



## COMMERCIAL CREDIT ACCOUNT APPLICATION FORM

To: R B Distributions Pty Ltd trading as Riviera Bakery ABN 83 076 379 158 and its successors and assigns (**Supplier**)

1. **CUSTOMER:**

	ABN:

2. **APPLICATION:**

The Customer applies for a credit account and agrees that the attached Terms of Trade will govern all dealings between the Customer and the Supplier.

3. **CREDIT LIMIT AND TERMS REQUESTED:**

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<input type="checkbox"/> - 7 day account
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4. **MEANS AND ABILITY TO PAY:**

The Customer warrants that it is solvent and has the future ability to pay all of its debts as and when they fall due.

5. **ACCEPTANCE:**

The Supplier will be deemed to have accepted this Application if it allows the Customer to trade with it on credit.

6. **PURPOSE / DECLARATION:**

The Customer declares that the credit to be provided to it by the credit provider is to be applied wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

**IMPORTANT**

You should only sign this declaration if this loan is wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

By signing this declaration you may lose your protection under the National Credit Code.

7. **PERSON COMPLETING THIS APPLICATION:**

Position: .....

Name: .....

Address (private) .....

Email: ..... Postcode: .....

**SIGNATURE:** ..... Date: ...../...../.....

(Signed for and on behalf of the Customer)

The person completing this Application on behalf of the Customer **HEREBY REPRESENTS AND WARRANTS** that the information set out hereon is true and correct and he/she is duly authorised to sign this Application on behalf of the Customer and **ACKNOWLEDGES** that the Supplier will rely upon and be induced thereby to grant credit and/or to deal with the Customer.

8. **ACCOUNTS PAYABLE CONTACT:**

..... Tel: .....

9. **CREDIT INFORMATION:**

The Customer and the person completing this Application irrevocably authorise the Supplier, its servants and agents to make such enquiries as they deem necessary to investigate the credit worthiness of the Customer and the person completing this Application from time to time, including the making of enquiries with persons nominated as trade references, the bankers of the Customer, any credit provider or Credit Reporting Agency and including personal credit and consumer credit information (together **"the information sources"**). The Customer and the person completing this Application hereby authorise the information sources to disclose to the Supplier such information concerning the Customer and the person completing this Application which is within their possession.

The Customer and the person completing this Application agree that the information provided on this Application concerning the Customer and the person completing this Application and any relevant trading information arising from any dealings between the Customer and the Supplier may be disclosed to a Credit Reporting Agency or any other interested person. The Supplier's full privacy and credit reporting policy which includes details of the persons to whom the Customer's information may be disclosed is available on its website, at [www.rivierabakery.com.au](http://www.rivierabakery.com.au) and a hard copy of that policy can be provided upon request.

**PARTNERSHIP/SOLE TRADER**

	Name	Address	Date of Birth	Private Telephone
Partners or Trader full Names & Private Addresses				

**TRADING DETAILS**

Trading Name

Business Address  Postcode

Address for correspondence

Telephone ( )  Mobile  Email

**COMPANY**

Company Name  ABN

Business Address  Postcode

Email

## Directors

	Name	Address	Date of Birth	Private Telephone
1.				
2.				
3.				
4.				

**THE DIRECTORS MUST SIGN THE GUARANTEE ON PAGE 3****TRUSTS**

Is the Customer involved or associated in any way with a Trust (whether Family Trust or Unit Trust)?

Yes  No

**INSOLVENCY**

Has the Customer or any of its directors or partners been insolvent or involved in any way with an insolvent (liquidation, receiver, administrator, bankruptcy etc.)?

Yes  No

## Type of Business

How Long Established?  How Long Current Owner?

Names of Related/Subsidiary Companies/Partnerships

Are the Business Premises owned?  Yes  No OR Leased  Yes  No

## Financial Details

Bank	<input type="text"/>	Branch	<input type="text"/>	Phone No:	<input type="text"/>
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## Trade References

(must be similar value to level of credit sought)

	Company	Address	Telephone
1.			
2.			
3.			
4.			



