10 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 AND/OR SERVICES

- 4.1 The Goods and/or Services are as described on the invoices, Quotation, Customer Pricing or order confirmation provided by the Supplier to the Customer.

5. PRICING AGREEMENT

- 5.1 The price of Goods and/or Services from time to time shall be notified to the Customer verbally or in writing ("Customer Pricing").
- 5.2 The Customer acknowledges that, subject to clause 5.3 and 5.4, the Supplier may vary the price of Goods and/or Services after the Customer places an Order with the Supplier.
- 5.3 Where Quotation is provided by the Supplier, the price shall be as set out in the Quotation and shall be binding upon the Supplier provided that the Goods and/or Services are delivered to and accepted by the Customer within sixty (60) days of the Quotation. To avoid doubt an Order confirmation provided by the Supplier to the Customer does not constitute a Quotation.

- 5.4 Where a Quotation is not provided, the price of the Goods and/or Services applicable to the order will be the total of the applicable Customer Pricing as at the time of delivery plus any transportation fee and GST (GST being charged at the applicable rate at the date of invoice) and will be set out in Supplier's invoice to the Customer.
- 5.5 In addition to the charges for the Services set out in this clause 5, additional charges may be applied and charged to the Customer at the Supplier's reasonable discretion for the following: changes in the Delivery Place or access to the Delivery Place which cause the Supplier to incur additional expense; or the removal of Non-Accepted Waste.

6. ACCOUNT TERMS

- 6.1 Unless otherwise agreed in writing by the Supplier, the Customer will pay for all Goods delivered at the time of delivery and all Services at the time they are provided.
- 6.2 At the Supplier's sole discretion, a non-refundable deposit may be required from the Customer.
- 6.3 Where the Supplier has agreed to extend credit to the Customer for the purchase of Goods and/or Services, 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.
- 6.4 Credit extended to the Customer for all Goods and/or Services provided is at the absolute discretion of the Supplier. Any credit limit approved by the Supplier shall be notified in writing to the Customer.
- 6.5 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.
- 6.6 Payments under these Terms must be made by direct credit or credit card. Payments will be applied to outstanding invoices of the Customer at the Supplier's sole discretion. The Supplier reserves the right to charge a credit card handling fee at rates advised by the Supplier from time to time.
- 6.7 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 the Bank Bill Swap Bid Rate plus 5% per annum from the due 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 from time to time.
- 6.8 If the Customer owes the Supplier any money, the Customer will pay any legal costs (on a solicitor/client indemnity basis) and other expenses incurred by the Supplier in connection with the enforcement of these Terms, any credit application, guarantee or other security documents related to 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.



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- 6.11 In the event that:
- the Supplier retains possession or control of the Goods;
 - payment of the Price is due to the Supplier;
 - the Supplier has made a demand in writing to the Customer for payment of the Price;
 - and the Supplier has not received payment from the Customer, then whether or not property in or title to the Goods has passed to the Customer, the Supplier may dispose of the Goods on such terms as it sees fit.

7. DELIVERY

- 7.1 Goods and/or Bins will be delivered or deemed to be delivered when they are delivered to: (a) the delivery place nominated by the Customer; or (b) if the Customer does not nominate a delivery place, when they are ready for collection at the Supplier's premises ("Delivery Place").
- 7.2 The Supplier may leave the Goods and/or Bins at the Delivery Place, or may collect the Bins from the Delivery Place (as the context requires) whether or not any person is present to accept delivery and the Supplier is not obliged to obtain a signed delivery receipt.
- 7.3 In the event the Customer requests the Supplier to enter a property to deliver the Goods and/or the Bins or to collect the Bins, then the Supplier accepts no responsibility for any damage caused by the Supplier in doing so.
- 7.4 Where the Supplier cannot access the Delivery Place, the Goods and/or Bins shall be delivered and left as close as practicable to the Delivery Place.
- 7.5 The Supplier reserves the right to elect to either dispose of the Goods or charge 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.
- 7.6 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.
- 7.7 On notification to the Customer, the Supplier reserves the right to extend the date for delivery of the Goods and/or Bins and the Supply of Services.
- 7.8 The Supplier shall not be liable to the Customer for any Loss attributable to failure by the Supplier to deliver the Goods and/or Bins.
- 7.9 Any notified times for delivery are estimates only. The Supplier shall not be liable to the Customer for any loss or damage arising from delay in delivery for any reason and whether in whole or in part, whatsoever whether or not beyond the control of the Supplier.
- 7.10 Unless agreed otherwise in writing prior to delivery, the unloading of Goods and/or Bins is the Customer's responsibility. Notwithstanding any agreement to unload by the Supplier, the Supplier is not responsible for any damage resulting from the unloading of Goods by the Customer, or by anyone on its behalf.
- 7.11 The Supplier will rely on the information the Customer provides in respect of the Delivery Place.
- 7.12 The Customer must ensure that there is unobstructed and safe access for the Supplier to perform the Services at the Delivery Place.

