

– STANDARD TERMS & CONDITIONS OF TRADE –

**1. DEFINITIONS AND INTERPRETATION**

1.1. In these terms and conditions, unless the context otherwise requires:

- (a) **“Customer”** shall mean the Customer as described or identified on any quotation, work authorisation or other form as provided by Pakton to the Customer, including its executors, administrators, successors and assigns and any person acting on behalf of and with the authority of the Customer.
- (b) **“Pakton”** shall mean Pakton Group Pty Ltd ACN 123 853 654 trading as Pakton Technologies, its successors and assigns, and any person acting on behalf of and with the authority of Pakton Group Pty Ltd ACN 123 853 654 trading as Pakton Technologies.
- (c) **“Delivery Costs”** shall mean all costs of delivery of Products including all carrier, freight, transit, insurance, customs, holding and storage charges, inspection costs, quarantine costs, discharge and release fees, taxes, duties and other levies, expenses and disbursements.
- (d) **“GST”** means goods and services tax levied under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (e) **“Guarantor”** means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- (f) **“Intellectual Property Rights”** means circuit layout rights, copyrights, patent rights, trademark rights, design rights, get up, know-how, trade secrets and any and all other forms of intellectual property rights, wheresoever and howsoever arising, whether registered or unregistered, anywhere in the world.
- (g) **“PMSI”** has the meaning set out under section 14 of the PPSA;
- (h) **“PPSA”** means the *Personal Property Securities Act 2009* (Cth).
- (i) **“PPSR”** means the Personal Property Securities Register.
- (j) **“Price”** shall mean the price payable for the Products as agreed between Pakton and the Customer in accordance with clause 3 of these terms and conditions.
- (k) **“Products”** shall mean Products, including parts, components and accessories of Products, as well as any manuals, guidelines and other documents for the Products, supplied by Pakton to the Customer (and where the context so permits shall include any supply of services of Pakton) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Pakton to the Customer.
- (l) **“Security Interest”** has the meaning set out under section 12 of the PPSA.
- (m) **“Warranty Period”** has the meaning set out in clause 7.3.

1.2. In these terms and conditions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes other genders;
- (c) another grammatical form of a defined term has a corresponding meaning;
- (d) a reference to currency, dollars or money shall be a reference to Australian currency, dollars or money;
- (e) a reference to these terms and conditions includes any clause, paragraph, schedule or annexure hereto;
- (f) a reference to a document, instrument or form includes any variations or replacements thereof;
- (g) a reference to a person includes a natural person, partnership, company, association, institution or other entity;
- (h) a reference to a rule or law includes all subordinate rules and laws and any variations or replacements thereof; and
- (i) headings are for ease of reference only and do not affect interpretation.

**2. ACCEPTANCE OF THESE TERMS AND CONDITIONS**

2.1. Each of the following acts or omissions shall constitute acceptance of these terms and conditions without reservation or qualification:

- (a) the giving of any order, request or instruction by the Customer to Pakton for the supply of Products following receipt of these terms and conditions or on any form containing these terms and conditions;
- (b) the Customer’s acknowledgement or acceptance of, or acquiescence in, any confirmation by Pakton of any order, request or instructions by the Customer hereunder;
- (c) the Customer’s acceptance of any Products supplied by Pakton;
- (d) the payment of any amount by the Customer for Products supplied by Pakton; and
- (e) any other conduct which indicates or constitutes acceptance of these terms and conditions by the Customer.

2.2. Upon acceptance of these terms and conditions by the Customer, the terms and conditions are binding on the Customer and can only be amended with the written agreement of Pakton.

2.3. Where more than one Customer has entered into these terms and conditions or where the Customer comprises multiple persons or entities, they shall be jointly and severally liable for all payments of the Price and for all obligations of the Customer hereunder.

2.4. Where a Customer enters into these terms and conditions as a trustee of any trust, the Customer and its successors as trustee of the trust are liable under these terms and conditions in their own right and as trustee of the trust. Nothing releases the Customer from any liability in their personal capacity. The

Customer warrants that all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the Customer as trustee without the consent of any third party, beneficiary, co-trustee, appointor or principal. The Customer warrants that the trust is a valid and subsisting trust, that the Customer has full and unfettered power to enter into and be bound by these terms and conditions as trustee, and that these terms and conditions is executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust. The Customer warrants that no restriction on the Customer's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that the said right of indemnity has priority over the right of the beneficiaries to the trust's assets.

