

## Terms & Conditions of Trade

### 1. Definitions

- 1.1 "ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended.
- 1.2 "Agreement" means any agreement for the provision of Goods or Services by OSA to the Client.
- 1.3 "Client" means the client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by OSA to the Client.
- 1.4 "consumer" is as defined in the ACL and in determining if the Client is a consumer, the determination is made if the Client is a consumer under the Agreement.
- 1.5 "Goods" means any goods or products supplied by OSA to the Client under any contract, agreement or order or other forms provided by OSA to the Client and where the context so permits will include any supply of Services.
- 1.6 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.7 "OSA" means Outdoor Sporting Agencies Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Outdoor Sporting Agencies Pty Ltd.
- 1.8 "PPSA" means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;
- 1.9 "Price" means the Price payable for the Goods.
- 1.10 "Services" means all services supplied by OSA to the Client (and where the context so permits will include any supply of Goods).
- 1.11 "Terms" means these Terms & Conditions of Trade.

### 2. The ACL

- 2.1 Nothing in the Terms is intended to have the effect of excluding, restricting, or modifying any applicable provisions of the ACL or any State or Territory legislation applicable to the sale of goods or supply of service which cannot be excluded, restricted or modified.
- 2.2 Where the Client buys Goods as a consumer, these Terms will be subject to any laws or legislation governing the rights of Consumers and will not affect the Consumer's statutory rights.

### 3. Acceptance

- 3.1 These Terms apply exclusively to every Agreement.
- 3.2 Any instructions received by OSA from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by OSA will constitute acceptance of the Agreement.
- 3.3 Where there is more than one Client, the Clients will be jointly and severally liable for all payments of the Price.
- 3.4 Upon acceptance of the Agreement by the Client the Terms are binding on the Client and can only be amended by the Client with the prior written consent of OSA.
- 3.5 The Client must obtain OSA's prior written consent to (which may be granted or withheld by OSA in OSA's absolute discretion) any proposed change of ownership of the Client and must give OSA not less than fourteen (14) days prior written notice of any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client will be liable for any loss incurred by OSA as a result of the Client's failure to comply with this clause.
- 3.6 Goods are supplied by OSA only on these Terms and, unless otherwise agreed in writing by OSA, these Terms apply to every order placed by the Client. The Client expressly acknowledges and agrees that these Terms replace and apply to the exclusion of any terms and conditions contained in any purchase order or other document issued by the Client.
- 3.7 OSA is entitled to refuse to accept an order from the Client if there are any outstanding moneys owing by the Client to OSA.

### 4. Price and Payment

- 4.1 At OSA's sole discretion the Price will be either:
  - (a) as indicated on invoices provided by OSA to the Client in respect of Goods supplied; or
  - (b) OSA's Price at the date of delivery of the Goods according to OSA's current pricelist; or
  - (c) OSA's quoted Price (subject to clause 4.2) which will be binding upon OSA provided that the Client accepts OSA's quotation in writing within thirty (30) days.
- 4.2 OSA reserves the right to change the Price in the event of a variation to OSA's quotation (including, but not limited to, any variation as a result of fluctuations in currency exchange rates). All variations will be charged for on the basis of OSA's quotation and will be shown as variations on the invoice.
- 4.3 Subject to clause 4.5, payment of the Price must be made in cleared funds to OSA by cheque, bank cheque, credit card, direct debit or other method agreed by OSA, prior to delivery.
- 4.4 Payment by credit card will incur a fee equal to 1% of the transaction amount.
- 4.5 If OSA has accepted and approved an application for commercial credit, at OSA's sole discretion, and granted the Client an approved credit limit, payment for approved Clients may be made within twenty-eight (28) days following the end of the month in which the goods are invoiced. Statements will be delivered monthly by email or facsimile. The Client acknowledges and agrees that OSA may vary or withdraw the approved credit limit of the Client at any time in its absolute discretion. The Client must not allow the balance of its account to exceed any approved credit limit and OSA may refuse to accept any order which may put the Client's account over the approved credit limit.

