

# STANDARD TERMS & CONDITIONS



## 1. Use of Purchase Orders

- 1.1 All Purchase Orders must be emailed to the Company's Representative.
- 1.2 By providing a Purchase Order, the Client makes a binding offer to purchase the Product on the Terms and Conditions.
- 1.3 The receipt of a Purchase Order by the Company does not create any obligation on the Company to supply Product to the Client until the Company accepts the Purchase Order in accordance with clause 2.1.
- 1.4 To the extent permitted by law and to the extent the Client's terms and conditions are supplied to the Company in respect of the supply of Product, those terms and conditions will not constitute part of this Agreement (even if any representative of the Company signs those terms and conditions or annexes the terms and conditions to this Purchase Order).
- 1.5 All subsequent Product accepted by the Client (whether ordered by purchase order, email or otherwise) shall be deemed to be subject to these Terms and Conditions.

## 2. Acceptance and amendment of Purchase Order

- 2.1 The Company may, in its sole discretion accept or reject a Purchase Order. If the Company wishes to accept a Purchase Order, it may do so within 30 days by confirming the order:
  - (a) by providing written confirmation or an invoice to the Client's Representative; or
  - (b) by delivering the Product, whichever occurs first.
- 2.2 The Company may accept a Purchase Order without change or may (by notice to the Client) either elect to supply a lower quantity of the Product and/or change the Delivery Date of the Product ordered (**Amended Delivery Date**). If the Amended Delivery Date is not reasonable, the Client may cancel the Purchase Order within 3 days of receipt of the Amended Delivery Date.

## 3. Credit Application and Credit Account

- 3.1 The Company may accept or reject a Credit Application made by the Client in its absolute discretion. The Client acknowledges that it is not entitled to any credit unless and until it receives notice in writing from the Company that credit has been approved. Until such a time as the Client receives that notice, payment for any Product delivered shall be made in accordance with clause 11.1.
- 3.2 The Client warrants that all information provided by it in its Credit Application is accurate, correct and complete as at the date signed by the Client. If at any future time, there is any change to the information regarding the Client provided by it in the Credit Application, the Client agrees to notify the Company of the change immediately.
- 3.3 If the Client has applied for a Credit Account and the Company has accepted that application as contemplated in clause 3.1:
  - (a) credit (if approved) will be made available to the Client for the purpose of the purchase of Product by the Client from the Company subject to these Terms and Conditions;
  - (b) the Credit Account may be withdrawn by the Company with 14 days' written notice if the Company has not received payment by the relevant due date or there is any other breach by the Client of any of these Terms and Conditions;
  - (c) if credit is withdrawn, all money payable by the Client and/or the Guarantor to the Company becomes immediately due and payable;
  - (d) the Company may set-off any credit amount that the Company owes to the Client against any debt due by the Client to the Company at the Company's sole discretion; and
  - (e) the Client declares that any credit to be provided by the Company to the Client is to be applied wholly or predominantly for business purposes and not for personal, domestic or household purposes.

## 4. Agents

The Client acknowledges that the Company shall be at liberty to

retain any agents the Company sees fit in relation to the performance of the Company's obligations under this Agreement at the sole discretion of the Company, and the Client consents to disclosure of any information in possession of the Company about the Client or its contacts to these agents.

## 5. Delivery of Product

- 5.1 Delivery of the Product will be as specified in the Purchase Order.
- 5.2 The Company will make commercially reasonable efforts to make the Product available for collection by the Client or the Client's carrier by the Delivery Date, and the Company will arrange for the Product to be supplied to the Client at the Delivery Point.
- 5.3 The Product supplied by the Company under this Agreement must be collected by the Client from the Delivery Point at its own cost.
- 5.4 If the Purchase Order specifies that the Company will arrange for the delivery of the Product to the Client, the Client will be responsible for the costs associated with the transport of the Product (including insurance).
- 5.5 The Product will be securely packaged in the Units described in the Purchase Order by the Company.
- 5.6 The Company's delivery of Product under the Purchase Order is a condition of the Client's duty to accept the Product provided and, unless otherwise agreed, the Client's duty to pay for the Product.
- 5.7 Unless the Client has a Credit Account with the Company, the Company is not obliged to make delivery of the Product until payment has been made by the Client in accordance with clause 11.1.