### **3. ORDERS AND CONFIRMATION NOTICES**

- 3.1. The Customer shall submit all orders for Products by notice in writing to Pakton's principal place of business or other address as notified by Pakton to the Customer from time to time.
- 3.2. The Customer shall be taken to have submitted an order on the date it is sent by the Customer to Pakton or, if such date cannot be ascertained, then on the date it is received by Pakton, whether or not Pakton seeks to confirm or seeks confirmation of the order with or by the Customer.
- 3.3. Each order placed by the Customer shall be deemed to be a representation by the Customer, made at the time that it is submitted, that the Customer is solvent and able to pay all of its debts as and when they fall due. Failure to pay Pakton in accordance with these terms and conditions shall be and be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation herein and that the representations were unconscionable, misleading and deceptive.
- 3.4. Pakton is not obliged to confirm any order received from the Customer or to seek confirmation of any order received by Pakton, or to make any inquiries of or about the order or the Customer, at any time, but may do so at its sole discretion by any means it thinks fit.
- 3.5. The Customer shall ensure that all orders for Products are in the form and contain the particulars required by Pakton from time to time. The Customer shall amend and re-submit any order which Pakton determines to be deficient or ambiguous. If Pakton determines that any deficiency or ambiguity can be resolved by inference or implication from other documents or correspondence of the Customer, or by reasonable assumption from or based upon industry standards or ordinary course of business, then Pakton may do so and the Customer shall be bound by it whether or not Pakton seeks confirmation of the order with the Customer.
- 3.6. Pakton reserves its right to reject any order for Products with or without giving reasons for doing so, upon which these terms and conditions shall be deemed to have been cancelled under clause 10.6 insofar as it applies to that order.
- 3.7. If Pakton has modified or replaced any Products ordered or requested by the Customer, then Pakton may in its discretion supply the modified or replacement Products to the Customer in place of the Products so ordered or requested, provided however that if any such modified or replaced Products are materially different to those ordered or requested by the Customer, then Pakton shall notify the Customer of that fact and give the Customer a reasonable opportunity to withdraw or change and resubmit its order before Pakton fulfils the order hereunder.

### **4. PRICES, INVOICING AND PAYMENT**

- 4.1. At Pakton's sole discretion, the Price shall be either:
  - (a) as indicated on invoices provided by Pakton to the Customer in respect of Products supplied; or
  - (b) Pakton's quoted Price (subject to clause 4.2) which shall be binding upon Pakton provided that the Customer shall accept Pakton's quotation in writing within thirty (30) days.
- 4.2. Pakton reserves the right to change the Price of any Products in the event of a variation to Pakton's quotation.
- 4.3. Unless Pakton specifies otherwise, all Products are sold and all Prices are quoted or advised *ex works* from Pakton's premises. All Delivery Costs and other expenses that may be applicable to the supply of any Products shall at Pakton's discretion either:
  - (a) be added to the Price except where they are expressly included in the Price; or
  - (b) be excluded from the Price and in that case be the sole responsibility of the Customer.
- 4.4. Pakton may at its sole discretion require the Customer to pay a deposit as security for payment of any amount which is or shall become due and owing under these terms and conditions.
- 4.5. Pakton shall submit a detailed payment claim to the Customer, in the form of an invoice, containing the particulars Pakton requires, for any amount or amounts owing, or which may become owing, under these terms and conditions, at such time or times as Pakton thinks fit.
- 4.6. At Pakton's sole discretion, unless otherwise agreed in writing between the parties:
  - (a) payment of each invoice shall be made as follows:
    - (i) one hundred percent (100%) of the Price, and one hundred percent (100%) of the Delivery Costs, as shown in the invoice, shall be paid prior to delivery of the Products.
  - (b) payment for approved Customers shall be made as per the terms of clause 4.6(a)(i), unless otherwise agreed in writing by Pakton; or
  - (c) payment for approved Customer's shall be due thirty (30) days following the date of which the invoice is issued.
- 4.7. All payments are to be made in Australian dollars unless otherwise agreed in writing by Pakton.
- 4.8. The time for payment of each invoice shall be of the essence of these terms and conditions.
- 4.9. Payment shall be made by cash, cheque, bank cheque, pay pal, direct credit, or any other method agreed in writing by Pakton. Pakton do not have credit card facilities.
- 4.10. GST and other taxes and duties (including customs excise and other governmental or quasi-governmental charges) that may be applicable shall be added to the Price, Delivery Costs and other invoiced amounts except when they are expressly included such amounts.
- 4.11. The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by Pakton.

## **5. DELIVERY OF PRODUCTS**

### **5.1. Delivery of the Products shall take place at the following times:**

- (a) if the Products are consigned to one or more carriers for delivery to the Customer (whether such carriers are engaged or nominated by Pakton or the Customer), when the Products are loaded on board the carrier's vehicle or vessel for such carriage; or
- (b) if the Products are delivered to the Customer by Pakton personally, when the Customer collects, receives or otherwise takes possession of the Products from Pakton or when the Products are off-loaded at the Customer's nominated address by Pakton, whichever occurs earliest in time;
- (c) if the Products comprise software and delivery is effected by email, internet upload and/or download, or other electronic means, when Pakton receives confirmation from the Customer of receipt by any means or when Pakton receives electronic confirmation of delivery or receipt, whichever occurs earliest in time.