AGREEMENT TO GUARANTEE AND INDEMNIFY

DEED POLL made

2018

BY: The Guarantors referred to below (Guarantors)

IN FAVOUR OF: R B Distributions Pty Ltd trading as Riviera Bakery ABN 83 076 379 158 and its successors and assigns (Supplier).

1. We Guarantee payment to you of all monies and performance of all obligations including any past, present and future indebtedness or obligation by

\_\_\_\_\_ Pty Ltd ABN \_\_\_\_\_ ("the Customer")
(insert) (insert)

or any of us arising from any past, present or future dealing with you.

2. We Indemnify You against all loss or damage arising from any past, present or future dealing with the Customer or any of us.

3. We Agree (a) to pay to a stakeholder nominated by you the amount you certify is payable before being entitled to dispute whether that amount is payable (b) that this Deed Poll shall remain effective notwithstanding any conduct or event (whether or not agreed to by you) which, but for this clause, may have released or varied any obligation of the Customer or any of us (c) that any payment to you which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid.

4. Consideration: You granting financial accommodation or other credit from time to time at your discretion to the Customer.

5. Proper Law: We agree that this Agreement and any claim or dispute between you and any of us shall be governed by the law applicable in South Australia and heard in the appropriate court nearest Adelaide.

6. Several Guarantors: If more than one Guarantor is named or intended to sign as guarantor, we each agree to be bound and liable for the full amount owed to you, even if we are the only one to sign and whether or not any amount is extinguished or compromised in any way. You may make any arrangement or compromise with any of us, obtain additional guarantees, indemnities or securities from any party or release or compromise with any Guarantor or party without affecting our liability to you.

7. We Warrant that the Guarantors are all of the directors / partners / proprietors of the Customer.

8. Credit Limit: Any credit limit you grant or apply to the Customer is at your discretion and will not limit our liability to you.

9. Privacy Act: You may make any enquiries you deem necessary to investigate our creditworthiness including enquiry with our bankers, any other credit provider or any credit reporting agency ("the sources"). We authorise the sources to disclose anything concerning us which is in their possession. We agree that you may disclose any information you have concerning us to the sources. We understand that a full copy of your privacy and credit reporting policy which includes details of the persons to whom our information may be disclosed is available on your website, at www.rivierabakery.com.au and a hard copy of that policy can be provided upon request.

10. Severability: Any part of anything herein shall be severable without affecting any other part hereof.

11. Read and Understood: We have each read and understood this document and have been advised by you to obtain independent professional advice before signing it.

12. Definitions: (a) "You" and "Your" means the Supplier; and (b) "We" and "us" means each of the Guarantors jointly and severally and their respective executors, administrators, successors and permitted assigns (as the case may be).

EXECUTED as a deed

THE GUARANTORS

1.....of.....

.....Signature.....

Witness.....(print name).....

2.....of.....

.....Signature.....

Witness.....(print name).....

3.....of.....

.....Signature.....

Witness.....(print name).....

IMPORTANT NOTICE: If you sign this Guarantee, you may be required to pay someone else's debts. You should ensure that you read and understand the terms of this Guarantee. If necessary, seek independent professional advice.

## PRIVACY AND CREDIT REPORTING POLICY

R B Distributions Pty Ltd trading as Riviera Bakery ABN 83 076 379 158 and its successors and assigns (**we, us or our**) complies with the 13 Australian Privacy Principles (**APPs**) as set out in the *Privacy Act 1988 (Act)* (as amended from time to time). For the purpose of this Policy:

**“Personal Information”** means information, including financial information, or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is in a material form or not.

**“Sensitive Information”** means information or an opinion (that is also Personal Information) about an individual’s racial or ethnic origin, political opinions, membership of a political association, religious beliefs, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual practices, criminal record or health information.

We recognise the importance of protecting your Personal Information. We will take reasonable steps to ensure all Personal Information held by us is secure and all Personal Information collected, used or disclosed by us is accurate, complete and up to date. Our handling of Personal Information is regulated by the Act and the *Credit Reporting Privacy Code* (as amended from time to time) (**Code**).