## 6. Delay in Delivery

- 6.1 As soon as reasonably practicable after the Company becomes aware that there may be a delay in the delivery of Product to the Client, the Company must notify the Client's Representative.
- 6.2 If the Company is delayed in delivering the Product to the Delivery Point by the Delivery Date due to an event beyond the control of the Company (including a Force Majeure Event), the Company may extend the Delivery Date by a period of time equal to the length of the delay.

## 7. Use and distribution of Product

- 7.1 The Client must not, directly or indirectly, distribute or on-sell any Product acquired from the Company or hold itself out, or otherwise represent or suggest to others, that it is an agent or distributor of the Company without the consent of the Company.
- 7.2 The Client:
  - (a) acknowledges that the Company may suffer or incur loss, liability, damages or claims arising out of or in connection with a breach of clause 7.1; and
  - (b) is liable for and must indemnify the Company from and against any losses, liabilities, damages, costs and expenses of whatever nature arising out of or in connection with a breach of clause 7.1.
- 7.3 The Company may give its consent to the Client to distribute or on-sell Product the subject of a Purchase Order to an end user in a specified area that is not a Prohibited Territory. If consent is given by the Company in accordance with this clause 7.3, the Client may distribute or on-sell its Product in accordance with that consent and must:
  - (a) ensure that any Product it distributes is not distributed into a Prohibited Territory, as advised by the Company from time to time; and
  - (b) comply with the Company's advertising, marketing and promotion requirements, as notified to the Client from time to time.
- 7.4 If the Company has a reasonable belief that the Client is acting as a distributor without the consent of the Company in contravention of this clause 7 then, notwithstanding clause 17, it may terminate this Agreement (including any Purchase Order) by 14 days' notice in writing to the Client and is not obliged to supply any Product or provide any credit to the Client.
- 7.5 The Company may, by 14 days' notice in writing, revoke any consent

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given for the Client to distribute or on-sell the Product under clause 7.3 at its absolute discretion. Upon the receipt of such notice, the Client must immediately cease distribution and/or on-sale of the Product.

## 8. Risk and Title

8.1 Risk in the Product passes from the Company to the Client once the Company has delivered the Product to the Client at the Delivery Point (whether collected by or otherwise made available to the Buyer).

8.2 Title in the Product passes from the Company to the Client when the Client pays the Price for the Product in full and pays in full any other monies owing or unpaid by the Client in respect of that Product to the Company including monies in respect of Product previously or subsequently supplied to the Client by the Company.

8.3 In relation to Product supplied to the Client for which payment in full has not been received:

- (a) the relationship between the Client and the Company shall be fiduciary;
- (b) the Client will hold the Product as bailee for the Company;
- (c) where the Client sells the Product, the Client does so as fiduciary agent of the Company;
- (d) where Product is disposed of, the monies resulting from the disposal and other proceeds received in respect of the Product, including insurance proceeds will be held separately on trust for the Company;
- (e) where Product is disposed of, the Client may only dispose of the Product in the ordinary course of its ordinary business on commercially reasonable terms; and
- (f) the Client undertakes that until it delivers the Product to a third party, it will store the Product so as to protect the Product from any damage in a manner satisfactory to the Company on its premises separately from its own goods, or those of any other person, and in a manner which makes the Product readily identifiable as the Company's Product.

## 9. Quality of Product

9.1 The Company warrants that the Product supplied under any Purchase Order:

- (a) matches the Description of the Product requested in the Purchase Order;
- (b) is of merchantable quality; and
- (c) meets the Specifications.

9.2 Other than as set out in clause 9.1, the Company makes no warranties of any kind in relation to the Product, and to the maximum extent permitted by law (including, without limitation, the *Competition and Consumer Act 2010* (Cth)), all other relevant implied warranties are expressly excluded.