4.6 Time for payment for the Goods will be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment will be due 14 days following the date of the invoice.

4.7 GST and other taxes and duties that may be applicable will be added to the Price except when they are expressly included in the Price.

## **5. Delivery of the Goods**

5.1 At OSA's sole discretion, delivery of the Goods will take place when the Client takes possession of the Goods at OSA's address.

5.2 At OSA's sole discretion, the costs of delivery are in addition to the Price.

5.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client.

5.4 OSA may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid in accordance with the provisions in the Terms.

5.5 The failure of OSA to deliver will not entitle either party to treat the Agreement as repudiated.

5.6 Any period or date for delivery of Goods or provision of Services stated by OSA is an estimate only.

5.7 OSA will use its reasonable endeavours to meet any estimated dates for delivery of the Goods but will not be liable for any loss or damage suffered by the Client or any third party for failure to meet any estimated date or to deliver the Goods at all, where due to circumstances beyond the control of the OSA.

5.8 If OSA cannot complete any delivery by any estimated date, it will use reasonable endeavours to complete the delivery within a reasonable time.

## **6. Risk**

6.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Client immediately on the Goods being dispatched or taken from OSA's premises.

6.2 The Goods are sold to the Client on the basis that the Client has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Goods.

6.3 Where the Client expressly requests OSA to leave Goods outside OSA's premises for collection, then such Goods will be left at the Client's sole risk and it will be the Client's responsibility to ensure the Goods are insured adequately or at all.

6.4 The Client assumes all risk and liability for loss, damage or injury to persons or to property of the Client, or third parties arising out of the use, installation or possession of any of the Goods sold by OSA, unless recoverable from OSA on the failure of any statutory guarantee under the ACL.

6.5 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, OSA is entitled to receive all insurance proceeds payable for the Goods. The production of the Terms by OSA is sufficient evidence of OSA's rights to receive the insurance proceeds without the need for any person dealing with OSA to make further enquiries.

## **7. All Moneys Retention of Title**

7.1 OSA and the Client agree that the legal and equitable, title ownership and property in the Goods remains with OSA absolutely at all times until:

(a) OSA has been paid in full for all Goods purchased by the Client under all individual contracts, agreements or orders between OSA and the Client ; and

(b) the Client has met all other obligations due by the Client to OSA in respect of the Agreement between OSA and the Client.

7.2 The Client is a trustee and bailee of the Goods and the proceeds received by or owed to the Client from the sale of the Goods and until such time as OSA has received payment in full of all amounts owing by the Client to OSA, then the Client must hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to OSA , on trust for OSA.

7.3 The trust and bailment referred to in clause 7.2 continues in relation to separate purchases of OSA's Goods delivered to the Client until the Price for the Goods under all individual contracts, agreements or orders between OSA and the Client have been paid in full.

7.4 The Client expressly acknowledges and agrees that OSA is not obliged or required to distinguish between Goods sold to the Client pursuant to invoices which remain unpaid and Goods sold to the Client pursuant to invoices which have been paid.

7.5 Where the Client does not make payment in respect of specific Goods, payment may be treated by OSA as having been made first in respect of Goods which have passed out of the possession of the Client and then in respect of whatever Goods are still in the possession of the Client, as OSA elects.

7.6 Receipt by OSA of any payment will not be deemed to be payment until that payment has been honoured, cleared or recognised and until then OSA's ownership or rights in respect of the Goods will continue.