### **5.2. Nothing in these terms and conditions shall oblige Pakton to fulfil any order and arrange delivery of any Products at or by or within any particular timeframe, provided however that Pakton shall act diligently in the ordinary course of its business in doing so.**

### **5.3. If the Products are consigned to one or more carriers for delivery to the Customer (whether such carrier is engaged or nominated by Pakton or the Customer), then Pakton shall use reasonable endeavours to promptly forward or send to the Customer or to the Customer's nominee true copies of the invoices, bills of lading, fumigation certificates and any other documents required by them to take delivery of the Products from the said carrier. Nothing herein shall render Pakton liable to the Customer or to any third party for any loss or damage whatsoever (including any additional Delivery Costs, loss of profits or loss or revenue or other economic loss, duties and taxes) arising due to the failure by Pakton to forward or send such documents (or any of them) promptly or at all.**

### **5.4. All Delivery Costs shall be in addition to the Price of any Products unless Pakton expressly agrees otherwise in writing.**

### **5.5. The Customer shall make all arrangements necessary to take delivery of the Products whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Products as arranged then Pakton shall be entitled to charge a reasonable fee for re-delivery and the Customer shall pay such fee promptly upon demand by Pakton or as a condition of re-delivery by Pakton.**

### **5.6. The Customer shall at its own cost and expense assist Pakton in obtaining any export compliance approvals which may be necessary under Australian or international laws or designated country of delivery import laws.**

### **5.7. Delivery of the Products to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these terms and conditions.**

### **5.8. Pakton may in its sole discretion deliver the Products by or in separate instalments, in which case Pakton may at its discretion invoice each such instalment separately, or invoice any two or more or all such instalments together. Each invoice shall be treated as a separate invoice payable in accordance with the provisions in these terms and conditions.**

### **5.9. The failure of Pakton to deliver any Products promptly or at all shall not entitle the Customer to treat these terms and conditions as repudiated.**

### **5.10. Pakton shall not be liable for any loss or damage whatsoever (including any additional Delivery Costs, loss of profits or loss of revenue or other economic loss, duties and taxes) arising due to failure by Pakton to deliver the Products (or any of them) promptly or at all.**

## **6. PASSING OF TITLE AND RISK**

### **6.1. Pakton and the Customer agree that ownership of the Products shall not pass until:**

- (a) the Customer has paid Pakton all amounts owing for the particular Products; and
- (b) the Customer has met all other obligations due by the Customer to Pakton in respect of all contracts between Pakton and the Customer.

### **6.2. Receipt by Pakton of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Pakton's ownership or rights in respect of the Products shall continue.**

### **6.3. It is further agreed that:**

- (a) where practicable the Products shall be kept separate and identifiable until Pakton shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Products shall pass from Pakton to the Customer, Pakton may give notice in writing to the Customer to return the Products or any of them to Pakton and upon receipt of such notice the rights of the Customer to obtain ownership or any other interest in the Products shall cease; and
- (c) Pakton shall have the right of stopping the Products in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Products to Pakton, then Pakton or Pakton's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Products are situated and take possession of the Products; and
- (e) the Customer is only a bailee of the Products and until such time as Pakton has received payment in full for the Products then the Customer shall hold any proceeds from the sale or disposal of the Products on trust for Pakton; and
- (f) the Customer shall not deal with the money of Pakton in any way which may be adverse to Pakton; and
- (g) the Customer shall not charge the Products in any way nor grant nor otherwise give any interest in the Products while they remain the property of Pakton, except for those charges and Security Interests which have been expressly authorised and provided for in accordance with these terms and conditions; and
- (h) Pakton can issue proceedings to recover the Price of the Products sold notwithstanding that ownership of the Products may not have passed to the Customer; and
- (i) until such time that ownership in the Products passes to the Customer, if the Products are converted into or incorporated in or attached to other products, whether or not they cease being identifiable or separable and whether or not they become composite products, then the parties agree

that title in the said products shall vest in and be retained by Pakton and Pakton will be the owner of the said products (whether they are composite products or end products or otherwise).