9.3 In the case of any liability for terms, conditions or warranties which are not able to be excluded, restricted or modified by law, the Company's liability in relation to the supply of Product pursuant to a Purchase Order shall be limited, to the maximum extent permitted by law, to the Company's option of either of the following:

- (a) the replacement of the relevant Product or the supply of equivalent goods; or
- (b) the payment of the cost of replacing the relevant Product or of acquiring the equivalent goods.

## 10. Return of Product

10.1 If the Client can reasonably demonstrate that the Product delivered by the Company did not conform with the provisions of clause 9.1, and such non-conformance was at the fault of the Company (**Defective Product**), the Client's Representative may inform the Company within 21 days of delivery of Product to the Client of the alleged defect and reasonable details to substantiate that the Product is Defective Product.

10.2 If within 21 days of delivery of the Product to the Client, the Company's Representatives receives notice from the Client of an alleged defect, and the Company is reasonably satisfied that the

Product is defective, then the Company may elect, in its sole discretion, to:

- (a) replace the Defective Product;
- (b) if payment has already been made by the Client, refund the Client the difference in value between the Product specified in the Purchase Order and the Defective Product; or
- (c) renegotiate the Price of the Defective Product with the Client.

10.3 The parties agree and acknowledge that, to the extent permitted by law, the performance of one of the three options in clause 10.2 shall be the Client's sole remedy for a breach of the Company's warranties in clause 9.1.

10.4 For the avoidance of doubt, the Company will not be responsible for any defects arising as a result of any act or omission by the Client in respect of delivered Product, including as a result of the Client's failure to store the Product in accordance with the requirements of this Agreement.

## 11. Invoicing and Payment

11.1 Unless the Client has a Credit Account with the Company, payment for Product must be made prior to delivery of the Product by way of wire or electronic funds transfer in accordance with instructions provided by the Company.

11.2 Where the Client has a Credit Account with the Company, within 7 Business Days of the delivery of Product the Company will issue a Tax Invoice to the Client.

11.3 A delay or failure to issue a Tax Invoice for any reason whatsoever will not prejudice the Company's right to recover and be paid for the Product delivered.

11.4 Each Tax Invoice must include:

- (a) a reference to the Purchase Order number;
- (b) a description and breakdown of the Product supplied;
- (c) the Price;
- (d) a Tax Invoice number;
- (e) the ABN of the Company; and
- (f) clearly state that it is a Tax Invoice.

11.5 If a Purchase Order specifies several Delivery Dates, then a separate invoice may be issued with respect to each Delivery Date.

11.6 If the Client has a Credit Account with the Company, the amount specified in the Tax Invoice must be paid to the Company no more than 30 days after the end of the month in which the Tax Invoice is issued by way of wire or electronic funds transfer, or in accordance with instructions provided by the Company.

11.7 Where the Client has a Credit Account with the Company, the Client agrees that if it fails to pay in accordance with this clause, the Company may:

- (a) charge a late payment fee of 5% on all amounts paid after the due date;
- (b) charge interest on debts at 5% per annum from time to time;
- (c) charge a dishonour handling fee in the amount of \$95.00;
- (d) recover all collection costs and expenses incurred in collecting overdue amounts on an indemnity basis;
- (e) withhold supply; or
- (f) sue for all amounts owing in respect of the Product provided.

11.8 If the Client disputes any Tax Invoice issued by the Company, it must notify the Company of its reasons by written notice within 14 days of the Tax Invoice date, failing which the Client loses any right to dispute the Tax Invoice amount.

11.9 If this Agreement has been entered into by more than one party, each party shall be jointly and severally liable for any amounts due and the performance of obligations under this Agreement.

## 12. GST

12.1 Unless the contrary intention appears, words and phrases which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning when used in this clause 12.