7.7 It is further agreed that:

(a) until the Goods are paid for in full, the Client must not sell or supply any Goods to any person other than in its ordinary or usual course of business and in its capacity as fiduciary agent of OSA. Upon such sale occurring, the Client must hold such proceeds on trust for OSA in accordance with clause 7.2;

(b) where practicable the Goods must be kept separate and identifiable until the Price for the Goods under all individual contracts, agreements or orders has been paid in full and all other obligations of the Client are met;

(c) until such time as ownership of the Goods passes from OSA to the Client, OSA may give notice in writing to the Client to return the Goods or any of them to OSA. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods will cease;

(d) OSA has the right of stopping the Goods in transit whether or not delivery has been made;

- (e) if the Client fails to return the Goods to OSA, then OSA or OSA's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods and in doing so, the Client acknowledges and agrees that OSA will not be deemed to be relinquishing any of its rights as a creditor when exercising any of its rights as owner of the Goods under this clause 7.1 and OSA's security interest will continue in full force and effect;;
- (f) the Client must not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of OSA;
- (g) OSA can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- (h) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that OSA will be the owner of the end products.

## **8. Liability**

- 8.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Goods or Services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services or any contractual remedy for their failure.
- 8.2 If the Client is a consumer nothing in these Terms restricts, limits or modifies the Client's rights or remedies against OSA for failure of a statutory guarantee under the ACL.
- 8.3 If the Client on-supplies the Goods to a consumer and:
  - (a) the Goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of OSA's liability to the Client;
  - (b) the Goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of OSA's liability to the Client; howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or Services by the Client or any third party.
- 8.4 If Clause 8.1 or 8.3 do not apply, then other than as stated in the Terms or any written warranty statement OSA is not liable to the Client in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or Services by the Client or any third party.
- 8.5 OSA is not liable for any indirect or consequential losses or expenses suffered by the Client or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 8.6 The Client acknowledges that:
  - (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by OSA in relation to the goods or services or their use or application.
  - (b) it has not made known, either expressly or by implication, to OSA any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Client.
  - (c) OSA is not liable for any failure or defect in Goods produced to the specifications provided by the Client or Services by particular methods specified by the Client.
  - (d) OSA is not liable for any incorrect or unsuitable application or use of the Goods by the Client.
- 8.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or the provision of Services which cannot be excluded, restricted or modified.

## **9. Personal Property Securities Act**

- 9.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 9.2 For the purposes of the PPSA:
  - (a) terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA;
  - (b) these Terms are a security agreement and OSA has a Purchase Money Security Interest in all present and future Goods supplied by OSA to the Client and the proceeds from sale of the Goods;
  - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Client at any particular time; and
  - (d) the Client must do whatever is necessary in order to give a valid security interest over the Goods which is able to be registered by OSA on the Personal Property Securities Register.
- 9.3 The security interest arising under this clause attaches to the Goods when the Goods are collected or dispatched from OSA premises and not at any later time.
- 9.4 Where permitted by the PPSA, the Client waives any rights to receive the notifications, verifications, disclosures, or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 9.5 OSA and the Client agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
- 9.6 To the extent permitted by the PPSA, the Client agrees that:
  - (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Client or which place obligations on OSA will apply only to the extent that they are mandatory or OSA agrees to their application in writing; and
  - (b) where OSA has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

- 9.7 The Client must immediately upon OSA request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
  - (b) procure from any person considered by OSA to be relevant to its security position such agreements and waivers (including as equivalent to those above) as OSA may at any time require.
- 9.8 OSA may allocate amounts received from the Client in any manner OSA determines, including in any manner required to preserve any Purchase Money Security Interest it has in Goods supplied by OSA.
- 9.9 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of Goods and details of the Goods will always be kept confidential. Neither party may disclose any information pertaining to these Terms or the sale of the Goods, except as otherwise required by law or that is already in the public domain.

## **10. Security and Charge**

- 10.1 Despite anything to the contrary contained herein or any other rights which OSA may have howsoever:
- (a) where the Client is the owner of land, realty, or any other asset capable of being charged, the Client agrees to mortgage and/or charge all of their joint and/or several interest in the said land, realty, or any other asset to OSA or OSA's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client acknowledges and agrees that OSA (or OSA's nominee) will be entitled to lodge where appropriate a caveat or a mortgage over any real property owned by the Client and such caveat or mortgage (as the case may be) must be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - (b) should OSA elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client must indemnify OSA from and against all OSA's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Client hereby irrevocably nominate, constitute and appoint OSA and each of OSA's appointed directors (separately) as the Client's true and lawful attorney with power to perform all necessary acts and sign all required documents to give effect to the provisions of this clause 10.1 including, without limitation, signing on behalf of the Client any mortgage over the real property of the Client. The Client authorises each attorney to exercise their powers under this power of attorney even the exercise of such powers may involve a "conflict transaction" (as defined in the Powers of Attorney Act 1998 (Qld)) or they have a personal interest in doing so.