This Policy is published on our website and may be updated from time to time at our discretion. By continuing to use our website, or otherwise continuing to deal with us, you accept this Policy as it applies from time to time. You may request a hard copy of this Policy.

### Types of Personal Information

Depending on the particular circumstances, we may collect and hold a range of different Personal Information about you. This may include, but is not limited to, your name, date of birth, contact details (including address, email address and telephone number), driver’s licence number, credit related information, internet protocol address, server address, domain name and payment, transaction and financial information (such as credit card or bank account numbers).

### Sources of Personal Information

Where possible, we will collect Personal Information directly from you. In some instances, we may collect Personal Information from other sources such as third parties, publically available sources, press reports or other publications, in which case, we will endeavour to verify such details with you.

We acknowledge that there is no obligation for you to provide us with Personal Information except as required by law. However, if you choose not to provide us with certain Personal Information, we may not be able to deal with you or provide you with our full range of services or employment.

We collect Personal Information in a number of ways, including but not limited to, directly from you when you engage us to provide you with services, set up an account with us, enter into a credit arrangement with us and when you browse our website. If you apply for employment with us, we may collect Personal Information about you from any third parties that you nominate as your referees and you consent to us obtaining Personal Information about you from third party sources such as social media sites.

### Purpose for Use and Disclosure

The purpose for which we use and disclose Personal Information will depend on the circumstances in which it is collected. We will only hold your Personal Information for the particular purpose of for which we collected it (**Primary Purpose**).

We will not use or disclose your Personal Information (not being Sensitive Information) for another purpose (**Secondary Purpose**) unless:

- we first obtain your consent;
- you would reasonably expect us to use or disclose it for a Secondary Purpose that is related to the Primary Purpose or (in the case of Sensitive Information) directly related to the Primary Purpose;



- we are required to by law;
- a permitted general purpose exists;
- a permitted health situation exists;
- we reasonably believe it is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body (for example, to comply with occupational health and safety, industrial relations and taxation laws).

Specific purposes for which we may use or disclose Personal Information include the purposes of providing you with services, dealing with customer care related activities, marketing and developing our services, the operation and administration of accounts, carrying out certain checks (for example, in relation to credit), considering an individual for employment, interacting with companies or organisations with whom we have a business relationship, complying with our obligations under agreements with third parties and carrying out any activity in connection with a legal, governmental or regulatory requirement that we have to comply with, or in connection with legal proceedings, crime or fraud prevention, detection or prosecution.

In the event we collect Sensitive Information about you, you consent to us collecting, using and disclosing the Sensitive Information for the purpose for which it was disclosed and as permitted by the Act and other relevant laws.

### **Overseas Recipients**

It is not likely that we will disclose Personal Information that we collect and hold about you to any overseas recipients (as defined in the Act).

### **Anonymity and Pseudonymity**

You can deal with us anonymously (without identifying yourself) or under a pseudonym (fictitious name) unless you are applying for credit from us, applying for employment with us, dealing with us in relation to the provision of services or in any other situation where it is impractical or unlawful to deal with you anonymously or under a pseudonym.

### **Storage of Personal Information**

All Personal Information collected by us will be retained as part of our business records, which will be securely monitored and maintained. We hold Personal Information in a number of ways, including:

- as part of customer records and other electronic documents on which Personal Information is contained which are stored on our information technology systems and servers operated by third parties who provide services to us in connection with our business; and
- by securely storing hard copy documents on which Personal Information is contained, at our various premises and using third party document management and archiving services.

### **Retention of Personal Information**

If we receive Personal Information where we have not taken any steps to collect such information, then within a reasonable time we will decide whether we could, under the APPs, have solicited that Personal Information ourselves. If we determine that we would not, under the APPs, have been permitted to solicit the Personal Information, we will as soon as practical (where lawful and reasonable to do so) destroy or de-identify that unsolicited Personal Information. If we could, under the APPs, have solicited the Personal Information then we may use and disclose the Personal Information for the purpose for which it was disclosed and as permitted by the Act and other relevant laws.

Where Personal Information held by us is no longer required to be held, and its retention is not required by law, then we will destroy such Personal Information by a secure means.