- 6.4. Pakton shall not be liable in contract or in tort or otherwise howsoever for any loss or damage including indirect, special or consequential loss or damage arising from delay in design, manufacture, supply or delivery of Products howsoever caused or for any delay in or failure of delivery after Products have been dispatched from Pakton's works.
- 6.5. All risk in or for or concerning the Products passes to the Customer on delivery whether or not ownership of the Products passes at, before or after that time.
- 6.6. The Customer shall obtain and maintain at its cost sufficient and appropriate insurance over loss or damage to the Products at all times after risk in them passes to the Customer until ownership passes to the Customer pursuant to these terms and conditions. The Customer further agrees to ensure that Pakton is endorsed as an insured party on all such insurance policies. If any Products are damaged or destroyed following delivery but prior to ownership passing to the Customer, then:
  - (a) Pakton is entitled to receive the entire proceeds of all such insurance policies from the insurer and the Customer, and if the Customer receive such proceeds then the Customer agrees that it shall hold them on trust for Pakton and shall immediately upon receipt pay them to Pakton in full; and
  - (b) the proceeds shall be applied by Pakton in payment of all amounts owing to Pakton in respect of the Products (including Delivery Costs); and
  - (c) Pakton shall remit and pay any remaining proceeds to the Customer.
- 6.7. The production of these terms and conditions by Pakton is sufficient evidence of Pakton's rights to receive the insurance proceeds without the need for any person dealing with Pakton to make further inquiries.
- 6.8. Pakton is not obliged to effect insurance on any Products after dispatch from their premises unless it receives specific instructions from the Customer, in which case the cost of the insurance will be borne by the Customer.
- 6.9. The Customer hereby grants a PMSI and/or a charge to Pakton, over the Products it has acquired from Pakton to secure payment of the Products in accordance with these terms and conditions and the provisions of the PPSA.
- 6.10. Pakton agrees to take a PMSI and/or charge over the Products, which Security Interest shall be registered on the PPSR.
- 6.11. The Customer shall do all such things and sign all such documents as are necessary and reasonably required to enable Pakton to acquire a perfected Security Interest in the Products which the Customer has purchased from Pakton.
- 6.12. The Customer agrees to provide all such information as is required to enable registration of the charge and /or PMSI on the PPSR.
- 6.13. The Customer acknowledges that a "PMSI" and/or a charge is granted priority to all other creditors of the Customer in relation to the Products.
- 6.14. The Customer authorises under section 275(7)(c) of the PPSA, the disclosure of information by a secured party under section 275(4) of the PPSA in response to any request for information from an interested person pursuant to sections 275(1) to (3) of the PPSA.
- 6.15. The Customer will not without written notice to Pakton, change its name or initiate any change to any documentation registered under the PPSA in relation to these terms and conditions.
- 6.16. Pakton undertakes to maintain the accuracy of the registered Security Interest and to remove the registration when the Customer has paid all amounts owed to Pakton in relation to the Products.

## **7. SHORTAGES, DEFECTS AND WARRANTY**

- 7.1. Our Products come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure.
- 7.2. The Customer shall inspect the Products immediately upon receipt of them hereunder and shall within seven (7) days of such receipt (time being of the essence) notify Pakton of any alleged shortage in quantity or failure to comply with the description or quotation or order for the Products. The Customer shall afford Pakton an opportunity to inspect the Products within a reasonable time following delivery if the Customer believes the Products are received short or fail to comply with the description or quotation or order in any way. If the Customer fails to comply with these provisions, or if Pakton determines (acting reasonably) that any shortage or failure to comply is due to any loss or damage to the Products in transit, then Pakton shall not be liable to rectify or remedy any such shortage or failure to comply. If any Products are in fact received short or fail to comply as aforesaid, and Pakton determines (acting reasonably) that such shortage or failure to comply is not due to any loss or damage to the Products in transit but due to a failure or mistake on Pakton's part, then Pakton shall rectify or remedy such shortfall or failure provided however that Pakton's liability shall be limited at Pakton's sole discretion to either replacing the Products or repairing the Products, except where the Customer has acquired the Products as a consumer within the meaning of the *Competition and Consumer Act 2010* (Cth) or the *Fair Trading Acts* of the relevant State or Territories of Australia, in which case (but in no other case) the Customer shall also be entitled at the Customer's discretion to either a refund of the Price of the Products (excluding Delivery Costs) or the repair or replacement of the Products.
- 7.3. Pakton hereby warrants to the Customer that the Products manufactured by it will be free from defects in materials and workmanship affecting normal use and operation, for a period of twelve (12) months (or such other warranty period provided by Pakton, as the case may be) and/or unless otherwise agreed by Pakton, from the date of purchase of the Products by the Customer (the "**Warranty Period**"), provided always however that:
  - (a) the Customer must notify Pakton of any actual or alleged defects within the said Warranty Period and also within fourteen (14) days of the discovery of the actual or alleged defect by the Customer (time being of the essence);
  - (b) the Customer must, at the Customer's sole cost, promptly after giving notice under the preceding paragraph (a):
    - (i) submit a warranty claim for the actual or alleged defect, in writing, using such forms or in such format as may from time to time be prescribed by Pakton; and
    - (ii) provide sufficient details and particulars of the actual or alleged defect, and provide any documents reasonably requested by Pakton, to enable Pakton to properly process and assess the warranty claim; and