## **11. Defects**

- 11.1 The Client must inspect the Goods on delivery and, within 14 days of delivery (time being of the essence), notify OSA of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client must afford OSA an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client fails to comply with these provisions the Goods will be presumed to be free from any defect or damage. For defective Goods, which OSA has agreed in writing that the Client is entitled to reject, OSA's liability is limited to either (at OSA's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the ACL and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.

## **12. Warranty**

- 12.1 Subject to clause 8 and the requirements of the ACL:
- (a) for Goods not manufactured by OSA, the warranty will be the current warranty provided by the manufacturer of the Goods.
  - (b) OSA will not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

## **13. Intellectual Property**

- 13.1 Where OSA has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents will remain vested in OSA, and may only be used by the Client at OSA's discretion.
- 13.2 The Client warrants that all designs or instructions to OSA will not cause OSA to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify OSA against any action taken by a third party against OSA in respect of any such infringement.
- 13.3 The Client agrees that OSA may use any documents, designs, drawings or Goods created by OSA for the purposes of advertising, marketing, or entry into any competition.

## **14. Default and Consequences of Default**

- 14.1 Without prejudice to any other remedies OSA may have, if at any time the Client is in breach of any obligation (including those relating to payment) OSA may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. OSA will not be liable to the Client for any loss or damage the Client suffers because OSA has exercised its rights under this clause.
- 14.2 In the event of any breach of this contract by OSA the remedies of the Client will be limited to damages which under no circumstances will exceed the Price of the Goods unless required otherwise by the ACL.

## **15. Cancellation**

- 15.1 OSA may cancel any Agreement to which these Terms apply or cancel delivery of Goods at any time before the Goods are delivered by giving reasonable written notice to the Client. On giving such notice OSA will repay to the Client any sums paid in respect of the Price. OSA will not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 If the Client cancels delivery of Goods the Client will be liable for any loss incurred by OSA (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will not be accepted once the order has been processed.

## **16. Unpaid OSA's Rights**

- 16.1 Where the Client has left any item with OSA for repair, modification, exchange or for OSA to perform any other Service in relation to the item and OSA has not received or been tendered the whole of the Price, or the payment has been dishonoured, OSA will have:
  - (a) a lien on the item;
  - (b) the right to retain the item for the Price while OSA is in possession of the item;
  - (c) a right to sell the item.
- 16.2 The lien of OSA will continue despite the commencement of proceedings, or judgment for the Price having been obtained.

## **17. General**

- 17.1 If any provision of these terms and conditions will be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 17.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA will prevail to the extent of that inconsistency.
- 17.3 These Terms and any Agreement to which they apply will be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 17.4 OSA will be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by OSA of the Terms, subject to any requirements of the ACL.
- 17.5 The Client is not entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by OSA nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.6 OSA may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.7 The Client agrees that OSA may review the Terms at any time. If, following any such review, there is to be any change to the Terms, then that change will take effect from the date on which OSA notifies the Client of such change. Except where OSA supplies further Goods to the Client and the Client accepts such Goods, the Client will be under no obligation to accept such changes.
- 17.8 Neither party will be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.9 The failure by OSA to enforce any provision of the Terms will not be treated as a waiver of that provision, nor will it affect OSA's right to subsequently enforce that provision.

