

# IAP GROUP AUSTRALIA PTY LTD (TRADING AS INTERNATIONAL AIR PARTS)

## ABN 61 003 675 8671 - STANDARD TERMS AND CONDITIONS

(FOR USE ONLY WHERE CUSTOMER HAS NOT COMPLETED (AND SIGNED) A CREDIT APPLICATION).

### 1. Definitions

**Amounts Payable** means all money payable by Customer to Supplier on any account whatsoever including, without limitation, in relation to the delivery, sale and supply of Parts and the performance of Services pursuant to the Agreement or otherwise.

**Consequential Loss** means any indirect or consequential loss including (but is not limited to), any:

- (a) loss of actual or anticipated profits or revenues;
- (b) loss by reason of shut down or non-operation;
- (c) loss of opportunity or productivity,
- (d) increased capital or financing;
- (e) increased operational costs;
- (f) increased costs of borrowing;
- (g) exemplary or punitive damage;

whether caused by or in relation to breach of contract, warranty, tort, product liability or strict liability, but does not include losses related to any:

- (h) liability to any third party;
- (i) claim in respect of personal injury or death;
- (j) damage to the property of the Customer (but still does not include those economic or financial losses outlined in (a) to (g) resulting from damage to Customer property) or any other person.

**Customer** means the person who obtains a quotation from Supplier for the supply of Parts and the performance of Services or who otherwise engages Supplier to supply Parts and perform Services.

**Default** means the occurrence of any of the matters referred to in clause 7.1.

**Delivery Address** means any premises the address of which is supplied to Supplier by Customer for the purpose of facilitating delivery of Equipment in respect of which Supplier has supplied Parts and performed Services.

**Equipment** means:

- (i) any turbine engine; or;
- (j) any aircraft,

or any part or component of either, provided by Customer to Supplier in respect of which Parts are to be supplied and on which Services are to be performed by Supplier.

**Information Sources** means, in respect of Customer, persons nominated as trade references, bankers or any other credit providers.

**Insolvency Event** means in relation to Customer:

- (a) a bankruptcy application is filed (where Customer is a natural person);
- (b) Customer (being a corporation) enters into any composition with its creditors or enters into any liquidation or suffers a receiver, a receiver and manager or an administrator or similar officer to be appointed in respect of all or part of its assets, or an application is made for, or an event occurs which would allow any of such persons to be appointed.

**Intellectual Property** means all intellectual or industrial property (whether registered or not) wherever subsisting in the world used in or relating to Supplier's business.

**Parts** means all parts, goods and/or components (including, without limitation, engines, airframes and aircraft) whether new, overhauled or repaired supplied by Supplier to Customer .

**Perfected** has the meaning given to that term in the PPSA.

**Personal Property** has the meaning given to that term in the PPSA.

**PPS Register** means the register established under the PPSA.

**PPS Security Interest** means a security interest as that term is defined in the PPSA.

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

**Related Entity** has the meaning ascribed to it in the *Corporations Act*.

**Services** means work performed by Supplier on or in relation to Equipment including, without limitation:

- (a) work undertaken to render the Equipment airworthy and/or serviceable;
- (b) the fitting of Parts to the Equipment; and
- (c) all transport, freight, storage, hangarage, inspections, modifications and testing undertaken in relation to the Equipment.

**Supplier** means IAP Group Australia Pty Ltd, ABN 61 003 675 867 trading as International Air Parts.

**Terms and Conditions** means these terms and conditions.

### 2. Terms

2.1 The only terms which apply to the supply of Parts and the performance of Services by Supplier to Customer are:

- (a) these Terms and Conditions; and
- (b) those, if any, which are imposed by law and which cannot be excluded,

and no further or other covenants, terms or conditions are implied or can arise between Supplier and Customer by way of collateral or other agreement or by reason of any alleged promise, representation, warranty or undertaking given or made by either party to the other at any time and the existence of any implied, collateral or other agreement is expressly negated.