- (iii) deliver the relevant Products to Pakton to enable Pakton to assess and respond to the warranty claim; and
  - (iv) show proof of purchase of the Product to Pakton or its nominated representative (i.e. tax invoice, with product serial number quoted) at or prior to inspection of the Product if and when requested to do so.
- (c) the warranty shall not cover any defects which may be caused or partly caused directly or indirectly by or arising from:
- (i) failure by the Customer to handle, store, use, install, test, commission, package, service and maintain (including remedial and preventative maintenance of) any Products in the manner in which a prudent and responsible operator or user would do so; or
  - (ii) failure by the Customer to follow any instructions or guidelines provided by Pakton or provided by any third party manufacturer or importer of any component, part or accessory of any Product; or
  - (iii) use of any Products otherwise than for any application specified on a quotation or order form; or
  - (iv) continued use of any Products after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - (v) fair wear and tear of any kind; or
  - (vi) any attempt by any person other than Pakton or any person approved by Pakton to adjust, repair, maintain, service or support the Products; or
  - (vii) malfunction, under-performance or other problems caused by use of parts, components or accessories to Products (including packaging and casings) not supplied by Pakton; or
  - (viii) any accident, abuse, misuse, problems with electrical power, servicing not authorised by Pakton, or other external causes beyond either party's control; or
  - (ix) any act of God, fire, flood, war, act of violence, terrorism or similar occurrence; and
- (d) the warranty does not cover batteries in or for any Products; and
- (e) the warranty does not cover loss of or damage to Products in transit; and
- (f) the warranty shall cease and Pakton shall thereafter in no circumstances be liable under the terms of the warranty if the Products are repaired, altered or overhauled by the Customer or a third party without Pakton's prior written consent; and
- (g) in no case shall the value of a warranty claim (as assessed and determined by Pakton or any person/agent approved by Pakton, acting reasonably) exceed the Price of the Products paid by the Customer, and all damage or expense over and above such Price shall be the responsibility of the Customer; and
- (h) in respect of all warranty claims, Pakton shall not be liable to compensate the Customer for any delay in either replacing or remedying the actual or alleged defect or in properly assessing and/or responding to the Customer's claim.

7.4. To the extent permitted by law, and without limiting the foregoing subject always to the *Competition and Consumer Act 2010* (Cth) and the *Fair Trading Acts* of each State and Territory in Australia, Pakton does not warrant:

- (a) the design of any Products; or
- (b) the performance of any Products; or
- (c) the use or utility of any Products; or
- (d) the fitness of any Products for any particular purpose; or
- (e) the merchantable quality of any Products,

other than to the extent expressly represented in any documentation prepared and supplied by Pakton with or for the Products and to the extent implied or required by law.

7.5. Pakton may, at its option, choose to satisfy any valid warranty claim by either:

- (a) repairing or replacing, or paying for the repair or replacement of, the relevant Products; or
- (b) refunding to the Customer the Price paid by the Customer for the Products (excluding Delivery Costs),

upon which Pakton shall be fully and effectually released and discharged from any further obligations in relation to such claim. The Customer shall be responsible for all Delivery Costs associated with the delivery of any Products to Pakton pursuant to a valid warranty claim. Pakton shall be responsible for all Delivery Costs associated with returning any repaired or replacement Products to the Customer.

7.6. Pakton may decline any warranty claim which does not comply with these terms and conditions, or which does not fall within the scope of the warranty provided under these terms and conditions, or which is made for Products that are found not to be defective by Pakton, in which case:

- (a) Pakton shall give notice to the Customer that the warranty claim is declined; and
- (b) the Customer shall be responsible for Pakton's reasonable costs of receiving, processing, assessing and declining to the Customer's warranty claim; and
- (c) the Customer shall be responsible for all Delivery Costs associated with the return of the Products by Pakton to the Customer; and
- (d) the Customer shall be responsible for the cost of the repair or replacement of any unwarranted Products or any materials, parts, components or accessories of such Products, by Pakton if the Customer so requests, and for all Delivery Costs associated with the delivery of those the Products to the Customer; and
- (e) the Customer shall be responsible for the cost of destruction or disposal of any Products which it no longer requires; and

- (f) Pakton may send such Products to the Customer freight unpaid; and
  - (g) Pakton may invoice the Customer any costs incurred by it under this clause 7.6 and the Customer shall promptly pay the invoice within seven (7) days of the date of the invoice.
- 7.7. For Products not manufactured by Pakton, the warranty shall be the current warranty provided by the manufacturer and/or importer of the Products as the case may be. Pakton shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by such manufacturer and/or importer of the Products.
- 7.8. The Customer hereby disclaims any right to rescind or cancel any contract with Pakton, or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by Pakton, and the Customer acknowledges that the Products are bought relying solely upon the Customer's skill and judgment.