## Credit Conditions

1. OSA may accept or reject the application for credit made in this form in its absolute discretion. The Applicant agrees that it is not entitled to any credit unless and until it receives notice in writing from OSA that credit has been approved, the initial credit limit to apply to the account ('**Credit Limit**'). Until the Applicant receives such notice, any goods or services that are to be supplied to the Applicant by OSA will only be provided on a cash in advance basis.
  2. Subject to clause 3, the Applicant is required to ensure at all times that the aggregate amount of all outstanding invoices issued by OSA to the Applicant is less than the Credit Limit. If the aggregate amount of all outstanding invoices reaches (or with the further supply of goods, would reach) the Credit Limit, then any goods that are to be supplied to the Applicant will only be provided on a cash in advance basis.
  3. The Applicant acknowledges and agrees that OSA may in its absolute discretion from time to time (either at the request of the Applicant or at its own discretion) increase or decrease the Applicant's Credit Limit and the terms of this Agreement will apply to the Credit Limit as varied by OSA from time to time. Where OSA agrees to increase the Credit Limit, such increase may be a temporary or one-off increase for a specific purchase or may be a permanent increase to the Credit Limit, as specified by OSA.
  4. The Applicant may request OSA to decrease the Credit Limit at any time provided that all amounts owing by the Applicant to OSA under the credit account are less than the decreased credit limit requested by the Applicant.
  5. If the Applicant applies to increase the Credit Limit, the Applicant must provide OSA with such information and documentation as OSA requires in order to consider the request to increase the Credit Limit. OSA may agree or refuse to increase the Credit Limit in its absolute discretion and, if it agrees, on such conditions as OSA requires including the provision of additional security (for example, the provision of a bank guarantee or, if not previously provided, the provision of a guarantee and indemnity by officer(s) or of Applicant).
  6. If the Applicant's application for credit is approved, then:
    - (a) all invoices must be paid in full by the Applicant within 28 days following the end of the month in which the goods are invoiced. Statements will be delivered monthly by email or facsimile. Credit, and the delivery of goods to the Applicant, may be suspended if payment is not made when due;
    - (b) if the Applicant defaults in making any payment when due, then all money payable by the Applicant becomes immediately due and payable;
    - (c) OSA may charge interest at the rate equal to eight per cent (8%) per annum above the then current base rate of the Reserve Bank of Australia at the date the invoice was issued, on all amounts due to it by the Applicant which remain unpaid, from the due date for payment until the date payment is received.
    - (d) the Applicant is liable for all costs, charges and expenses incurred by OSA in recovering any outstanding monies including debt collection agency fees, administration fees and legal costs (on a full indemnity basis). Such amounts must be paid by Applicant on demand;
    - (e) the credit granted to Applicant may be reduced, suspended until further notice, or terminated at any time by OSA by written notice to the Applicant. If credit is terminated, all money payable by the Applicant becomes immediately due and payable.
  - (f) OSA may at any time impose as a condition precedent to the granting of any further credit or the maintenance of the existing Credit Limit, the requirement that the Applicant gives or procures such security or additional security as is required by OSA in its absolute discretion. OSA is entitled to withhold the supply of goods until such security or additional security is provided;
  - (g) if any invoice issued to the Applicant is overdue, OSA may refuse to supply any goods on credit until no such invoices are overdue;
  - (h) OSA, in its absolute discretion, may suspend the provision of goods to the Applicant at any time if OSA believes that the Applicant is unable or unwilling to pay an amount when due;
  - (i) OSA may amend or replace these Credit Conditions in its absolute discretion by providing prior written notice to the Applicant, which notice may be endorsed on or accompany an invoice, statement, correspondence or other document provided to the Applicant. The amended or replacement Credit Conditions apply with effect from the date stipulated in the notice (which must be no earlier than the date the notice is given to the Applicant) and do not affect accrued rights and obligations.
7. The Applicant represents and warrants to OSA that:
    - (a) the Applicant is not aware of any information, notice or court proceedings that may result in the appointment of a trustee in bankruptcy, administrator, controller or managing controller, receiver or receiver manager or liquidator to it or any of its property;
    - (b) none of its officers (if it is a company or other body corporate), partners (if it is a partnership) or it (if it is a sole trader) has been a director of a company which has been declared insolvent, entered into an arrangement with its creditors or subject to external administration under the *Corporations Act 2001* (Cth) or has been declared bankrupt or has entered into an arrangement under the *Bankruptcy Act 1966* (Cth) (as amended).
  8. The Applicant agrees to notify OSA in writing as soon as practicable and in any event within 3 days of the occurrence of:
    - (a) a change in the legal status, ownership or control of the Applicant;
    - (b) a change in the directors (if it is a company or other body corporate) or partners (if it is a partnership) of the Applicant;
    - (c) the appointment of a liquidator, administrator or receiver, or the liquidation, administration, arrangement, receivership or bankruptcy of the Applicant; or
    - (d) any step being taken to sell an asset or assets of the Applicant with a value of 50% or more of the gross assets of the Applicant, or sell, transfer, encumber or otherwise dispose of 50% or more of the shares (if it is a company or other body corporate) of the Applicant.On the occurrence of such an event, OSA may reduce, suspend until further notice, or terminate the provision of