2.2 In signing an order for the supply of Parts and the performance of Services or alternately, in delivering Equipment to Supplier for the purpose of having Supplier commence the supply of Parts and the performance of Services in respect of that Equipment Customer contracts with Supplier for the supply of Parts and the performance of Services on the basis of these Terms and Conditions and these Terms and Conditions will be incorporated into every agreement between Supplier and Customer.

2.3 Orders for the supply of Parts and the performance of Services placed by Customer can only be validly accepted by Supplier by:

- (a) a form of unconditional acceptance in writing; or

- (b) Supplier commencing the supply of Parts and/or the performance of Services
- 2.4 If Customer is not the owner of the Equipment, Customer:
- (a) must inform Supplier to this effect (and identify the owner);
  - (b) provide the Supplier with full details of any PPS Security Interest which exists in respect of the Equipment;
  - (c) warrants it has the authority of the owner to engage Supplier to supply Parts and perform Services in relation to the Equipment; and
  - (d) if Supplier requests it, must provide Supplier with the written consent or approval of the owner to the supplying of Parts and the performance of Services in relation to the Equipment.
- 2.5 Supplier will use its best endeavours to supply Parts and perform Services within a reasonable time and, despite any estimate of time given by Supplier, Supplier will have no liability to Customer for:
- (a) any delays beyond the control of Supplier;
  - (b) any Consequential Loss or damage suffered by Customer as a result of such delays.
- 2.6 Not less than 14 days prior to any proposed change of ownership, directors, shareholding or effective control of Customer, Customer must notify Supplier of the proposed change. Supplier may impose conditions on its continued provision of credit under these Terms and Conditions (including, without limitation, the provision of guarantees by any additional or new directors or shareholders of Customer) and the provision of credit under these Terms and Conditions is suspended until Customer complies with any such requirement.
- 2.7 If Supplier grants Customer credit for a specific period, the credit period is for that period or until the resale of Parts by Customer or their use by Customer in a manufacturing or construction process of its own or a third party, whichever is the earlier.
- 3. Additional Material**
- 3.1 The publication by Supplier of price lists, quotations (other than formal quotations) and other material to Customer:
- (a) does not constitute a representation by Supplier that the Parts and Services detailed in such publication are available to Customer;
  - (b) will only constitute an invitation to treat (and not an offer to supply Parts or perform Services on the stipulated or any other basis),
- and Supplier will not be bound by any order for the supply of Parts and the performance of Services based on or which refers to any such material.
- 3.2 Any quotation for the supply of Parts and the performance of Services:
- (a) must be in writing;
  - (b) relates only to the supply of Parts and the performance of Services referred to in the quotation;
  - (c) if accepted, must be accepted by Customer within 30 days unless:
    - (i) otherwise specified in the quotation; or
    - (ii) expressly agreed in writing;
  - (d) must be accepted by Customer advising Supplier in writing of Customer's acceptance of the quotation; and
- (e) is subject to Customer delivering the Equipment as directed by Supplier in accordance with the terms of the quotation.
- 3.3 If Supplier is not the manufacturer of the Parts, Customer acknowledges that Supplier is dependent on the manufacturer for supply, delivery dates, specifications and all manner of things relevant to the Parts (which may include the performance of Services in relation to them). Customer acknowledges that any manufacturer of Parts (which includes the performance of Services in relation to them) to Supplier may vary the composition or packaging for the supplying of Parts and the performance of the Services and Supplier does not undertake that any Parts supplied and/or Services performed to or on behalf of Customer by Supplier will be identical to those previously supplied or advertised.
- 3.4 Where the price of any Parts is based on trade-in of run-out units or "cores" for exchange, the price is contingent on run-out units or "cores" being in normal run-out condition acceptable to Supplier's supplier and Customer warrants that it has free and clear title to any run-out units or "cores" provided on this basis.
- 4. Amounts Payable**
- 4.1 Payment by Customer for the supply of Parts and the performance of Services by Supplier is on a COD basis unless Supplier agrees in writing to Customer making payment on some other basis.
- 4.2 Customer must pay Supplier the Amounts Payable by:
- (a) cash or credit card;
  - (b) cheque; or
  - (c) direct deposit of clear funds into such account as Supplier may nominate from time to time.
- 4.3 If payment is made by credit card, Supplier may, in its complete discretion, charge Customer an administration fee for processing such payment.
- 4.4 Payment will be treated as made:
- (a) if made in cash is tendered, on the date it is tendered; and
  - (b) if a cheque (bank or otherwise) or other negotiable instrument is tendered, on the date on which the cheque or other negotiable instrument is negotiated and cleared by Supplier's bankers.
- 4.5 If Customer Defaults (in terms of clause 7.1(a)) in making payment to Supplier in accordance with these Terms and Conditions, Supplier may, in its sole and absolute discretion:
- (a) charge Customer interest calculated on the portion of the Amounts Payable overdue at the rate of 21% per year, from the date on which the Default arose; and
  - (b) require Customer to reimburse Supplier for all collection costs arising from or incidental to Supplier exercising a right under these Terms and Conditions including legal costs (on a full indemnity basis) incurred by Supplier as a consequence of Supplier instructing its lawyers to provide advice to it in connection with the Default and/or the institution of such recovery proceedings as Supplier, in its sole and absolute discretion decides.
- 4.6 Customer will be liable, without demand, to reimburse Supplier for all charges incurred by Supplier in relation to cheques, electronic funds transfer transactions, telegraphic transfers or any other payment method provided or requested by Customer which are dishonoured on presentation when first presented to Customer's bank.