12.2 Unless expressly stated otherwise in these Terms and Conditions, all

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- consideration to be provided under these Terms and Conditions is exclusive of GST.
- 12.3 If GST is payable on a supply made under or in connection with these Terms and Conditions and the consideration is not expressly stated to be inclusive of GST, the party providing the consideration for the supply must pay to the Company an additional amount equal to the amount of GST payable on that supply (**GST Amount**).
- 12.4 Subject to the prior receipt of a Tax Invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- 12.5 If an adjustment event occurs for a supply made under or in connection with these Terms and Conditions, the supplier must issue an adjustment note and a payment must be made as between the parties to reflect the adjustment.
- 12.6 Any payment, reimbursement, indemnity or similar payment that is required to be made under these Terms and Conditions which is calculated by reference to an amount paid by another party shall be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clauses 12.3 and 12.4 will apply to the reduced payment.
- 13. Access**
- 13.1 In respect of any Purchase Order, where the Delivery Point is located at the Company's premises, the Client and the Client's officers, agents, employees, affiliates and subcontractors may have access to the Company's Premises for the purpose of taking delivery of the Product and in doing so must:
- (a) not interfere with the Company's activities or the activities of any other person at the Delivery Point; and
  - (b) comply with all of the Company's safety requirements and instructions relating to conduct at the Company's premises, as may be directed by the Company from time to time.
- 13.2 The Client irrevocably permits the Company or any person authorised by the Company in writing, upon giving reasonable notice to the Client, to enter the Client's premises or at premises or at premises where the Product is reasonably believed by the Company to be held on the Client's behalf for the purpose of examining or recovering the Product in accordance with these Terms and Conditions. The Client also agrees to indemnify and hold the Company harmless for reasonable costs of removal, enforcement, and legal action in respect of the removal of any Product, the subject of this Agreement.
- 14. Liability**
- 14.1 Subject to clause 10, and to the extent permitted by law, the total aggregate liability of the Company to the Client under this Agreement, howsoever arising whether in contract, in tort (including negligence), under statute, in equity, by way of indemnity or otherwise is limited to 100% of the Price.
- 14.2 Notwithstanding any other provision of this Agreement but subject to clause 7.2 and to the extent permitted by law, neither party is liable to the other for any indirect or consequential loss or damage, including but not limited to loss of revenue, loss of profit, loss of business, loss of opportunity howsoever arising whether in contract, tort or under any legislation, provided that nothing in this clause 14 will restrict the ability of the Company to recover in full the Price and all debts and interest outstanding.
- 15. Dispute Resolution**
- 15.1 This Agreement will be governed by and construed in accordance with the laws and regulations in Western Australia.
- 15.2 The parties agree, acknowledge, and submit to the courts of Western Australia having exclusive jurisdiction over all and any dispute or difference between the parties arising out of or in connection with this Agreement.
- 16. Force Majeure**
- 16.1 If the performance of the Company's obligations under this Agreement is affected by a Force Majeure Event, the Company must give written notice of the occurrence of the Force Majeure Event to the Client's Representative as soon as possible and in any event no later than 5 Business Days after the occurrence of the Force Majeure Event.
- 16.2 If the Company has given notice in accordance with clause 16.1, then its obligations under this Agreement are suspended to the extent that the Force Majeure Event prevents or delays its performance.
- 16.3 The Company must take all reasonable steps to try to overcome (including to keep the Client updated of its efforts to do so) the Force Majeure Event as soon as possible.
- 16.4 As soon as reasonably possible after a Force Majeure Event ceases to prevent or delay the Company's performance of its obligations, the Company must notify the Client's Representative and resume performance of its obligations.
- 17. Default**
- 17.1 If the Client:
- (a) fails to pay for any goods or services on the date specified in a Tax Invoice; or
  - (b) otherwise breaches this Agreement and fails to rectify such breach within 7 days' written notice; or
  - (c) commits an act of bankruptcy or allows a trustee in bankruptcy or receiver and manager to be appointed to the Client or any of its property; or
  - (d) allows a judgment or order to be enforced or become enforceable against the Client's property; or
  - (e) permits proceedings to be commenced to wind the Client up or controller, receiver, administrator, liquidator or similar officers appointed to the Client in respect of any part of its property,
- then the Company may, without prejudice to any other rights it may have and notwithstanding clause 7.4, terminate the Agreement (including the Credit Account to the extent applicable) with 14 days' notice, and, in the case of clause 17.1(a):
- (a) enter upon the Client's premises where Product supplied under this Agreement is situated at any time and re-take possession of any or all of the Product the Company has supplied to the Client;
  - (b) resell the Product concerned; and
  - (c) sue for any monies owing.
- 17.2 The Client will be in default if the Client does not pay any amounts payable when due under this Agreement. The Client (and the Guarantor if applicable) agree that the Company is authorised to contact a credit reporting agency throughout the term of the Agreement to obtain a report about the creditworthiness of the Client (or the Guarantor or both).
- 17.3 The Client (and the Guarantor if applicable) jointly and severally authorise the Company to engage in the exchange of information with a credit reporting agency or with other similar parties as are necessary to give effect to the Agreement and to the ongoing relationship between the parties.
- 17.4 The Company reserves the right to report a Client's delinquent account to a credit reporting agency should payment remain outstanding for more than 60 days. In addition the Company may refer the outstanding account for debt collection or issue legal proceedings to recover any outstanding Tax Invoices. Should an account be referred for debt collection the Client acknowledges and agrees to pay any debt collection charges incurred by the Company on the day the Company refers the matter to their nominated debt collection agency. The Client shall also be liable for interest at the rate of 5% per annum and any legal costs incurred by the Company in connection with such action on a solicitor and own client cost basis.
- 18. Right to amend Terms and Conditions**
- 18.1 The Company reserves the right to amend Terms and Conditions by giving the Client notice in writing of the amended Terms and Conditions to the Client's address as specified in the Purchase Order or as notified by the Client from time to time. The Client is deemed

