

TOP COAT ASPHALT CONTRACTORS PTY LTD – STANDARD TERMS AND CONDITIONS – SUPPLY OF GOODS AND SERVICES

1. Definitions

- 1.1 **Australian Consumer Law** means Schedule 2 to the Competition and Consumer Act 2010 (Cth).
- 1.2 **Buyer** shall mean the buyer or any person or Seller acting on behalf of and with the authority of the buyer and includes its successors, personal representatives and permitted assigns.
- 1.3 **Consumer Guarantee** means the consumer guarantees contained in Division 1 or Part 3-2 of the Australian Consumer Law.
- 1.4 **Goods** includes:
(a) all goods; and
(b) all services and includes any advice or recommendations,
both collectively and individually supplied by the Seller to the Buyer.
- 1.5 **GST** means goods and services tax payable in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.6 **Guarantor** means that person (or persons), or entity who agrees to be liable for the debts of the Buyer if a limited liability company, on a principal debtor basis.
- 1.7 **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- 1.8 **Price** shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of these Terms.
- 1.9 **Seller** shall mean TOP COAT ASPHALT CONTRACTORS PTY LTD, and its successors and assigns.
- 1.10 **Taxes** means all taxes, levies, imposts, deductions, charges, excises, withholdings and duties (including, without limitation stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with any of them.
- 1.11 **Terms** means the agreement formed between the Buyer and the Seller on these Terms and Conditions.
- 1.12 Terms defined in the PPSA have the same meaning when used in these Terms, unless the term is otherwise defined or the context otherwise requires.

2. Application

- 2.1 All Goods supplied by the Seller to the Buyer shall be subject to these Terms, except where otherwise agreed in writing by the Seller.
- 2.2 Any Buyer order form terms and conditions, or other terms provided by the Buyer, will not apply.
- 2.3 Any instructions received by the Seller from the Buyer for the supply of Goods shall constitute acceptance of these Terms.
- 2.4 Acceptance of these Terms by the Buyer is irrevocable and can only be rescinded in accordance with these Terms or with the written consent of the Seller.
- 2.5 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Seller in writing nor is the Seller bound by any such unauthorised statements.

3. Goods

- 3.1 The Goods shall be as described on the invoices, quotation, work, authorisation, sales order or any other work commencement forms as provided by the Seller to the Buyer.
- 3.2 Quotations provided by the Seller to the Buyer shall remain open for acceptance by the Buyer for a period of 30 days from the date of the quotation and any acceptance of the quotation within such period shall not bind the Seller unless written acknowledgement of such acceptance is provided by the Seller.
- 3.3 The Seller may change the specifications of any Goods, without obtaining the Buyer's approval, if, in the reasonable opinion of the Seller, the changes improve the function or use of the Goods or do not otherwise result in the Goods differing in any substantial way from the original specification at the time the Buyer agrees to purchase the Goods.
- 3.4 The weight or volume of Goods sold to the Buyer shall be the weight or volume determined by the Seller's system of weighing or measuring prior to delivery.
- 3.5 Where Goods are measured by volume, the Seller's standard conversion factors shall be used to calculate weights.
- 3.6 Any description of Goods contained in these Terms is given by way of identification only. The use of the description will not constitute these Terms as a sale by description.
- 3.7 Goods are supplied in accordance with nominated specifications as confirmed by the Seller.
- 3.8 The Seller makes no representations as to the type, or quantity of polymer, or other additives used in any Goods supplied.

4. Price

- 4.1 Subject to clause 4.3, at the Seller's sole discretion:
(a) the Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied;
(b) the Price shall be the Seller's current price at the date of delivery of the Goods according to the Seller's current Price list; or
(c) the price of the Goods shall be the Seller's quoted price, which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation within thirty (30) days of the date of issue of the quotation.
- 4.2 Unless otherwise stated, the Price and all other amounts due and payable in accordance with these Terms will be quoted exclusive of GST and other Taxes. The Buyer must pay, reimburse or indemnify the Seller against all GST and other

Taxes, payable in respect of the Goods or otherwise under these Terms.

- 4.3 The Seller may by giving notice to the Buyer at any time up to 7 days before delivery increase the Price of the Goods to reflect any increase in the cost to the Seller beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs).