8. PROPERTY AND RISK

- 8.1 Risk in the Goods will pass to Customer as soon as they are delivered at the Delivery Place. Risk in each Bin will return to the Supplier as soon as the Supplier collects the Bin from the Customer's premises. Risk in Waste and Non-Accepted Waste will be dealt with under clause 10.7.
- 8.2 Other than in respect of Bins, which remain the property of the Supplier at all times, property in and title to the Goods will not pass to the Customer until payment in full of the Price and all other amounts payable to the Supplier by the Customer and the Customer has complied with these Terms. Until property and title in the Goods pass to the Customer:
- the Customer holds the Goods as trustee and agent for the Supplier;
 - 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;
 - the Supplier may require the Customer to return the Goods to the Supplier or its authorised representative on demand;
 - notwithstanding clause 8.2b), the Customer may sell the Goods in the ordinary course of its business as trustee and agent of the Supplier and holds the proceeds of such sale in trust for the Supplier and in that case the Customer agrees to keep complete records as to the use and sale to third parties of such Goods.
 - Notwithstanding anything else in this Agreement, property in the Bins remains with the Supplier at all times and does not pass to the Customer at any time.

9. RETURN OF GOODS

- 9.1 Subject to clauses 8, 11.2, 11.3 and 11.5 unless agreed in writing by the Supplier, the Supplier will not accept any return of Goods other than Bins.
- 9.2 If Goods other than Bins are accepted for return by the Supplier under this clause (other than pursuant to clauses 11.2, 11.3 and 11.5):
- the Customer will pay a restocking charge to the Supplier of 15% of the price of the Goods;
 - the original invoice number and a copy of the original invoice must accompany all Goods returned to the Supplier; and
 - the Supplier, in its sole discretion, may request immediate payment of this charge by the Customer upon return of the Goods.



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10. WASTE AND BINS

- 10.1 The Customer will not contaminate the Waste with any Non-Accepted Waste, deliver any Non-Accepted Waste to the Supplier's premises for disposal or place any Non-Accepted Waste in the Bins.
- 10.2 The Supplier will only collect the Waste.
- 10.3 If the Waste has been contaminated with Non-Accepted Waste or Non-Accepted Waste has been otherwise placed in the Bins, the Supplier may, at its discretion:
- not collect the Non-Accepted Waste or any Bin which contains Non-Accepted Waste and ask the Customer to remove the Non-Accepted Waste from the Bins or the Customer's premises; or
 - collect the Non-Accepted Waste, in which case the Customer will meet all Loss and Consequential Loss suffered by the Supplier in addition to the additional fees for the transport and/or disposal of the Non-Accepted Waste.
- 10.4 Subject to this Agreement, all Waste becomes the Supplier's property once the Waste has been collected or accepted by the Supplier.
- 10.5 The Customer will store all Waste securely and evenly spread the Waste inside the Bins and the Customer will not overfill the Bins or place Waste beside or on top of the Bin(s).
- 10.6 If the Customer needs Non-Accepted Waste collected, the Customer must contact the Supplier to request a special collection. The Supplier may decline to do so in its absolute discretion.
- 10.7 For the avoidance of doubt, title and risk in any Non-Accepted Waste remains with the Customer until it is deposited to a waste facility that is legally authorised to accept such Non-Accepted Waste.
- 10.8 The Customer will comply with all of the Supplier's Policies and Procedures.

11. LIMITATION OF LIABILITY

- 11.1 Subject to clauses 11.2, 11.3 and 11.5:
- all warranties, 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;
 - the Supplier is 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 willful 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:
- be limited to the extent the Loss the subject of the Claim was caused directly by the Supplier; and
 - in all events, exclude Loss relating to any delay in supply of Goods and/or Services and for any Consequential Loss.
- 11.4 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:
- The Customer failing to properly maintain or store any Goods;
 - The Customer using the Goods for any purpose other than that for which they were designed;
 - 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;
 - The Customer failing to follow any instructions or guidelines provided by the Supplier; or
 - Fair wear and tear, any accident or act of God.
- 11.5 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:
- 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 or waste, breach or non-performance of these Terms by the Customer, or non-compliance with any law or regulation. The Supplier may enforce this right of indemnity at any time, including before it has incurred the Loss; and
 - that to the extent permitted by law, the indemnity referred to in clause 12.1a) 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.