### **Credit Reporting**

If you apply for credit from us, we will need to collect Personal Information from you so we can assess your Credit Application. In order to assess your Credit Application, you consent to your Personal Information being disclosed to, and us obtaining your Personal Information from, third parties. Such third parties may include credit reporting bodies (**CRB**), companies who provide commercial credit references, people you authorise us to contact in connection with your Credit Application or any



approved Business Credit Account, mercantile agencies and other companies who provide outsourced services to us. For contact details and information on how a CRB manages credit related Personal Information, please see their privacy policies available at the websites set out above.

CRBs may include your Personal Information in reports that they provide to credit providers to assist those providers in assessing your credit worthiness. If you fail to meet your payment obligations in relation to consumer credit or commit a serious credit infringement, we may be entitled to disclose this to a CRB.

CRBs offer a service to credit providers wanting to send direct marketing material about credit services to individuals (**credit pre-screening**). You have the right to request that CRBs do not use your Personal Information for credit pre-screening. To opt-out of credit pre-screening, contact the CRB, using the contact details on their websites set out above. You can also ask a CRB not to use or disclose your Personal Information for a period if you believe on reasonable grounds that you have been or are likely to be a victim of fraud.

### **Access to Personal Information**

You can gain access to your Personal Information, subject to certain exceptions contained in the Act. To request access to your Personal Information, or to update or correct that Personal Information, please send a written request to either 96 Hayward Avenue, Torrensville SA 5031 or [admin@rivierabakery.com.au](mailto:admin@rivierabakery.com.au) (**Contact Address**). We will check the identity of individuals making requests to determine within 14 days whether the request will be met.

### **Direct Marketing**

We may send you marketing communications in line with your previously expressed marketing preferences or as otherwise permitted under the Act and other relevant laws. If you do not wish to receive such communications, please contact us via the Contact Address or follow the opt-out instructions contained in each marketing communication.

### **Compliance**

If you are concerned that the way in which we collect, hold, use or disclose your Personal Information may be in breach of the APPs or the Code, please send written details of your complaint to the Contact Address.

After receiving a complaint, we will conduct internal discussions and evaluate whether we believe that such collection, holding, use or disclosure of your Personal Information was in breach of the APPs and/or the Code. We will endeavour to notify you of the results of our investigation of your complaint within 30 days of receiving your complaint. However, if your complaint involves complex issues or requires extensive investigation, it may not be possible to respond within this timeframe. If the conclusion of our investigation is that our collection, holding, use or disclosure of your Personal Information was in breach of the APPs and/or the Code, we will take steps to remedy the breach as soon as reasonably practicable. If after dealing with us you are still not satisfied, you are entitled to make a complaint to the Office of the Australian Information Commissioner ([www.oaic.gov.au](http://www.oaic.gov.au)) or the Financial Ombudsman Service ([www.fos.org.au](http://www.fos.org.au)).



## Terms of Trade

These Terms will apply to every sale of Goods and provision of Services by the Supplier. Unless expressly accepted in writing by the Supplier, any qualification of these Terms contained in any document issued by the Customer shall be of no force or effect. These Terms constitute the entire agreement between the Supplier and the Customer, and no variation of or addition to these Terms will be binding unless reduced to writing and signed by the Supplier and the Customer or their duly authorised representatives.

### 1. Definitions

- 1.1 **Australian Consumer Law** means Schedule 2 to the Competition and Consumer Act (as amended or replaced from time to time);
- 1.2 **Competition and Consumer Act** means the *Competition and Consumer Act 2010* (Cth) (as amended or replaced from time to time);
- 1.3 **Customer** means the party who enters into these Terms with the Supplier, for the supply of Goods and / or Services from the Supplier to the Customer;
- 1.4 **Goods** means goods supplied by the Supplier to the Customer pursuant to these Terms;
- 1.5 **PPSA** means the *Personal Property Securities Act 2009* (Cth) (as amended or replaced from time to time);
- 1.6 **Services** means services supplied by the Supplier to the Customer pursuant to these Terms;
- 1.7 **Supplier** means R B Distributions Pty Ltd trading as Riviera Bakery ABN 83 076 379 158; and
- 1.8 **Terms** means these terms of trade.