## **8. INTELLECTUAL PROPERTY RIGHTS AND USE OF PRODUCTS**

- 8.1. Unless the parties agree otherwise in writing, the Customer does not own any Intellectual Property Rights in the Products and these terms and conditions does not confer or grant any licence, authorisation or permission to use or exploit such Intellectual Property Rights in any way. All Intellectual Property Rights in the Products shall only be used by the Customer at Pakton's discretion and in accordance with the written directions of Pakton issued from time to time.
- 8.2. The Customer warrants that all orders, instructions, designs, drawings and other documents or works given to Pakton by the Customer or its nominees or representatives shall not cause Pakton to infringe any Intellectual Property Rights of any third party in the execution of the Customer's order, and the Customer agrees to indemnify Pakton and keep Pakton indemnified from and against any and all actions taken by a third party against Pakton in respect of such infringement and from and against any liability, costs and disbursements incurred by Pakton in respect of such infringement.
- 8.3. To the best of Pakton's knowledge and belief, Products supplied to the Customer hereunder will not infringe any Intellectual Property Rights of any third party. Pakton shall use its reasonable endeavours to ensure that Products supplied to the Customer will not infringe any Intellectual Property Rights of any third party. That said, however, Pakton shall in no circumstances be liable to the Customer in respect of any such infringement, whether such infringement is constituted by the supply, use or marketing of the Products or otherwise.
- 8.4. The Customer shall at its own cost and expense notify Pakton if it breaches or discovers any breach of any Intellectual Property Rights in the Products, and further the Customer shall at its own cost and expense provide full assistance and cooperation in enabling Pakton to apply for or register or file any documents or applications to protect such Intellectual Property Rights and to prosecute infringements of and defend any claims concerning Intellectual Property Rights in the Products in any jurisdiction anywhere in the world.
- 8.5. The Customer hereby agrees to use and/or hold the Products only for their intended purpose as disclosed in any documentation accompanying the Products, and further shall only use them as an end user of the Products or as an authorised dealer, distributor or re-seller of the Products pursuant to a written agreement with Pakton. The Customer shall not re-sell, hire out, lend, license, auction, advertise or any in other way make the Products or any copyrighted works recording them or any Intellectual Property Rights in them available to any third parties unless expressly authorised to do so in writing by Pakton.
- 8.6. The Customer shall neither reverse engineer nor manufacture any of the Products, nor arrange for or allow them to be reverse engineered or manufactured by any third party, or do or allow a third party to manufacture any products which are modelled upon and similar in appearance, function or design to the Products whether in competition with Pakton or otherwise. The Customer shall not remove any trademarks or other indicia, model or serial numbers, codes or markings of Pakton from any Products. The Customer agrees that these restraints and prohibitions are reasonable and are necessary to protect Pakton's Intellectual Property Rights in the Products and its legitimate business and proprietary interests. The Customer further agrees that Pakton may seek damages and/or injunctive relief in respect of any actual or suspected breach of any of these restraints and prohibitions in addition to any other remedies which may be available to it at law or in equity.

## **9. DEFAULT & CONSEQUENCES OF DEFAULT**

- 9.1. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Pakton from and against all costs and disbursements incurred by Pakton in pursuing the debt including legal costs on a solicitor and own Customer basis and Pakton's collection agency costs.
- 9.2. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 9.3. If any account remains overdue after thirty (30) days, then an amount of the great of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 9.4. Without prejudice to Pakton's other remedies at law or in equity, Pakton shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Pakton shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Pakton becomes overdue, or in Pakton's opinion the Customer will be unable to meet its payments as they fall due; or
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, administrator, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 9.5. Without prejudice to any other remedies Pakton may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Pakton may suspend or terminate the supply of Products to the Customer and any of its other obligations under these terms and conditions. Pakton will not be liable for any loss or damage the Customer suffers because Pakton has exercised its rights under this clause.
- 9.6. Without prejudice to any other remedies Pakton may have at law, if at any time the Customer is in default of any obligation contained under these terms and conditions, Pakton shall have the right to enforce all of its rights under the PPSA, which includes but is not limited to, the right to seize and take possession of the Products.