5. Payment

- 5.1 At the Seller's sole discretion, payment shall be due:
(a) on delivery of the Goods; or
(b) where the Seller provides credit facilities to the Buyer, thirty (30) days from the invoice date, and
this clause is an essential provision of these Terms.
- 5.2 Payment must be made in cash, direct debit, EFT transaction, or any other method as agreed between the Buyer and the Seller.
- 5.3 If the Buyer fails to pay any amount that is due and payable to the Seller, the Seller may charge the Buyer Interest on the unpaid portion at a rate of 8.0% per calendar month (calculated daily) for the period commencing on the day after the due date for payment and ending on the date that such amount is paid in full.
- 5.4 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller on demand for any cost and expenses incurred by the Seller in collecting or enforcing collection of all outstanding monies including but not limited to all legal costs and any collection agency charges.

6. Delivery of Goods

- 6.1 If the Delivery of the Goods is required by the Buyer it shall be made to the Buyer's address or the Buyer's nominated location. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Seller's address. One hour shall be allowed for unloading from the nominated delivery time. [Demurrage delays beyond the nominated delivery time will be charged to the Buyer at the Seller's standard demurrage charges]
- 6.2 Delivery of Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.
- 6.3 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.
- 6.4 Charges to the Buyer for delivery arranged by the Seller will, unless otherwise quoted be in accordance with the Seller's standard delivery charges.
- 6.5 The Seller may deliver the Goods by separate instalments (in accordance with an agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in these Terms.
- 6.6 The Seller shall not be liable for any loss or damage of any kind due to failure by the Seller to deliver the Goods (or any of them) promptly or at all nor shall such failure entitle the Buyer to treat the agreement constituted by these Terms as repudiated.
- 6.7 The Buyer shall remain liable to pay for the Goods in accordance with these Terms notwithstanding that the Seller fails to deliver the Goods (or any of them) by the required date.
- 6.8 When the Goods at the date of these Terms are in possession of a third person there is no delivery by the Seller to the Buyer unless and until such third person acknowledges to the Buyer that the Goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the Goods.

7. Risk

- 7.1 All risk for the Goods passes to the Buyer on delivery.
- 7.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms (including the right to receive payment of the balance of the Price of the Goods), to receive all insurance proceeds payable in respect of the Goods. This clause applies whether or not the Price has become payable under these Terms.
- 7.3 The production of these Terms by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds which are to be distributed as follows:
(a) first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;
(b) second, in payment of the outstanding Price of any other Goods supplied to the Buyer by the Seller whether under these Terms or otherwise;
(c) third, in payment of any other sums payable to the Seller by the Buyer on any account; and
(d) fourth, any balance is to be paid to the Buyer.

8. Defects

- 8.1 By signing the delivery docket when the Goods are delivered to the Buyer, the Buyer is deemed to have accepted that the Seller