### 2. Price

- 2.1 Prices quoted in the Supplier's price lists, quotes and advertising literature are for guidance only and they are exclusive of GST unless otherwise indicated (which will be included). The contract price of the Goods sold and Services rendered to the Customer will be as agreed in writing between the Supplier and the Customer from time to time (including pursuant to the Supplier's acceptance of an order from the Customer).
- 2.2 The Supplier reserves the right to charge the Customer for any costs incurred as a result of the Customer varying an order for Goods or Services, or requiring Goods or Services urgently. Unless otherwise agreed, prices do not include the cost of delivery of the Goods.

### 3. Payment

- 3.1 The contract price of Goods and Services shall be paid without deduction:
  - (a) 30 day accounts - within 30 days from the end of the month of the invoice;
  - (b) 14 day accounts - within 14 days from the end of the fortnight of the invoice;
  - (c) 7 day accounts - within 7 days from the end of the week of the invoice; and
  - (d) accounts where there is no agreement to provide credit, or where such credit has been withdrawn or suspended, at the time of delivery,or on such terms as the Supplier and the Customer may otherwise agree in writing.
- 3.2 The Customer must make payment in such manner as the Supplier directs from time to time by written notice to the Customer, and where the Supplier has extended credit to the Customer, the Supplier reserves the right to revoke the provision of credit at any time.
- 3.3 The Supplier reserves the right to suspend or cancel the supply of further Goods and Services if the terms of payment are not strictly adhered to by the Customer, or if the Customer is in breach of or default under any other subsisting agreement between the Supplier and the Customer.
- 3.4 If the Customer fails to pay any sum to the Supplier by the due date then, although no demand for payment may have been made, the sum in respect of which such default is made or so much thereof as shall from time to time remain unpaid shall bear simple interest at the rate which is 2% in excess of the maximum rate per annum charged by the Supplier's bank on the due date on overdraft accommodation of the same amount, and such interest shall accrue and be recoverable from day to day.
- 3.5 All costs and expenses incurred by the Supplier in recovering any outstanding money (including, without limitation, debt collection agency fees or lawyer's costs on a solicitor-own client basis) shall be paid by the Customer.

### 4. Delivery and Risk

- 4.1 Once an order has been placed by the Customer, and accepted by the Supplier, it cannot be cancelled by the Customer. The supply of Goods and/or Services is subject to availability, and the Supplier reserves the right to suspend or discontinue the supply of Goods and/or Services to the Customer.
- 4.2 The Supplier reserves the right to deliver part of an order to the Customer, and the Customer agrees to accept any part order so delivered. Failure by the Supplier to deliver any part of an order shall not entitle the Customer to cancel the balance of the order and in the event of the Customer defaulting on payment of any part of an order, the Supplier shall be entitled to treat the default as a breach of contract relating to the total order or any or all part orders of such order.
- 4.3 Where a time for delivery is agreed, the Supplier will take all reasonable action to deliver the Goods and/or Services on time, but time shall in no circumstances be deemed of the essence, and the Supplier shall not be liable for any loss or damages suffered by the Customer arising out of, or in relation to, a delay in delivery by the Supplier.
- 4.4 Unless otherwise agreed in writing between the Supplier and the Customer, delivery of the Goods will be deemed to have occurred when the goods are either collected by the Customer or the Customer's agent or offloaded to the Customer's nominated point of delivery. Any costs incurred by the Supplier due to any failure by the Customer to accept the Goods at time of delivery will be reimbursed by the Customer to the Supplier.
- 4.5 The Customer shall inspect the Goods immediately following delivery and shall notify the Supplier of any shortfall in or loss or damage to the Goods delivered immediately upon completion of the inspection. To the extent permitted by law, failure to so notify shall disentitle the Customer to any remedy in respect of the shortage, loss or damage.