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to accept any amended Terms and Conditions unless it notifies the Company in writing within seven days of its objection to the proposed amendment to the Terms and Conditions.

## 19. Security interest

The Client grants to the Company a security interest as defined in the PPSA (which may comprise a purchase money security interest) in respect of all present and after acquired Product supplied to the Client by the Company to secure payment of the Price for all Product supplied to the Client by the Company and any other monies owing or unpaid by the Client to the Company.

## 20. PPSA further steps

If the Company determines that this Agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, the Client (and any Guarantor) agrees to do anything that the Company reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed) to:

- (a) ensure that the security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or
- (b) enable the Company to apply for registration, or give any notification, in connection with the security interest so that the security interest has the priority required by the Company (including a registration for whatever collateral class the Company thinks fit and the Client and the Guarantor consent to any such registration or notification and agree not to make an amendment demand); or
- (c) enable the Company to exercise rights in connection with the security interest

## 21. PPSR Registration

The Client agrees:

- (a) to not, without first giving the Company 15 business days' notice, change its name, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the Personal Property Securities Register established under the PPSA (PPSR) in connection with the security interest;
- (b) to not, without the Company's prior written consent, lodge or serve a financing change statement or an amendment demand in relation to the security interest;
- (c) to waive its right to receive a verification statement or notice in relation to a registration event in accordance with section 157(3)(b) of the PPSA;
- (d) that to the extent that:
  - section 115(1) of the PPSA allows them to be excluded, sections 125, 130, 132(3)(d), 132(4), 135, 136B(4), 142 and 143; and
  - section 115(7) of the PPSA allows them to be excluded, sections 129(2), 129(3), 132, 134(2), 135, 136(5) and 137,do not apply to any enforcement by the Company of the security interest;
- (e) to waive its right to receive anything from the Company under section 275 of the PPSA and agrees not to make a request of the Company under that section. The Client and the Company agree for the purposes of section 275(6) of the PPSA that neither the Client nor the Company will disclose any information in the nature of that mentioned in section 275(1) of the PPSA.