- has supplied the quantity and description of the goods on the date and at the place of delivery specified in that delivery docket.
- 8.2 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.
- 8.3 The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following the delivery if the Buyer believes the Goods are defective in any way.
- 8.4 If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with these Terms and free from any defect or damage.
- 9. Safety and access**
If the Seller or its carrier enters the Buyer's premises to deliver or collect the Goods, the Buyer must provide full and safe access and will be liable for, and indemnifies the Seller against the cost of all loss, damage to the property and injury to persons, occurring directly or indirectly as a result of the failure by the Buyer to ensure the said full and safe access.
- 10. Liability**
- 10.1 Where any applicable legislation:
- (a) implies any term, condition or warranty into the relationship between the Buyer and the Seller or into these Terms;
 - (b) imposes a Consumer Guarantee in respect of the Goods; or
 - (c) otherwise provides the Buyer with a particular remedy against the Seller,
- and that legislation or any legislation avoids or prohibits provisions excluding or modifying the application of, or exercise of, or liability under, such term, condition warranty, Consumer Guarantee or remedy (a **Non Excludable Condition**) then:
- (d) that Non-Excludable Condition shall be deemed to be included in these Terms or to apply to the relationship between the Buyer and the Seller; or
 - (e) in the case of a Non-Excludable Condition imposed on any Goods, that Non-Excludable Condition shall apply in respect of those Goods..
- 10.2 All terms, conditions and warranties (whether express or implied and whether arising by virtue of statute or otherwise) as to the condition, specifications, quality, fitness for purpose, suitability or safety of, or title to the Goods, except any Non-Excludable Condition, are negated and excluded from these Terms and the Buyer acknowledges and agrees that it has relied entirely on its own knowledge, skill and judgement in relation to the supply of the Goods.
- 10.3 The Seller's liability for breach of these Terms and for reach of any Non-Excludable Condition (other than a guarantee under sections 51, 52 or 53 of the Australian Consumer Law), shall be limited, at the Seller's option, in any one or more of the ways permitted by applicable legislation, including, where so permitted, if the breach relates to Goods which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, to:
- (a) replacing the Goods or resupply of the equivalent Goods; or
 - (b) refunding the Price,
- provided that:
- (c) the Buyer notifies the Seller within seven (7) days of delivery that the Goods are defective;
 - (d) the Seller is given a reasonable opportunity to investigate the Buyer's claim; and
 - (e) the Seller will not be liable for Goods, which have not been stored in a proper manner.
- 10.4 To the fullest extent permitted by law, the Seller excludes any liability to the Buyer for indirect, consequential, special or economic loss or damage or exemplary damages arising under or in connection with these Terms or any Goods including loss or damage such as:
- (a) loss of revenue, profits, production or opportunity;
 - (b) increases of operating and financing costs;
 - (c) damage to the Buyer's or any other person's premises; or
 - (d) damage to reputation (whether real or perceived), even if such losses are foreseeable, and even if the Seller is aware or advised of the likelihood of such loss or damage occurring. This clause shall not apply to the extent that such loss is caused by our breach of a Consumer Guarantee.
- 10.5 In the event of any breach of these Terms by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 11. Ownership**
- 11.1 It is the intention of the Seller and agreed by the Buyer that the property in the Goods shall remain with the Seller (but at the Buyer's risk) and shall not pass to the Buyer until:
- (a) the Buyer has paid all amounts owing in respect of the particular Goods and any other moneys owing by the Buyer to the Seller; and
- (b) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all the contracts between the Seller and the Buyer,
- and that such Goods shall be kept separate until the Seller has received such payment and all other obligations of the Buyer have been satisfied.
- 11.2 It is further agreed that until such time as ownership of the Goods shall pass from the Seller to the Buyer, the Buyer:
- (a) is in possession of the Goods as bailee;
 - (b) holds the Goods on trust for the Seller;
 - (c) must secure the Goods from all risk and otherwise keep the goods full insured against such risks as are common or usual to insure against in a business of a similar nature of that of the Buyer;
 - (d) shall not grant any security interest over the Goods while they remain the property of the Seller, without the Seller's prior written consent; and
 - (e) may sell or otherwise supply the Goods in its usual course of business, but must hold the proceeds of such goods on trust for the Seller in a separate account.
- 11.3 Should the Goods be on-sold to a third party before payment in full is received by the Seller, the Buyer assigns to the Seller its right of recovery of payment from the third party.
- 11.4 The Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice, the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
- 11.5 If the Buyer fails to return the Goods to the Seller in accordance with this clause, the Buyer irrevocably authorises the Seller or the Seller's agent to enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Seller reasonably believes the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
- 11.6 If the Buyer sells the Goods prior to payment for those Goods (whether or not the Goods have been incorporated into another product), the proceeds of such sale equivalent to the amount unpaid for the Goods shall be held on trust for the Seller, until such time as payment for the Goods has been made in full.
- 11.7 The Seller may issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.
- 12. Security over Goods**
- 12.1 Without prejudice to clause 11 of these Terms, the Buyer grants a security interest to the Seller under the PPSA in respect of any Goods supplied and any proceeds in respect of such Goods to secure the price payable for the Goods and to secure any interest, charges or other amounts payable by the Buyer to the Seller on any account.
- 12.2 The Buyer acknowledges:
- (a) the Seller's right to register a financing statement on the Personal Property Securities Register with respect to the security interest;
 - (b) that the Seller may do all things the Seller determines are necessary or desirable to register or perfect in any other way any security interest created under these Terms, with the priority required by the Seller; and
 - (c) that the security interest referred to in clause 12.1 will continue until the Seller gives the Buyer a final release in writing.
- 12.3 To the extent permitted by law, if the Buyer defaults under these Terms or fails to make any payment by the due date, each security interest created in favour of the Seller will become immediately enforceable.
- 12.4 In addition to any rights arising at law in respect of a breach by the Buyer of these Terms, the Seller exercise any or all remedies of a secured party under the PPSA including taking possession of and either selling or retaining the Goods and paying any expenses incurred in the exercise of any such powers from the realisation of, the Goods.
- 12.5 Where the Seller takes possession of the Goods, the Seller may sell the Goods by any means at any time and from any sale proceeds, deduct all costs incurred in connection with the sale and all monies owed (even if not due and payable) to the Seller by the Buyer on any account. The Seller may recover from the Buyer any shortfall on any sale or attempted sale. The Buyer agrees that it will pay or reimburse the Seller for any costs, losses or other liabilities the Seller incurs or sustains, (including actual legal costs and disbursements on a solicitor and own client basis), in connection with the exercise, enforcement or preservation of any right arising under these Terms.
- 12.6 Without limiting clause 12.2(b), the Buyer agrees to do anything (including providing information, obtaining consents, executing, completing and producing documents) which the Seller requests and considers necessary or desirable to:
- (a) ensure that the Seller's security interest is enforceable, perfected and otherwise effective;