## 10. SECURITY AND CREDIT CHECKING

- 10.1. The Guarantor unconditionally guarantees to Pakton the due and punctual performance by the Customer of the terms covenants and obligations on the part of the Customer under these terms and conditions. The Guarantor shall indemnify Pakton, and keep Pakton indemnified, from and against any and all claims, demands, actions, proceedings, losses, damages and costs that Pakton incurs or may incur as a result of any breach by the Customer of these terms and conditions. The Guarantor's liability under the aforesaid guarantee and indemnity is unlimited. The Guarantor acknowledges and declares that the Guarantor's obligations hereunder will continue notwithstanding, and will not be affected or avoided in any way by any agreement or arrangement between Pakton and the Customer, any alteration or replacement of these terms and conditions, the granting of any indulgence or forbearance to the Customer by Pakton, the appointment of an official manager, administrator, receiver, receiver and manager, liquidator or provisional liquidator of the Customer, or any order or statutory provision having the effect of restricting or deferring claims against the Customer by its creditors. Pakton is at liberty to regard the Guarantor as the principal covenantor and debtor in all respects under these terms and conditions at all times. Pakton is not obliged to take action against the Customer before taking action against the Guarantor under these terms and conditions, and may take action against the Guarantor at any time Pakton thinks fit without notice to the Customer. The obligations of the Guarantor hereunder neither merge nor are deemed to have merged in any judgment of a court, tribunal or any other governmental or judicial authority obtained by Pakton against the Customer under or in connection with these terms and conditions. The Guarantor remains liable to Pakton hereunder notwithstanding that Pakton may at any time obtain a judgment against the Customer in connection herewith.
- 10.2. Despite anything to the contrary contained herein or any other rights which Pakton may have howsoever, where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other assets capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Pakton or Pakton's nominee to secure all amounts and other monetary obligations payable under these terms and conditions, and further the Customer and/or the Guarantor acknowledge and agree that Pakton (or Pakton's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- 10.3. Pakton shall in respect of all unpaid debts or monies due from the Customer have a general lien on all Products and property of the Customer in Pakton's possession and may on the expiration of fourteen (14) days notice to the Customer dispose of such Products or property as it thinks fit and apply the proceeds towards reduction of such debts.
- 10.4. If Pakton elects to proceed in any manner in accordance with this clause 10, the Customer and/or Guarantor shall indemnify Pakton from and against all Pakton's costs and disbursements including legal costs on a solicitor and own Customer basis and Pakton's collection agency costs.
- 10.5. The Customer and/or the Guarantor (if any) agree to irrevocably nominate, constitute and appoint Pakton or Pakton's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 10.
- 10.6. The Customer and/or the Guarantor authorise Pakton to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and the Guarantor in relation to credit provided by Pakton. The Customer and/or the Guarantor authorise Pakton to exchange information about them with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency in order to assess an application for credit by them, to notify other credit providers of any default by them, to exchange information with other credit providers as to the status of their credit account or accounts with Pakton, and/or to assess the credit worthiness of the Customer and/or the Guarantor. The Customer consents to Pakton being given a consumer credit report to collect overdue payment on commercial credit as per Section 18K(1)(h) of the Privacy Act 1988 (Cth). Pakton may give information about the Customer and/or the Guarantor to a credit reporting agency in order to obtain a consumer credit report about the Customer and/or the Guarantor and to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer and/or the Guarantor.
- 10.7. To further secure payment of all monies for which the Guarantor may become liable to pay Pakton hereunder, the Guarantor hereby agrees to do all such things and sign all such documents as are necessary to enable registration of any charge contemplated by clause 10.2 of these terms and conditions.
- 10.8. The Guarantor further agrees that immediately upon demand being made to the Guarantor by Pakton, the Guarantor shall deliver to Pakton such mortgage, charge or bill of encumbrance in registrable form and fully executed by the Guarantor, or such other instrument including an assignment or security or consent that Pakton may require from time to time.
- 10.9. In the event the Guarantor should neglect or fail to deliver the requested instrument or security as stipulated in clause 10.8, the Guarantor hereby appoints Pakton or an authorised officer of Pakton, to be the Guarantors lawful attorney for the purpose of executing and registering such instruments. The Guarantor authorises the attorney appointed pursuant to this clause to enter into conflict transactions within the meaning of the *Powers of Attorney Act 1998* (Qld).

## 11. CANCELLATION OF CONTRACT

- 11.1. Pakton may cancel any contract to which these terms and conditions apply or cancel delivery of Products at any time before the Products are delivered, with or without giving any reasons for doing so, by giving written notice to the Customer. On giving such notice Pakton shall repay to the Customer any sums paid in respect of the Price. Pakton shall not be liable for any loss or damage whatever arising from such cancellation.
- 11.2. In the event that the Customer cancels delivery of Products, the Customer shall be liable for any loss incurred by Pakton (including, but not limited to, any loss of profits) up to the time of cancellation.