- 4.7 Despite any other provision of these Terms and Conditions to the contrary, any Amounts Payable must be paid immediately if Customer is in Default.
- 4.8 Any payments tendered by Customer will, at Supplier's election, be applied as follows:
- (a) firstly, as reimbursement for any collection costs incurred by Supplier under clause 4.5(b);
  - (b) secondly, in payment of any interest charged to Customer under clause 4.5(a); and
  - (c) thirdly, in satisfaction or part satisfaction of the oldest portion of any Amounts Payable.
- 4.9 Where Customer does not make payment in respect of specific Parts supplied and/or Services performed, payment must be treated as having been made:
- (a) firstly, in respect of the Services performed for Customer by Supplier;
  - (b) secondly, in respect of Parts supplied which have passed out of the possession of Customer; and
  - (c) thirdly, in respect of whatever Parts supplied are still in the possession of Customer, as Supplier in its sole and absolute discretion elects.
- 4.10 As security for the performance of Customer's Obligations under these Terms and Conditions including, without limitation, the due and punctual payment of all Amounts Payable, Customer:
- (a) charges in favour of Supplier all its interest in all its current and after acquired real property;
  - (b) grants Supplier a charge and acknowledges that Supplier may have a PPS Security Interest over the whole of its other undertaking including, without limitation, all Personal Property and expressly authorises Supplier to register such interest on the PPS Register and take any other steps that Supplier considers necessary to ensure that its interest is Perfected;
  - (c) agrees to deliver to Supplier a mortgage (in a form acceptable to Supplier) in any property referred to in clause 4.10(a) within seven days of written demand from Supplier, together with any other information or documents required to obtain registration of any such mortgage;
  - (d) consents to the lodging of a caveat over any real property it owns to which the charge referred to in clause 4.10(a) attaches and Customer must immediately, on request, execute any necessary form of consent in registrable form to the lodging of that caveat;
  - (e) irrevocably appoints Supplier and/or each director of Supplier to be its duly constituted attorney for the purpose of drawing, executing, registering and enforcing any such securities as may be required by Supplier from time to time including, without limitation, any PPS Security Interest and any mortgage or caveat and any ancillary documents necessary to perfect such mortgage or caveat;
  - (f) agrees that if any Default occurs, Supplier may appoint a receiver, administrator or appropriate person to collect, realise and/or sell all goods charged to Supplier (or which Supplier has a PPS Security Interest in) under this clause to satisfy Supplier's claim for any Amounts Payable; and
  - (g) agrees to be liable for and pay all of Supplier's legal costs on an indemnity basis which are incurred as a result of Supplier taking steps to protect, recover under and/or enforce in any way the securities created pursuant to this clause 4.10.
- 4.11 Time is of the essence in respect of Customer's obligation to make payment of all Amounts Payable under these Terms and Conditions.
- 4.12 A restocking fee of up to 10% of the net price will apply to any Parts ordered in error by Customer.
- 5. Location of Parts and Equipment**
- 5.1 If Customer requests that Parts and/or Equipment on which Services have been performed by Supplier be delivered to the Delivery Address, Supplier must deliver or arrange delivery of the Parts and/or Equipment to the Delivery Address and Customer must pay all delivery charges at the rates determined by Supplier.
- 5.2 If Customer elects to collect Parts and/or Equipment from Supplier, Customer agrees that if Parts and/or Equipment are not collected from Supplier within a reasonable time following notification by Supplier to Customer that Parts and/or Equipment are available and/or that Services have been completed, Supplier may charge reasonable fees for hangarage or storage from the date of notification until collection by Customer. Supplier reserves the right to terminate any hangarage or storage arrangement on seven days written notice to Customer and takes steps to sell Parts and/or Equipment or otherwise deal with them in accordance with clause 4.10 to recover all Amounts Payable.
- 5.3 Until Parts have been paid for in full:
- (a) acknowledges that Supplier may have a PPS Security Interest over the Parts and expressly authorises Supplier to register such interest on the PPS Register and take any other steps that Supplier considers necessary to ensure that its interest is Perfected;
  - (b) Customer must store the Parts delivered in such manner as to show clearly that they are the property of Supplier; and
  - (c) Customer may sell the Parts delivered, in the ordinary course of its business, but only as fiduciary agent of Supplier.
- 5.4 Any right to bind Supplier to any liability to a third party by contract or otherwise is expressly negated. Customer receives all proceeds, whether tangible or intangible, direct or indirect, of any dealing with the Parts (including any proceeds from insurance claims) in trust for Supplier and must keep the proceeds in a separate bank account until the liability to Supplier is discharged.
- 5.5 Customer agrees not to sell, assign, charge or otherwise encumber or grant any interest over any rights which Customer may have in relation to any third party as a result of the use, manufacture or resale of Parts.
- 5.6 Customer irrevocably authorises Supplier at any time, to enter any premises in which Parts are stored or at which Customer's records pertaining to Parts are held (**Records**), to enable Supplier:
- (a) to inspect the Parts; and
  - (b) if Customer is in Default, to reclaim possession of the Parts; and
  - (c) to inspect and copy the Records.
- 5.7 If Supplier takes action pursuant to clause 5.6 Supplier will not be liable for any damages, losses, costs, injury or harm suffered or incurred as a result of that action and Customer agrees to indemnify Supplier in relation to any damages, losses, costs, injury or harm.
- 5.8 Customer will at Supplier's request indicate to Supplier which Parts are the property of Supplier and provide adequate proof in relation to any Parts which Customer claims are not the property of Supplier. In the absence of adequate proof, Customer will accept Supplier's