- (b) enable the Seller to register, protect, perfect, record or better secure its position or give any notification, in connection with the Seller's security interest, so that it has the priority required by the Seller; and
- (c) enabling the Seller to exercise powers in connection with the security interest.
- 12.7 To the extent that the law permits, the Buyer agrees:
- (a) to waive its right to receive any verification statement (or notice of any verification statement) in respect of any financing statement or financing change statement relating to any security interest created under these Terms;
- (b) at the election of the Seller to be exercised in its absolute discretion, that any section of the PPSA specified in section 115 of the PPSA will not apply, to the extent permitted by section 115;
- (c) that subject to any provision to the contrary in the PPSA, the Seller need not comply with any other section of the PPSA notified to the Buyer by the Seller at any time;
- (d) that neither the Buyer nor the Seller will disclose information of the kind specified in section 275(1) of the PPSA in relation to these Terms or any security interest created under these Terms, except where required by the PPSA; and
- (e) to waive its rights to receive from the Seller any notice required to be provided under the PPSA (including under sections 144 and 157).
- 13. Security and Charge**
- 13.1 Notwithstanding anything to the contrary contained in these Terms or any other rights which the Seller may have:
- (a) where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any personal property capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any personal property owned nor or in the future to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these Terms.
- (b) the Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge, where appropriate, a caveat and register its security interest over the personal property of the Buyer and the Grantor on the Personal Property Securities Register, which caveat or registration shall be released once all payments and other monetary obligations payable hereunder have been met; and
- (c) should the Seller elect to proceed in any manner in accordance with this clause, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis; and
- (d) to give effect to the provisions of clause 13.1(a) and (b) inclusive the Buyer and/or Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and security agreements (whether registered or not) including such other terms and conditions as the Seller shall think fit its absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty and personal property in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions in this clause.
- 14. Cancellation**
- The Seller may cancel or terminate these Terms or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 15. Warranties**
- 15.1 In agreeing to these Terms, the Buyer and each Guarantor represents and warrants that:
- (a) it has the necessary power and authority to enter into the agreement constituted by these Terms;
- (b) if the Buyer enters into the agreement constituted by these Terms as a trustee:
- (i) the Terms bind the Buyer personally and in its capacity as trustee;
- (ii) entry into the agreement is for a proper purpose of the trust;
- (iii) it has the requisite power and authority under the trust;
- (iv) it has the right to be fully indemnified out of the trust property before the trust's beneficiaries for all liabilities it incurs under the Terms; and
- (c) no event specified in clause 17.1 has occurred.
- 15.2 These warranties and representations are taken to be made on the date the Buyer signs each order and on the delivery date and the Buyer must advise the Seller immediately in writing if any of the warranties or representations become untrue or misleading at any time before title to the Goods passes to the Buyer in accordance with these Terms.
- 16. Licences and Patents**
- 16.1 All Goods are sold or performed (in the case of services) on the understanding that any licences and permits under all relevant statutes, ordinances, rules and regulations have been obtained by the Buyer and the Buyer will ensure that the installation and use of the Goods meets all statutory requirements.
- 16.2 The Buyer further warrants that any design or instruction furnished to the Seller will not cause the Seller to infringe any patent, copyright, registered design or trade mark.
- 16.3 The sale and purchase of the Goods does not confer on the Buyer any licence or rights under any patent, registered design, trade mark, confidential information, or copyright which is the property of the Seller.
- 17. Default & Consequences of Default**
- 17.1 If, at any time:
- (a) the Buyer is in breach of any obligation (including those relating to payment) and fails to remedy such breach within 10 days of receiving a notice from the Seller which requires the Buyer to remedy the breach;
- (b) any account remains unpaid at the end of the second month after the date on which the Goods were supplied;
- (c) in the Seller's opinion the Buyer will be unable to meet its payments as they fall due;
- (d) the Buyer or any Guarantor:
- (i) becomes insolvent or bankrupt; or
- (ii) convenes a meeting with its or their creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its or their creditors;
- (e) a receiver, manager, administrator liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; or
- (f) the Seller ascertains that any representation, warranty or statement made by the Buyer or a Guarantor in or connection with these Terms or any guarantee is untrue or misleading (whether by omission or otherwise) in any material respect,
- then, without prejudice to any other remedies the Seller may have:
- (g) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed;
- (h) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable;
- (i) the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under these Terms; and
- (j) an amount of \$25.00 per month shall be levied for administration fees in respect of any overdue amounts, which sum shall become immediately due and payable.
- 17.2 The Buyer must advise the Seller immediately if it becomes aware that any event set out in clause 17.1 occurs.
- 17.3 The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 17.4 If a liability under these Terms becomes merged in a judgement or order or exists after the Buyer is wound up, the Buyer as an independent obligation, must pay interest on the amount of that liability from the date the liability becomes payable both before and after the judgement, order or winding up until that amount is paid, at the rate specified in clause 5.3.
- 18. Force Majeure**
- 18.1 The Seller will not be liable for any loss incurred as a result of delay or failure to make any delivery of Goods or to observe any provisions of these Terms due to an event of force majeure, being any cause or circumstance beyond the Seller's reasonable control, including but not limited to, any lack of production capacity or raw materials, strikes, lockouts, labour disputes, pandemics, fires, floods, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-governmental authorities or embargoes.
- 18.2 During the continuance of an event of force majeure the Seller's obligations under these Terms will be suspended.
- 18.3 The Buyer must accept delivery of the Goods notwithstanding any delay in delivery caused by any force majeure event.
- 19. General**