credit to the Applicant and/or may require the Applicant to make a new application for credit.

9. The Applicant agrees that the credit contract formed between the Applicant and OSA upon acceptance of this application for credit ("**Credit Contract**") is personal to the Applicant and is not assignable. OSA may terminate the Credit Contract by notice in writing to the Applicant if the Applicant assigns or purports to assign or otherwise deal with its interest under the Credit Contract.

10. Privacy Act 1988 (Cth)

(a) The Applicant agrees to OSA obtaining from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by OSA.

(b) The Applicant agrees that OSA may exchange information about the Applicant with those credit providers named in a consumer credit report issued by a credit reporting agency for the following purposes:

- i. to assess an application by the Applicant; and/or
- ii. to notify other credit providers of a default by the Applicant; and/or
- iii. to exchange information with other credit providers as to the status of this credit account, where the Applicant is in default with other credit providers; and/or
- iv. to assess the creditworthiness of the Applicant.

(c) The Applicant understands that the information exchanged can include anything about the Applicant's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

(d) The Applicant consents to OSA being given a consumer credit report to collect overdue payment on commercial credit.

(e) The Applicant agrees that personal credit information provided may be used and retained by OSA for the following purposes (and for other purposes as may be agreed between the Applicant and OSA or required by law from time to time):

- i. the provision of Goods; and/or
- ii. the marketing of Goods by OSA, its agents or distributors; and/or
- iii. analysing, verifying and/or checking the Applicant's credit, payment and/or status in relation to the provision of Goods; and/or
- iv. processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Applicant; and/or
- v. enabling the daily operation of the Applicant's account and/or the collection of amounts outstanding in the Applicant's account in relation to the Goods.

(f) OSA may give information about the Applicant to a credit reporting agency for the following purposes:

- i. to obtain a consumer credit report about the Applicant;
- ii. allow the credit reporting agency to create or maintain a credit information file containing information about the Applicant.

(g) The information given to the credit reporting agency may include:

- i. personal particulars (the Applicant's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
- ii. details concerning the Applicant's application for credit or commercial credit and the amount requested;

iii. advice that OSA is a current credit provider to the Applicant;

iv. advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;

v. that the Applicant's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;

vi. information that, in the opinion of OSA, the Applicant has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Applicants' credit obligations);

vii. that credit provided to the Applicant by OSA has been paid or otherwise discharged.