determination as to which Parts are the property of Supplier.

## 6. Risk and Title

6.1 Title to Parts supplied by Supplier to Customer and title to any end-products in which the Parts are incorporated or to which they have been attached or affixed in any manner, will not pass to Customer until all Amounts Payable have been paid in full and Customer only has custody of the Parts and retains them as the fiduciary agent and bailee of Supplier.

6.2 Parts supplied by Supplier to Customer are at Customer's risk immediately on delivery to Customer or into Customer's custody (whichever is the sooner). Customer must insure Parts delivered, at its cost, from the date of delivery until the Parts are paid for in full against all risks and must note the interest of Supplier on the policy and produce a certificate of currency to Supplier on request.

6.3 If Supplier supplies Parts and performs Services in fitting those Parts to Equipment in a manner or to an extent such that those Parts are no longer separately identifiable or severable, Customer will be deemed to have assigned title to the Equipment to Supplier (or, if Customer does not have title to the Equipment, to have assigned to Supplier the full benefit of any agreement between Customer and a third party under or by virtue of which Customer has a Right to possession of the Equipment) and title to the Equipment (or the rights to it derived through any agreement with a third party as the case may be) will pass back to Customer only when all Amounts Payable have been paid in full. Customer acknowledges that Supplier may have a PPS Security Interest over the Equipment and expressly authorises Supplier to register such interest on the PPS Register and take any other steps that Supplier considers necessary to ensure that its interest is Perfected.