### 5. Retention of Title and Security Interest

- 5.1 Property in and legal and beneficial ownership of the Goods shall remain with the Supplier until the Customer has made payment in full in cleared funds of the contract price of those Goods and any other money owing by the Customer to the Supplier, and pending such payment the Customer:
  - (a) shall hold the Goods as fiduciary bailee and agent for the Supplier;
  - (b) shall retain the Goods in a manner such that they are readily identifiable as the Supplier's property; and
  - (c) shall handle and store the Goods with due care.
- 5.2 If the Customer defaults in payment of the contract price or any other money owing by the Customer to the Supplier:
  - (a) the Supplier and its nominees shall have the right to enter the premises where the Goods are believed to be stored to take possession of all or any of the Goods, and for this purpose the Customer shall grant or cause to be granted reasonable access rights and the Supplier shall be entitled to do all things required to secure possession;
  - (b) upon taking possession of Goods, the Supplier shall thereafter be entitled to sell and dispose of them or any of them, either together or in parcels, at such time or times, and place or places, and either by public auction or private contract or partly by one and partly by the other, to any person or persons, for such price or prices as the Supplier may deem proper or expedient, with power for the Supplier to make any other terms and conditions in regard to such sale or sales as the Supplier may think proper, without being answerable or accountable for any loss, diminution in price, costs or expenses occasioned by any such sale;
  - (c) the Supplier shall be entitled to apply the net proceeds of sale in reduction of the money owing by the Customer to the Supplier (including, without limitation, that referred to in clause 5.2(d)(2)), and shall pay any surplus to the Customer;
  - (d) if the Supplier exercises any of the rights set out in this clause 5.2, the Customer:



- (1) will not have any claim whatsoever against the Supplier for breach of contract or otherwise;
    - (2) must indemnify the Supplier from and against any claim against the Supplier arising out of its taking possession of the Goods; and
    - (3) must reimburse the Supplier on demand in respect of the costs and expenses incurred by the Supplier in exercising or attempting to exercise those rights including, without limitation, costs of taking possession, storage and transportation.
  - 5.3 Notwithstanding clause 5.1, before the Customer has obtained legal and beneficial ownership in the Goods, it is entitled to sell the Goods (including goods into which the Supplier's Goods have been mixed), in the ordinary course of its business, provided that the Customer:
    - (a) shall hold the proceeds of that sale of the Goods on trust for and as agent for the Supplier immediately when they are receivable or are received; and
    - (b) if requested by the Supplier, must either pay the amount of the proceeds of sale to the Supplier immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Supplier.
  - 5.4 The Customer acknowledges and agrees that by assenting to these Terms, which constitute a security agreement for the purposes of the PPSA:
    - (a) the Customer grants a security interest to the Supplier in all Goods now or in the future supplied by the Supplier to the Customer (or to its account) during the continuance of the relationship between the Supplier and the Customer, and the proceeds of those Goods;
    - (b) any purchase it makes on credit terms or on a retention of title basis pursuant to these Terms, will constitute a purchase money security interest (**PMSI**) for the purposes of the PPSA, and the PMSI will continue to apply to any Goods coming into existence, and the proceeds of the sale of Goods coming into existence, on or after the date of these Terms;
    - (c) the Supplier will continue to hold a security interest in the Goods in accordance with, and subject to, the PPSA, notwithstanding that the Goods may be processed, commingled or become an accession with other goods;
    - (d) any security interest held by the Supplier will be a continuing and subsisting interest in the Goods, which will have priority to the fullest extent permitted by law over all other registered or unregistered security interests;
    - (e) until title in the Goods passes to the Customer, it will keep all Goods supplied by the Supplier free, and will ensure all such Goods are kept free, of any charge, lien or security interest and not otherwise deal with the Goods in a way that will or may prejudice any rights of the Supplier under these Terms or the PPSA; and
    - (f) in addition to any other rights under these Terms or otherwise arising, the Supplier may exercise any and all remedies afforded to it as a secured party under the PPSA, including, without limitation, entry into any building or premises owned, occupied or used by the Customer, to search for, seize, dispose of or retain those Goods in respect to which the Customer has granted a security interest to the Supplier.
  - 5.5 The Customer will, whether before or after Goods are supplied under these Terms, do such acts and provide such information (which information the Customer warrants to be complete, accurate and up to date in all respects) as in the opinion of the Supplier (acting in its absolute discretion) may be required or desirable to enable the Supplier to perfect under the PPSA the security interest created by these Terms.
  - 5.6 In addition to the security interest granted pursuant to clause **Error! Reference source not found.** and in consideration for the Customer agreeing to supply Goods or Services to the Customer on credit terms:
    - (a) the Customer grants a security interest over all of its present and after acquired personal property to secure payment and performance of all of its obligations under these Terms; and
    - (b) The Customer charges in favour of the Supplier all of its interest in all present and future real property of the Customer to secure the performance of the Customer's obligations under these Terms, including payment of any monies owing to the Supplier. The Customer acknowledges that the Supplier has a caveatable interest in any real property of the Customer under this clause and may lodge a caveat over that property. Upon demand by the Supplier, the Customer agrees to immediately execute a mortgage in registrable form on terms satisfactory to the Supplier to more particularly describe the security interest conferred by this clause. Should the Customer fail within a reasonable time of such demand to execute that mortgage, then the Customer irrevocably appoints the Supplier as its attorney with authority to do on its behalf anything that it may lawfully authorise an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any real property of the Customer.
  - 5.7 To the extent permitted by law the Customer waives any right to receive a copy of a verification statement under section 157 (or otherwise) of the PPSA and agrees as to any contract between the Supplier and the Customer for the supply of Goods governed by these Terms, to the extent permitted by law, to contract out of each and every provision permitted by section 115(1) of the PPSA, except section 115(1)(g), to the intent that the Supplier will preserve its right to seize collateral, and the Customer agrees to waive its rights referred to in section 115(1).
  - 5.8 The Customer undertakes to:
    - (a) not register or permit to be registered a Financing Change Statement (as defined under the PPSA) in any of the Goods in which the Supplier has a security interest pursuant to these Terms; and
    - (b) provide the Supplier not less than 7 days' prior written notice of any proposed change in the Customer's name, address, contact numbers, business practice or such other change in the Customer's details which are registered on the Personal Property Securities Register, to enable the Supplier to register a Financing Change Statement (as defined by the PPSA), if the Supplier deems it necessary (in its sole discretion).
  - 5.9 The Customer agrees to pay the costs, charges and expenses of and incidental to the need for, or desirability of registration of, a financing statement or financing change statement or any action taken by the Supplier to comply with the PPSA or to protect its position under the PPSA. The Customer agrees to pay any costs incurred by the Supplier, including, but not limited to, legal costs on a solicitor-own client basis, arising from any disputes or negotiations with third parties claiming an interest in any Goods supplied by the Supplier.
6. **Termination of Supply**
- The Supplier may at any time by written notice to the Customer terminate its obligation to supply Goods or Services to the Customer upon the happening of any of the following:
- 6.1 any action is taken for, or with a view to, the liquidation (including provisional liquidation), winding up, official management, bankruptcy or insolvency (or equivalent) of the Customer and such action remains pending for a period of 21 days thereafter, unless the Customer satisfies the Supplier (in its absolute discretion) of the Customer's solvency;
  - 6.2 the Customer becomes insolvent or is unable or deemed to be unable to pay its debts or ceases or threatens to cease to carry on its business or a major part of its business or the Customer enters into dealings with any of its creditors with a view to avoiding, or in expectation of, insolvency or stops or threatens to stop payments generally or a receiver or receiver and manager is appointed to, or an encumbrancee takes or proposes to take possession of, any material part of the assets of the Customer;
  - 6.3 the Customer enters into any arrangement, assignment or composition with or for the benefit of its creditors or any class of them;
  - 6.4 any distress, attachment or execution is issued, levied or enforced against the Customer which is not satisfied or challenged in good faith by appropriate means within 14 days;