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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.

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 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; or
- g) the Customer offers the Goods for sale through the internet on eBay or any like website,

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 and/or cease to supply Services to the Customer;
- (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, recover and resell the Goods;
- (4) recover from the Customer the cost of materials or Goods acquired for the purposes of future deliveries; and/or
- (5) any discount, markdown, reduction or special price, previously offered by the Supplier to the Customer may be withdrawn, or cancelled, and the Price shall become the Supplier's standard Price as at the date of the original sale.

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; and
- 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 amounts outstanding from time to time.

17. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

17.1 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; and
- d) security interest has the meaning given to it by the PPSA.

17.2 Upon acceptance of these Terms in writing by placing an Order, the Customer acknowledges and agrees that these Terms:

- a) constitute a security agreement for the purposes of the PPSA; and
- b) 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.

17.3 The Customer undertakes to:

- a) promptly sign any further documents and/or provide any further information which the Supplier may reasonably require to:



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- (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 17.1a) or 17.1b).
- 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; and
- 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.
- 17.4 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.
- 17.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 17.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 17.7 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.
- 17.8 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 17.3 to 17.7.
- 17.8 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 17.3 to 17.7.

18. GUARANTEE

- 18.1 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.
- 18.2 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.
- 18.3 The Customer must pay the Supplier's costs of administering (including the enforcement of) this guarantee.
- 18.4 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.
- 18.5 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.

- 18.6 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.
- 18.7 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.
- 18.8 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.

19. FIXED AND FLOATING CHARGE

- 19.1 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.
- 19.2 The charge hereby created ("the Charge") shall operate as:
- a) 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
 - b) as a floating charge in respect of all other assets hereby charged.
- 19.3 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.

20. CAVEAT

- 20.1 The Supplier shall be entitled to lodge a caveat in respect of the agreement to grant the Charge or in respect of all or any of the real property of the Customer charged to the Supplier under these Terms.



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20.2 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.

21. FUTURE ASSURANCES

- 21.1 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 caveat.
- 21.2 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 these Terms.
- 21.3 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.

22. POWER OF ATTORNEY

- 22.1 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:
- do any act including the execution of the Charge and the execution of such documents in the Customer's name as may be necessary to register the Charge in the Customer's name as charger or otherwise enforce the Supplier's rights pursuant to this application;
 - 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 Charge or security interest granted by the Customer to the Supplier and to execute and appeal from any judgment or judgments in connection therewith.

23. ACKNOWLEDGMENT

- 23.1 Each of the Customer and the Directors hereby acknowledge, affirm and agree that:
- this application has been provided to the Supplier to enable each of the Customer and its Directors to take it away and read it so that they may fully understand and comprehend the terms conditions and provisions contained herein;

- they have read, fully understand and comprehend the terms, conditions and provisions contained in this application;
- 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 take such advice as to us has seemed appropriate;
- they have full power and authority to enter into this Agreement;
- this Agreement is signed, sealed and delivered as a Deed; and
- the Supplier will rely on all information given to the Supplier by the Customer and the Directors and this information is true and correct.

24. ASSIGNMENT AND NOVATION

- 24.1 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.

25. LAWS TO GOVERN PROVISIONS OF AGREEMENT

- 25.1 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.

26. NOTICES

- 26.1 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.
- 26.2 Notices to be given to the Customer by the Supplier may be delivered personally, or sent to the Customer's last known physical address or electronic mail address provided by the Customer to the Supplier and unless the contrary is proved shall be taken as delivered on the second business day following posting. Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post.

27. GENERAL PROVISIONS

- 27.1 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.
- 27.2 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.



Conditions of Trade

- 27.3 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.
- 27.4 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 the Supplier's rights may only occur in writing.
- 27.5 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

28. NEW SUPPLIER GROUP ENTITIES

- 28.1 The Customer and the Supplier intend for all New Supplier Group Entities to have the benefit of these Terms.
- 28.2 The Customer covenants that it will only order Goods and/or Services from a New Supplier Group Entity on the condition that these Terms apply to such an order and that the New Supplier Group Entity will have the benefit of and may enforce these Terms irrespective of the fact that the New Supplier Group Entity may not have been in existence or an entity within the Supplier Group of Companies at the time of initial acceptance by the Customer of these Terms.
- 28.3 The Customer acknowledges that, in consideration of facilitation of an extension of credit by a New Supplier Group Entity to the Customer, the Supplier as at the date of this Agreement holds the benefit of the promises made under clause 24.2 as trustee on behalf of that entity.

29. PRIVACY

- 29.1 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.