6.4 Supplier may commence legal action against Customer:

- (a) if Parts delivered are not paid for within Supplier's usual credit terms or any separate agreement for credit made by Supplier with Customer; or
- (b) if Customer has been granted credit for a specific period, that period ends pursuant to clause 2.7,

although title to Parts has not passed to Customer.

6.5 Subject to Clause 6.1:

- (a) any parts or components replaced by Supplier in the course of performing the Services will not be returned to Customer unless specifically requested by Customer in writing prior to requesting a quotation from Supplier;
- (b) title to any parts and/or components replaced by Supplier in the course of providing the Services will pass to Supplier on replacement with Parts supplied by Supplier and fitted to the Equipment; and
- (c) Customer will not retain any interest whatsoever in the parts or components.

6.6 Supplier is expressly authorised to test, taxi or fly the Equipment for any purpose incidental to the Services and at Customer's expense.

6.7 All Intellectual Property whether or not devised in the course of performing the Services, remains the property of Supplier unless Supplier agrees otherwise in writing.

6.8 Customer undertakes that subject only to any express written agreement with Supplier to the contrary, it will not in any circumstances register or otherwise take steps to Perfect a PPS Security Interest in respect of Supplier or any of its Personal Property.

## 7. Default

7.1 Customer (or a Related Entity of Customer) will be in default of this Agreement if:

- (a) Customer (or a Related Entity of Customer) fails to pay any Amounts Payable when due under this Agreement or any other agreement between Customer and Supplier (or a Related Entity of Customer);
- (b) an Insolvency Event occurs;
- (c) if any of the information set out in the Credit Application is or becomes false, inaccurate or misleading.

7.2 If Customer is in Default:

- (a) Supplier may withhold the supply of any Parts or performance of any Services pending the remedying of the Default;
- (b) even though Customer has no right to require Supplier to supply Parts to it or perform Services on its behalf, Supplier may decline to consider any further request for the supply of Parts or the performance of Services to Customer; and
- (c) if:
  - (i) Customer does not remedy the Default within (in Supplier's opinion) a reasonable time; or
  - (ii) Supplier forms the opinion that the Default is incapable of being remedied or will not be remedied by Customer,

then Supplier may withdraw its acceptance of any order for the supply of Parts and/or the performance of Services placed by Customer with Supplier under these Terms and Conditions.

7.3 If Supplier does not:

- (a) supply any Parts to Customer;
- (b) perform any Services on Customers behalf; or
- (c) withdraws Supplier's acceptance of an order placed with Supplier by Customer,

Customer will only be liable to pay Amounts Payable in respect of Parts actually delivered and Services actually performed.

7.4 Customer agrees to indemnify and keep the Supplier indemnified (regardless of any act, neglect or default on Supplier's part) against:

- (a) all losses incurred by Supplier;
- (b) all liabilities incurred by Supplier; and
- (c) all costs actually payable by Supplier to its lawyers on a full indemnity basis and other expenses incurred by Supplier in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal),

arising directly or indirectly as a result of, or in connection with, the supply of Parts and/or the performance of Services on credit by Supplier for Customer or any other breach of these Terms and Conditions by Customer.

7.5 Customer must pay to Supplier all liabilities, costs and other expenses referred to in clause 7.4 whether or not Supplier has paid or satisfied them.

## 8. Credit Enquiries

8.1 Where Supplier agrees to supply Parts and/or perform Services on Customer's behalf on credit, Customer

irrevocably authorises Supplier, its employees, agents and contractors to make such enquiries as it considers necessary to investigate the credit worthiness of Customer. Such investigations may include, without limitation, making enquiries of Information Sources and Customer authorises the Information Sources to disclose to Supplier all information concerning Customer which is in their possession and which is requested by Supplier.