- 19.1 If any provision of these Terms is found to be invalid, void or illegal or unenforceable in any jurisdiction, it will have no force or effect in that jurisdiction and will be severed from the Terms without affecting the validity, existence, legality and enforceability of the remaining provisions.
- 19.2 All Goods supplied by the Seller are subject to the laws of South Australia and the Seller takes no responsibility for changes in the law, which affect the Goods supplied.
- 19.3 The Buyer shall not set off any amounts due from the Seller against the Price. The Buyer irrevocably authorises the Seller to set off without notice any money held by the Seller on any account against any money owing by the Buyer to the Seller.
- 19.4 The Seller may assign, transfer or otherwise deal with the agreement constituted by these Terms or all or any part of the Seller's rights or obligations under these Terms without the Buyer's consent. The Buyer may not assign, transfer or otherwise deal with any of its rights under the agreement constituted by these Terms without the Seller's prior written consent.
- 19.5 The Seller may licence or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 19.6 Where the Buyer is more than one person, each of them shall be jointly and severally liable under these Terms.
- 19.7 The Seller reserves the right to review these Terms at any time and from time to time. If, following any such review, there is to be any change in such Terms, that change will take effect from the date on which the Seller notifies the Buyer of such change.
- 19.8 Any notice or demand to be given by the Seller may be served on the Buyer by being left at or sent by pre-paid mail or facsimile-mail to the Buyer at the address or e-mail address set out in the order or as otherwise notified in writing by the Buyer to the Seller. The notice or demand will be treated as having been given and received:
- (a) If delivered, on the day of delivery;
 - (b) If sent by pre-paid mail, on the next delivery day; and
 - (c) If transmitted by facsimile-mail, on the day of the transmission if a business day, otherwise on the next business day.
- 19.9 The Seller's acceptance of any payment or delay or failure to act shall not prejudice its right to exercise any remedy it has against the Buyer.
- 19.10 Except to the extent otherwise agreed in writing by the Seller, these Terms constitute the entire agreement between the parties and there are no further terms of the agreement or warranties collateral to that agreement.
- 20. Privacy Act**
- 20.1 The Buyer and/or the Guarantor/s agree that the Seller may obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 20.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) to obtain a credit report about the Buyer;
 - (b) to allow the credit-reporting agency to create or maintain a credit information file containing information about the Buyer;
 - (c) to assess an application by Buyer;
 - (d) to assess and monitoring the credit worthiness of the Buyer and/or Guarantor;
 - (e) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers.
- 20.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (section 18K(1)(h) of the *Privacy Act 1988* (Cth)).
- 20.4 The Buyer consents to the personal data provided being used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller, or required by law from time to time:
- (a) provision of Goods;
 - (b) marketing of Goods by the Seller, its agents or distributors in relation to the Goods;
 - (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods;
 - (d) administering the Buyer's account;
 - (e) processing of any payment instructions, direct debit facilities requested by the Buyer; and
 - (f) enabling the daily operation of Buyer's account and/or the collection of the amounts outstanding in the Buyer's account in relation to the Goods, and
- this consent shall continue to apply for the period during which the Buyer maintains an account with the Seller, unless the Buyer advises otherwise in writing.
- 20.5 The Buyer has a right to access personal information held by the Seller (subject to certain exceptions). Any requests for access to information or queries regarding the Seller's privacy policy should be directed to the Seller's privacy officer at the mailing address provided on the credit application.