- 6.5 a person is appointed under any applicable law to investigate any part of the Customer's business or affairs or an application is made for the appointment of such an inspector, or an administrator (or equivalent) is appointed to the Customer or any steps are taken for such an appointment; or
- 6.6 any other event occurs or circumstance arises, financial or otherwise, which, in the reasonable opinion of the Supplier, is likely materially and adversely to affect the ability of the Customer to observe any of its payment obligations to the Supplier,
- and in any such event the Customer shall be deemed to be in breach of its obligation to purchase those Goods or Services.
7. **Limitation of Liability**
- 7.1 The Customer acknowledges, agrees, represents and warrants that:
- (a) the use of the Goods is outside the control of the Supplier, and the Customer is satisfied that the Goods have (unless the Goods are returned pursuant to clause **Error! Reference source not found.**) the condition, characteristics, quality and attributes that will make them suitable or fit for any ordinary or special purpose required for those Goods, even if that purpose was made known to the Supplier;
  - (b) the Customer has or will in a timely manner conduct all mandatory or prudent tests and apply all mandatory or prudent quality control checks and procedures to ensure the Goods and any product that is produced from or incorporates them will be without defect and suitable or fit for any purpose required for them; and
  - (c) it has not relied upon any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by the Supplier or anyone on its behalf, or apparently on its behalf, in respect of the Goods, other than those that are expressly contained in these Terms.
- 7.2 Subject to the remainder of this clause 7, the Supplier offers no guarantee or warranty in respect of the Goods and Services it supplies to the Customer, and all representations, conditions and warranties of any nature made in relation to the Goods and Services are expressly excluded from these Terms and shall not bind the Supplier.
- 7.3 To the extent permitted by law, where the Supplier becomes liable to the Customer in any manner for any breach of any condition or warranty expressed or implied in relation to the supply of Goods or Services to the Customer, the Supplier's liability will be limited, at the Supplier's sole discretion to either:
- (a) in relation to the supply 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 replacing the Goods or of acquiring equivalent goods; or
    - (4) the payment of the cost of having the Goods repaired; and
  - (b) in relation to the supply of Services:
    - (1) the supplying of the Services again; or
    - (2) the payment of the cost of having the Services supplied again.
- 7.4 To the extent permitted by law, the Customer releases and indemnifies the Supplier and its officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Customer and whether at common law, under tort (including (without limitation) negligence), in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness, cost or damage arising out of or in relation to any breach by the Customer of any warranty provided by it under clause 7.1.
- 7.5 To the extent permitted by law, the Supplier will have no liability to the Customer however arising, including, without limitation, under any cause of action or theory of liability, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity, arising out of or in connection with these Terms or any supply made pursuant to them.
8. **Indemnity**  
The Customer shall keep the Supplier indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without limitation, claims of death, personal injury, damage to property and consequential loss (including loss of profit) which may be made against the Customer or which the Customer may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the Goods unless such costs, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract or guarantee by, or negligence of, the Supplier or its duly authorised employee or agent.
9. **Cost Recovery**  
Any expenses, costs or disbursements incurred by the Supplier in recovering any outstanding monies owing by the Customer, including, without limitation, debt collection fees and solicitors costs (on a full indemnity basis), shall be paid by the Customer.
10. **Confidentiality**
- 10.1 Neither the Supplier nor the Customer will disclose any information of the kind referred to in section 275(1) of the PPSA.
- 10.2 The Customer will not authorise the disclosure of any information of the kind referred to in section 275(1) of the PPSA at any time.
11. **Severability**  
The whole or any part of a clause of these Terms shall be capable of severance without affecting the rest of these Terms.
12. **Governing Law**  
These Terms shall be governed by the laws of the State of South Australia (excluding its conflict of laws provisions) and the Customer must submit to the non-exclusive jurisdiction of the courts of or exercising jurisdiction of that State and the Customer waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.
13. **Waiver**  
If the Supplier elects not to exercise any of its rights arising as a result of a breach of these Terms, that will not constitute a waiver of any rights of the Supplier relating to any subsequent or other breach.
14. **Force Majeure**  
The Supplier will not be in breach of any contract with the Customer where it results from any act, matter or thing beyond the reasonable control of the Supplier.