8.2 Customer consents to Supplier making enquiry of Customer's financial status under the provisions of the *Privacy Act 1988* (Cth) ("**Act**"), including the following:

- (a) obtaining reports and information from credit reporting agencies in respect of the Credit Application;
- (b) giving information to credit reporting agencies regarding the Credit Application, including, without limitation, details about Customer's credit worthiness, standing, history, capacity, or any other information able to be shared or communicated pursuant to the Act; and
- (c) obtaining information regarding Customer's credit history in terms of recovery of late payment.

8.3 Customer agrees that any information obtained by Supplier in relation to Customer may be used by Supplier to:

- (a) assess Customer's credit worthiness;
- (b) notify other parties of any Default by Customer under these Terms and Conditions; and
- (c) exchange information with other credit providers regarding Customer's credit status.

**9. Guarantors**

9.1 Supplier may, by notice to Customer, require Customer to procure all current directors and/or shareholders to guarantee Customer's obligations to Supplier under these Terms and Conditions.

9.2 If Supplier requires Customer to procure a guarantee of Customer's obligations under the Terms and Conditions from Customer's directors and/or shareholders, that guarantee will be in the form of the guarantee at the end of these Terms and Conditions and, if Supplier requests it, Supplier will be under no obligation to supply any Parts or perform any Services or continue supplying Parts and continue performing Services until the guarantee is provided.

**10. Warranty, Implied Terms and Limitation of Liability**

10.1 In relation to the supply of Parts and the performance of Services, Supplier warrants to Customer, as set out in clauses 10.2 - 10.5 inclusive, subject to the conditions set out in clauses 10.6 - 10.9 inclusive. The warranties in clauses 10.2 - 10.5 inclusive are the only warranties that Supplier gives in relation to the subject matter of these Terms and Conditions other than such warranties as cannot by law be excluded and to the fullest extent permitted by law:

- (a) all terms which may be implied into these Terms and Conditions by any applicable law at any time do not apply to, and may not be implied into, these Terms and Conditions; and
- (b) without limiting the effect of subclause (a) in any way, all conditions and warranties whether express or implied, whether arising by virtue of statute or otherwise as to the condition, specification, quality, fitness for purpose or safety of, or title to, Parts supplied or Services performed are expressed negated and excluded and Supplier does not give any warranty or undertaking or make any representation in relation to any of these matters.

10.2 In the case of the supply of Parts (and/or materials) and the performance of Services by a subcontractor or supplier to Supplier, the warranty provided by Supplier will be the warranty provided by the manufacturer / subcontractor / supplier current at the time of delivery of the Parts to Supplier or the performance of Services and the supply of materials.

10.3 In the case of the performance of Services by Supplier, the warranty will subsist for the relevant periods set out in the table.

Services	Whichever period expires first	
	Time in relation to installation	Elapsed time from shipping ex-IAP prior to installation
Airframe Component Accessories services	Time of installation	1 month

10.4 Supplier's sole obligation in respect of the warranty will be to elect in its sole and absolute discretion:

- (a) in the case of the performance of Services, to either:
  - (i) perform the Services again; or
  - (ii) pay the cost of having the Services performed again,
- (b) in the case of the supply of Parts, to:
  - (i) replace the Parts, or supply equivalent parts;
  - (ii) pay the cost of having the Parts replaced or having equivalent parts supplied; or
  - (iii) pay the cost of having the Parts repaired.

For the avoidance of doubt, Customer must pay all freight costs, both inwards and outwards, in the event that any warranty claim is approved and any Equipment or Parts are returned to Supplier (and sent back to Customer after Supplier has performed Services or supplied Parts pursuant to this clause 10.4).

10.5 Supplier will have no liability for any other cost, expense or damage incurred by Customer in connection with a warranty claim or generally and any liability for Consequential Loss is expressly excluded (to the fullest extent permitted by law).