## 11. **Guarantee and Indemnity**

In consideration of OSA providing the credit and agreeing to supply and deliver goods to the Applicant, the Guarantors hereby:

(a) guarantee to OSA the due and punctual payment of all money presently owing under this Credit Contract and all other money that may become payable by the Applicant, in respect of goods supplied by OSA and any other sums payable by the Applicant pursuant to this Credit Contract and/or OSA's Terms and Conditions of Trade (**guaranteed money**);

(b) agree to pay the guaranteed money to OSA on demand;

(c) indemnify and agrees to keep indemnified OSA from and against all losses, costs, charges and expenses whatsoever (including all legal costs) that OSA may suffer or incur in relation to the supply of goods or the provision of credit to the Applicant or a default by the Guarantor under the terms of this deed. This indemnity is a continuing obligation, independent of the Guarantor's other obligations under this deed and continues after those other obligations end. It is not necessary for OSA to incur expense or make payment before enforcing a right of indemnity under this deed;

(d) covenant, acknowledge and agree:

i. this deed will not be discharged or deemed to be discharged in any way by any payment to OSA other than the full payment and acceptance by OSA of the whole of the guaranteed money;

ii. the Guarantor is liable as a principal and as a primary debtor for the payment of the guaranteed money;

iii. this deed is valid and enforceable against the Guarantor and the liability of the Guarantor continues and may be enforced by OSA notwithstanding:

A. any compromise or concession granted by OSA to the Applicant;

B. that no steps or proceedings have been taken against the Applicant;

C. the death or bankruptcy or winding up of the Applicant;

D. that payment of the guaranteed money by the Applicant cannot be legally enforced against the Applicant;

E. OSA taking or failing to take, or enforcing or failing to enforce, or holding any other security for the Applicant's debt, or varying

- or surrendering any such security will not exonerate or discharge the Guarantor or otherwise prejudice or affect the liability of the Guarantor;
- iv. the Guarantor must not compete with OSA if the Applicant becomes insolvent until OSA has received full payment of the guaranteed money;
  - v. OSA has afforded the Guarantor the opportunity to obtain independent legal and financial advice on the Guarantor's obligations under this deed; and
  - vi. the Guarantor is responsible for making themselves aware of the financial position from time to time of the Applicant and any other Guarantor.
- (e) charge, for the purpose of securing payment to OSA of the guaranteed money, all the Guarantors rights, title and interest in and to all real property, intellectual property, water rights, goods or chattels owned by the Guarantor. The Guarantor acknowledges that this charge is a sufficient interest to support a caveat over the real property the Guarantor and authorises and consents to OSA lodging a caveat on the title of the Guarantor's real property;
- (f) grant as further security for the payment to OSA of the guaranteed money, a Security Interest in all of the Guarantor's Present and After-Acquired property in which the Guarantor has rights and agrees to sign or complete any further documents necessary to complete a registration of such interest. The Guarantor waives their rights under sections 123, 125, 126, 128, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the Personal Property Securities Act 2009 (Cth). The terms used in this clause have the same meaning as in the Personal Property Securities Act 2009 (Cth);
- (g) consent to OSA:
- i. disclosing credit information about the Guarantor to a credit reporting body;
  - ii. obtaining credit eligibility information about the Guarantor from a credit reporting body;
  - iii. using credit eligibility information about the Guarantor; and
  - iv. disclosing credit eligibility information about the Guarantor,
- for the purposes of OSA:
- v. assessing whether to accept the Guarantor as a guarantor for credit that has been provided to or may be applied for by the Applicant; and
  - vi. collecting overdue payments; and
  - vii. reporting on payment defaults and insolvency issues.
- (h) acknowledge that:
- i. the term "OSA" includes its successors and assigns and the terms "Applicant" and "Guarantor" include their respective executors, administrators and successors;
  - ii. this Deed is governed by the laws of Victoria and the Guarantor submits to the non-exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia
- (i) If this document is signed electronically as a deed, then to the extent the signing may not be valid, the parties agree that this document is signed as an agreement if legally possible and that valid consideration has been given by OSA by the granting of credit to the Applicant.
12. OSA may at any time set off amounts payable by OSA to the Applicant from the amounts payable by the Applicant to the OSA.
13. These Credit Conditions are governed by and are construed in accordance with the laws applicable to the State of Victoria and the parties irrevocably submit to the exclusive jurisdiction of the courts of State of Victoria, the Federal Court of Australia, and any court capable of hearing appeals from those courts.