## 22. Assignment

The Client and Guarantor must not assign, transfer, novate or otherwise deal with its rights or obligations under this Agreement without the prior consent of the Company.

## 23. Confidentiality

23.1 The Client and Guarantor must treat this Agreement and any information provided by the Company or on its behalf, as confidential and must not disclose the Agreement or such information, the existence of the Agreement, the information contained in it or its subject matter to any third party (except as may be required to perform its obligations under this Agreement, by a law, a Court order or the rules of any securities exchange on which the Client's securities are listed) or use it for advertisement, display or publication without the prior written consent of the Company.

23.2 The rights and obligations under this clause 22 continue after the termination of this Agreement.

## 24. Set-off

The Client must make all payments that become due under this Agreement free and clear and without any set-off or deduction of all present and future withholdings (including taxes, duties, levies, imposts, deductions and charges levied under any jurisdiction), unless such withholding is required by law.

## 25. Guarantee and Indemnity

25.1 The Guarantor:

- (a) guarantees to the Company that the Client will pay all amounts owing to the Company under this Agreement when due;
- (b) indemnifies and agrees to keep indemnified the Company from and against any and all damages, cost, losses and expenses which the Company may suffer or incur in any way out of or consequent upon or arising directly or indirectly out of the Agreement between the Company and the Client, including costs and legal fees on a solicitor and own client basis;
- (c) acknowledges that the liability of the Guarantor will not be affected by the granting of time or other indulgence or concession to the Client, or by the compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the rights of the Company against the Client or by any neglect or omission relating to sureties which would or might but for this provision release the Guarantor from their obligations;
- (d) acknowledges and agrees that the Company is at liberty to act as though the Guarantor is the primary debtor jointly and severally liable with the Client, and, to the extent permitted by law, the Guarantor waives all rights either at law or in equity or under any statute that the Guarantor might otherwise be entitled to claim or enforce as a defence to any action brought by the Company;
- (e) acknowledges that the payment of GST imposed by the Company by reason of supply of goods and services or both to the Client shall also be guaranteed by the Guarantor; and
- (f) authorises the Company to conduct such credit and financial checks as deemed necessary at any time, and consent to such checks for the purposes of the *Privacy Act 1988* (Cth), and consent to disclosure of such information to a credit reporting or recovery agents.

25.2 The Guarantor gives the following warranties in the knowledge that the Company has relied on them in entering into this Guarantee:

- (a) that the Guarantor has read and understood these Terms and Conditions;
- (b) that the Company has afforded the Guarantor of an unrestricted opportunity of seeking independent legal advice on the Guarantor's obligations under this Agreement prior to the signing of this Agreement;
- (c) that the Guarantor has sought and obtained such legal and accounting advice as they may have required before executing this Agreement.

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## 26. General

- 26.1 No waiver by the Company of a breach of this Agreement by the Client constitutes a waiver for any subsequent or continuing breach by the Client.
- 26.2 If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid or otherwise unenforceable, that provision may be severed from this Agreement and the remainder of this Agreement will continue to be effective and valid notwithstanding such severance.
- 26.3 Except as expressly stated otherwise in this Agreement, this Agreement may only be varied or replaced by written agreement between the parties.
- 26.4 Except as expressly stated otherwise in this Agreement, the rights of a party under this Purchase Order are cumulative and are in addition to any other rights of that party.
- 26.5 The Company and the Client agree that the 'United Nations Convention on Contracts for the International Sale of Goods (1980)' does not apply to this Agreement or the transactions contemplated under it.
- 26.6 Where this Agreement allows the Company a discretion as to whether to do or not to do any act, matter or thing of any kind, or confers on the Company a power of determination or right of opinion, approval or the like, that discretion, power or right is absolute and the Company is not obliged to give its reasons, unless this Purchase Order states otherwise.
- 26.7 Except as otherwise agreed between the parties in writing, this Agreement embodies the whole agreement between the parties and, subject to the express terms contained in any written acceptance thereof, all previous dealings, representations and arrangements are hereby excluded and cancelled.