10.6 The warranties given by Supplier in clauses 10.2 to 10.5 inclusive will, at the election of Supplier, be void and of no further effect if any defect in Parts supplied or Services performed is caused or contributed to by:

- (a) any abnormal or unintended use, accident, contamination, tampering, improper storage or negligence by any person; or
- (b) the installation, operation or maintenance of any item of Equipment that is not in accordance with an original Equipment manufacturer's approved published data; or
- (c) the installation of any item of Equipment by any third party not authorised under CAR 42ZC OR CAR 42ZD, or equivalent legislative provisions; or
- (d) Customer failing to notify Supplier within seven days of the defect or warranty event occurring; or
- (e) Customer failing to provide a completed purchase order form for warranty consideration (or other Supplier approved document) prior to or with the delivery of returned Parts or Equipment; or
- (f) Customer fails to comply strictly with the requirements of the warranties.

- 10.7 The supply of any Parts and/or the performances of any Services by Supplier arising from investigations or rectification of any alleged defective Parts or deficiencies in the performance of Services in accordance with these Terms and Conditions, but which are determined by Supplier to have arisen as a consequence of any of the activities listed in clause 10.6, may be the subject of charges. Such charges will be at the prevailing rate for such freight, handling, investigation, Parts supplied or Services performed at the time of such transportation, investigation, supply or performance as the case may be.
- 10.8 Except as provided in 10.4, Supplier will not be liable to Customer or any party beneficially entitled under these Terms and Conditions for any Consequential Loss.
- 10.9 Any warranties in relation to the Parts set out on any packaging or materials provided with the Parts are warranties provided by the manufacturer of the Parts and not by Supplier. Supplier's only obligation in respect of any such warranties is to refer any communication in respect of them received from Customer to the manufacturer.
- 10.10 Customer cannot assign the benefit of the warranties contained in this clause 10 to any party without the prior written consent of Supplier. Supplier must not unreasonably withhold its consent.
- 11. General**
- 11.1 These Terms and Conditions:
- (a) are the entire agreement and understanding between Supplier and Customer on everything connected with the subject matter of these Terms and Conditions; and
  - (b) supersede any prior agreement or understanding on anything connected with that subject matter.
- 11.2 Supplier and Customer have entered into these Terms and Conditions without relying on any representation by the other or any person purporting to represent the other.
- 11.3 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 11.4 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 11.5 A reference to a party in these Terms and Conditions includes the party's successors, permitted substitutes and permitted assigns and if a party to these Terms and Conditions consists of more than one person, or a term is used in these Terms and Conditions to refer to more than one party:
- (a) an obligation of those persons is joint and several; and
  - (b) a right of those persons is held by each of them severally.
- 11.6 The law of Queensland governs these Terms and Conditions. The parties submit to the non-exclusive jurisdiction of the courts of Queensland at Brisbane and of the Commonwealth of Australia.
- 12. No consumer credit**
- Customer agrees that any credit applied for pursuant to this application will be predominantly for business and investment purposes and will not be for personal, domestic or household purposes.

# GUARANTEE

Where Customer is a corporation all current directors/shareholders of the corporation must sign this Guarantee (please arrange execution of additional copies of this guarantee where additional space is required).

## IMPORTANT NOTICE

This Form of Guarantee imposes significant obligations on the persons that sign it. Any person being required to sign the Form of Guarantee as a Guarantor should obtain independent legal advice in relation to the obligations that the person is undertaking as a Guarantor.

## GUARANTORS' DETAILS

Name \_\_\_\_\_

Address \_\_\_\_\_

Suburb \_\_\_\_\_

Post Code \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Suburb \_\_\_\_\_

Post Code \_\_\_\_\_

In consideration of Supplier agreeing at the request of the directors and/or shareholders of Customer ('**Guarantor**') to enter into the Terms and Conditions with Customer, to supply Parts to Customer and perform Services for and on Customer's behalf on credit, the Guarantor agrees with Supplier as follows:

### 1. Definitions

In this guarantee, except to the extent the context otherwise requires:

'**Breach**' means failure by Customer to:

- (a) perform any part of the Terms and Conditions;
- (b) observe any part of the Terms and Conditions;
- (c) indemnify any party,

strictly as required by the Terms and Conditions.

### 2. Guarantee

The Guarantor guarantees the performance and observance of the Terms and Conditions by Customer and, on any Breach by Customer, the Guarantor must immediately perform the term breached in place of Customer.