## 12. CUSTOMER WARRANTIES

- 12.1. The Customer represents, warrants and covenants to Pakton that at the date of acceptance of these terms and conditions by the Customer and at all times until these terms and conditions is fully performed and completed:
- (a) the Customer is not bankrupt and is not insolvent or in receivership or under administration, official management or liquidation and has not entered into an arrangement with its creditors;
  - (b) the Customer is able to carry on its business and perform its obligations under these terms and conditions;
  - (c) the Customer is adequately insured with a reputable insurer against all risks which a prudent person carrying on its business would insure against;
  - (d) there are no legal proceedings, actions, prosecutions or investigations threatened, pending or commenced against the Customer or the directors or shareholders of the Customer;

- (e) all corporate authorisations and approvals necessary to enable it to enter into these terms and conditions have been obtained and remain in full force and effect;
- (f) all governmental requirements, authorisations, approvals and licenses which are necessary for the Customer to legally carry on its business are in full force and effect; and
- (g) it has not withheld from Pakton any document, information or other fact material to the decision of Pakton to enter into these terms and conditions or to supply Products or provide credit to the Customer.

12.2. The Customer must immediately notify Pakton if any of the aforementioned representations, warranties and covenants cease to be true and correct.

### 13. GENERAL

- 13.1. Each party warrants, states and represents that the party has entered these terms and conditions with full knowledge of the responsibilities of the party under it, with full knowledge of the effect of these terms and conditions on the party's financial position, after either obtaining or electing not to obtain independent legal and accounting and taxation advice on the terms and subject matter of these terms and conditions, and without any reliance on any other party in respect thereof.
- 13.2. Subject always to clauses 6.3(e) and 6.6(a), nothing in these terms and conditions shall render or constitute either party a partner, employee or agent of the other party or a trustee of property for the benefit of the other party. The parties contract independently from one another.
- 13.3. These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland. All legal proceedings in relation to these terms and conditions shall be instituted and held in Brisbane in the State of Queensland, Australia.
- 13.4. Nothing in these terms and conditions is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the states and territories of Australia, except to the extent permitted by those Acts where applicable.
- 13.5. If any provision of these terms and conditions shall be invalid, illegal or unenforceable, that provision shall be severed from these terms and conditions and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired in any way.
- 13.6. Pakton shall be under no liability whatsoever to the Customer for any indirect, special or consequential loss and/or damage (including loss of profit, loss of revenue or other economic loss) suffered by the Customer arising out of a breach by Pakton of these terms and conditions.
- 13.7. In the event of any breach of these terms and conditions by Pakton, the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Products.
- 13.8. All notices required to be given by the Customer under these terms and conditions must be given in writing, addressed to Pakton, in the English language, signed by the Customer (or its duly authorised attorney or representative), and dated the date on which it was signed. Pakton may give notices to the Customer in any form Pakton thinks fit.
- 13.9. Pakton may license or sub-contract all or any part of its rights and obligations without the Customer's consent. Pakton may also at its sole discretion transfer or assign all or any part of its rights and obligations hereunder to any third party without the Customer's consent.
- 13.10. The Customer shall not transfer or assign all or any part of its rights and obligations hereunder without first obtaining the prior written consent of Pakton.
- 13.11. The Customer shall give Pakton not less than fourteen (14) days prior written notice of any proposed change of ownership or control of the Customer, or any change in the Customer's name, or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Pakton as a result of the Customer's failure to comply with this requirement. In addition, any such change in ownership or control of the Customer shall be deemed hereunder to constitute a transfer or assignment of the Customer's rights and obligations hereunder to the person or entity take on or taking over such ownership or control, which change shall not be undertaken without first obtaining the prior written consent of Pakton.
- 13.12. Pakton reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Pakton notifies the Customer of such change. The Customer may not change or amended these terms and conditions without Pakton's prior written agreement.
- 13.13. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 13.14. Each party shall keep the terms and subject matter, and any and all confidential or commercially sensitive information (including without limitation client information, trade secrets, and Product details or designs) disclosed to it by the other party, strictly confidential, and must not disclose, use or exploit those terms, that subject matter or that information in any way other than with the prior written consent of the other party, provided however that nothing herein shall prevent a party from disclosing information where required by any judicial authority or by law.
- 13.15. Personal information about a party may be used and retained by the other party for the provision of Products, the marketing of Products, credit checking, maintenance of the Customer's account with Pakton, processing any payment instructions or direct debit or credit facility, and debt collection, as well as for any other purposes as may be agreed between the parties or required by law from time to time.
- 13.16. The failure by Pakton to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Pakton's right to subsequently enforce that provision.
- 13.17. Any party signing or executing or otherwise accepting these terms and conditions on behalf of the Customer as the Customer's director, officer, attorney or representative hereby warrants, states and represents in his or her personal capacity that he or she is duly authorised and permitted to do so by the Customer and by law.
- 13.18. Subject to any written agreement to amend the terms hereof, these terms and conditions constitute the sole and entire agreement between the parties with respect to its subject matter. No warranties, representations, guarantees or other terms or conditions of any kind not contained and recorded in these terms and conditions are of any force or effect.



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