## 27. Interpretation

- 27.1 Unless otherwise required by the context:

**Agreement** means the agreement formed by the Company accepting the Purchase Order and consists of:

- (a) the relevant Purchase Order;
- (b) these Terms and Conditions; and
- (c) the Credit Application (if applicable).

**Applicant/s** means the party applying for a Credit Account under the Credit Application

**Business Day** means a day other than Saturday, Sunday or public holiday on which banks in Perth, Western Australia are open for general banking business.

**Client** means the party identified as the Client in the Purchase Order.

**Client's Representative** means the individual whose details are set out in the relevant section of the Purchase Order.

**Company** means GMA Garnet Pty Ltd (ABN 72 009 344 227).

**Company's Representative** means the individual whose details are set out in the relevant section of the Purchase Order.

**Credit Account** means an arrangement (if any) approved (and not cancelled or withdrawn) by the Company that permits you to pay for Product within a certain time after delivery in accordance with these Terms and Conditions.

**Credit Application** means an application for a Credit Account (if applicable) attached to this Agreement.

**Defective Product** has the meaning given to it in clause 10.1.

**Delivery Date** means the date(s) for delivery of Product identified in the Purchase Order.

**Delivery Point** means the area identified as the delivery point in the Purchase Order.

**Description** means the description of the Product used in column 3 of the Product table in the Purchase Order.

**Force Majeure Event** means circumstances beyond a party's reasonable control, including failure resulting from acts of God, acts of public authority, war and war measures, civil unrest, strikes, terrorism, fire, or flood.

**Guarantee** means the Guarantee given by the Guarantor under clause 24.

**Guarantor/s** means the party or parties identified as the guarantor/s in the Credit Application.

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

**Price** means the total price payable to the Company for the Product supplied pursuant to the Purchase Order, inclusive of any GST (unless context otherwise requires).

**Product** means the industrial grade garnet provided by the Company pursuant to the Purchase Order as described in column 3 of the Product table in the Purchase Order.

**Prohibited Territory** means a geographical area or a class of customers which is or are the subject of a distribution agreement between the Company and another third party distributor under which the Company has granted that third party distributor an exclusive right or rights to distribute the Product within that geographical area or to that class of customer.

**Purchase Order** means an offer by the Client to Purchase Product from the Company pursuant to the Terms and Conditions, in the form attached to these Terms and Conditions.

**Quantities** means the quantities of Product described in column 1 of the Product table in the Purchase Order.

**Specifications** means the specifications of the Product as set out on the Company's website: [www.gmagarnet.com/en-nz](http://www.gmagarnet.com/en-nz).

**Tax Invoice** means the document described in clause 11.4.

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

**Units** means the units of delivery for Product described in column 2 of the Product table in the Purchase Order.

- 27.2 In this Purchase Order, unless the context requires otherwise:

- (a) a word in this Agreement that has a capitalised first letter has the meaning given to it by this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) headings are for reference only and do not affect the interpretation of this Agreement;
- (d) a reference to any legislation includes a reference to any proclamation, order, amendments or modification made under that legislation;
- (e) where two or more persons are named as the Client then the obligations on their part will bind and be observed and performed by them jointly and severally;
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or benefits from it;
- (g) a reference to:
  - a person includes that person's legal personal representatives, successors or assigns;
  - time is to local time in Perth, Western Australia;
  - "\$" or "dollars" is a reference to Australian currency unless otherwise agreed; and
  - a clause is a reference to a clause of this Purchase Order;
- (h) if the date on or by which any act must be done under this Purchase Order is not a Business Day, the act must be done on or by the next Business Day;
- (i) where time is calculated by reference to a day or event, that day or the day of that event is excluded; and
- (j) a notice or other communication means a notice or communication in writing in the English language, by electronic mail addressed to the email address of the recipient party or by first class, registered or certified mail, postage prepaid, in each case to the postal addresses of the recipient party.