### 3. Indemnity

The Guarantor indemnifies Supplier against any loss or damage suffered by it because of:

- (a) any Breach by Customer;
- (b) the Terms and Conditions (or any part of them) being void or unenforceable;
- (c) disclaimer of the Terms and Conditions by the liquidator (or trustee in bankruptcy) of Customer,

the Guarantor acknowledges that these indemnities survive disclaimer or termination of the Terms and Conditions.

### 4. Continuing guarantee

The following circumstances (or any combination of them) do not diminish nor extinguish the enforceability of this Guarantee against the Guarantor:

- (a) assignment (with or without Supplier's consent) by Customer of its interest under the Terms and Conditions to a third party;
- (b) disposal by the Guarantor of all legal or beneficial ownership of shares held in Customer (if a corporation);
- (c) variation of the Terms and Conditions without the consent of the Guarantor;
- (d) the omission of Supplier to exhaust all avenues of remedy against Customer before proceeding against the Guarantor;
- (e) compulsory winding-up, liquidation or bankruptcy (as applicable) of the Customer;
- (f) voluntary winding-up, dissolution or death (as applicable) of Customer;
- (g) an indulgence of time, compromise or waiver by Supplier in favour of Customer;
- (h) any abandonment, compromise or release (in whole or part) of Supplier's rights against Customer;
- (i) a ruling by a court that the Terms and Conditions or any part of them are void or unenforceable;
- (j) if Supplier is proceeding against one or more of several persons comprising the Guarantor, the death or insolvency of any other of those persons;

- (k) expiry by effluxion of time or the earlier termination or rescission of the Terms and Conditions.

**5. Multiple guarantor**

Where the Guarantor is comprised of more than one person:

- (a) the liability of the persons comprising the Guarantor is joint and several;
- (b) the enforceability of this guarantee against any signatory is not conditional on:
  - (i) any other person comprising the Guarantor signing this guarantee;
  - (ii) the enforceability of this guarantee against any or all of the other persons comprising the Guarantor.

**6. Enforceable by Supplier and successors**

This guarantee is enforceable not only by Supplier, but also by all successive assignees of Supplier's interests and a notice in writing of any assignee's acceptance of the benefit of the Terms and Conditions signed by the assignee in question or its agent and served on the Guarantor in any manner prescribed under the *Property Law Act 1974 (Qld)* constitutes an effective acceptance for the purposes of Section 55(6) of that Act and renders this guarantee immediately enforceable at the suit of any such assignee.

**7. Waiver of defence**

The Guarantor waives the benefit for the duration of the Terms and Conditions of all:

- (a) legal equitable defences available to Customer; and
- (b) rules of law or equity relating to contracts of guarantee,

which would have the effect of redrawing or extinguishing rights of action by Customer against the Guarantor under this guarantee.

**8. Severance**

Any provision of this guarantee which may be void or unenforceable at law or in equity does not render this guarantee unenforceable but will be severed so as to preserve the remainder.

**9. Interest on overdue payments**

If the Guarantor fails to pay Supplier any money payable pursuant to the guarantee within 7 days following demand, the Guarantor must pay Supplier interest on the outstanding moneys or so much as remains unpaid from the due date until the date of payment and also on any judgment which Supplier may obtain against the Guarantor from the date of that judgment until satisfaction of it, at the rate of 1.75% per month.

**10. Acknowledgement**

The Guarantor acknowledges that the Guarantor was advised by Supplier to obtain independent legal advice in relation to the Guarantor's obligation under this Guarantee.

Executed as a Deed.

**Execution by company**  
**EXECUTED** by **[INSERT COMPANY DETAILS AND** )  
**ACN]** in accordance with section 127(1) of the )  
*Corporations Act* by: )  
)

.....  
Director  
Name (printed):  
Date: ...../...../.....

.....  
Director/Secretary  
Name (printed):  
Date: ...../...../.....

**Execution by individuals**  
**EXECUTED** by **[INDIVIDUAL NAME]** before me: )  
)  
)  
)

.....  
Witness  
Name (printed):  
Date: ...../...../.....

.....  
Name (printed):  
Date: ...../...../.....