**AUSSIE FLUID POWER PTY LTD**
**TERMS AND CONDITIONS OF SALE**

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract:

(a) **Australian Standards** means any applicable Australian and New Zealand Standards and related documents as amended from time to time.

(b) **Australian Consumer Law** means schedule 2 of the *Competition and Consumer Act 2010* (Cth), and any equivalent state or territory legislation.

(c) **Bailor** means, the Purchaser or third party who has left the Bailed Goods with the Company under clause 10.

(d) **Bailed Goods** means any goods left with the Company by a Bailor or any Goods in the possession of the Company.

(e) **Cash Sale Purchaser** is any Purchaser who is not a Credit Account Purchaser.

(f) **Claim** means any claim, demand, suit, action, proceedings or any other related matters.

(g) **Company** means Aussie Fluid Power Pty Ltd ACN 141 897 869.

(h) **Company Branch** means a location other than the registered office where business is conducted or operated from.

(i) **Consumer Guarantee** means a right or guarantee the Purchaser may have under the Australian Consumer Law or other rights in relation to the supply of goods or services (such as implied terms) that cannot lawfully be excluded.

(j) **Contract** means the agreement recorded by this document including any schedule to it.

(k) **Core** means worn equipment, parts or components supplied to the Company in accordance with the Service Exchange program.

(l) **Core Deposit** means the Price of Refurbished Goods, being the initial amount payable by a Purchaser in accordance with the Service Exchange program.

(m) **Corporations Act** means the *Corporations Act 2001* (Cth).

(n) **Credit Account Purchaser** means a Purchaser who has an approved credit account with the Company.

(o) **Currency** means Australian dollars unless the Company (in its sole discretion) nominates or agrees to a different currency to apply to a particular Order or future Orders from time to time.

(p) **Delivery** means, in relation to the delivery of Goods to the Purchaser, the earliest of:

(i) the passing of title in the Goods to the Purchaser in accordance with clause 8.5;

(ii) the physical delivery of the Goods to the Purchaser;

(iii) the time when the Goods are loaded at the Company's premises or another location nominated by the Company for delivery to the Purchaser by a carrier nominated, arranged or engaged by the Purchaser;

(iv) the time when the Goods arrive at the premises of the Purchaser (prior to being taken off the carrier) where the carrier which is to effect delivery of the Goods from the Company or another location nominated by the Company to the Purchaser has been nominated, arranged or retained by the Company;

(v) if Goods are stored by the Company on behalf of the Purchaser in accordance with clause 10 in respect of;

(A) a Credit Account Purchaser: the last day of the month following the month in which an invoice issued by the Company to the Purchaser is dated;

(B) a Cash Sale Purchaser: 7 days following the date of an invoice issued by the Company to the Purchaser; or

(vi) in the case of export orders, when the Goods are made available from the place of production, manufacture or distribution unless otherwise agreed by the parties upon the Company's receipt of the Order.

(q) **Due Date** means:

(i) in respect of a Credit Account Purchaser: the last day of the month following the month in which an invoice issued by the Company to the Purchaser is dated;

(ii) in respect of a Cash Sale Purchaser: the date of the invoice issued to the Purchaser; or

(iii) any other due date for payment as determined by the Company, and as advised by the Company.

(r) **Force Majeure Event** includes:

(i) any natural disaster, lightning, earthquake or other act of God;

(ii) war, terrorist act, riot, insurrection or civil commotion;

(iii) fire or explosion; or

(iv) industrial or other action beyond the control of the Company.

(s) **Goods** means any goods or services purchased from the Company by the Purchaser or the subject of the Contract and includes Refurbished Goods.

(t) **Guarantor** means any person or entity which has guaranteed the due payment to the Company of all monies which have or will become payable to the Company for or in consequence of the supply of Goods by the Company to the Purchaser.

(u) **GST** means Goods and Services Tax as defined in A New Tax Act (Goods and Services) 1999 (Cth).

(v) **Insolvency Event** means, for a person:

(i) being in liquidation, provisional liquidation or under administration;

(ii) having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property;

(iii) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;

(iv) being unable to pay its debts as and when they fall due or otherwise insolvent;

(v) the taking of any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act); or

(vi) entering into a compromise or arrangement with, or assignment for the benefit of, any of its creditors, or any analogous event, except where the compromise or arrangement does not prejudice the interests of any creditors.

(w) **Notice** means a notice in accordance with clause 29.

(x) **Notice to Collect** means a Notice issued by the Company to a Bailor whereby the Bailor is required to collect any Bailed Goods.

(y) **Notice of Disposal** means a Notice issued by the Company to a Bailor whereby the Bailor is put on notice that if Uncollected Goods are not collected within the period specified under the relevant legislation, the Company may exercise its rights under clauses 10.2 and 10.4.

(z) **Normal Wear and Tear** means the gradual reduction in performance of Goods having regard to the age of the Goods and the nature and frequency of use of the Goods.

(aa) **Order** means the Purchaser's offer to the Company to purchase the Goods.

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

(cc) **Price** has the meaning stated in clause 4.

(dd) **Purchaser** means any purchaser or potential purchaser of Goods from the Company and includes a Cash Sale Purchaser and a Credit Account Purchaser.

(ee) **Refurbished Goods** means a Core that has been repaired, rebuilt and tested by the Company to perform as intended by the manufacturer during the course of its serviceable life.

(ff) **Service Exchange** means the Company's exchange of Refurbished Goods with the Purchaser's prior, simultaneous or subsequent supply of a Core to the Company for refurbishment at the Purchaser's cost.

(gg) **Uncollected Goods** means any Bailed Goods which remain uncollected for a period of 7 days after the Company issues a Notice to Collect.

(hh) **Warranty** has the meaning stated in clause 11.

(ii) **Work Health and Safety Laws** includes:

(i) all applicable work health and safety legislation, including regulations; and

(ii) all applicable standards, codes and other guidance material relating to work health and safety.

(jj) **You** means the Purchaser where the Purchaser is a "consumer" within the meaning of the Australian Consumer Law.

1.2 Headings are for convenience only and do not affect interpretation.

1.3 A reference to a "person" includes a natural person, corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.

1.4 A reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.

1.5 Each indemnity provided by the Purchaser in this Contract is a separate and continuing indemnity which survives the termination of this Contract and the delivery and supply of the Goods.

1.6 If the Purchaser is made up of more than one person:

(a) an obligation of those persons is joint and several;

(b) a right of those persons is held by each of them severally; and

(c) any reference to the Purchaser is a reference to each of those persons separately, and any warranty, covenant or indemnity is given by each of them separately.

1.7 The parties agree that in this Contract, a reference to "dollars", "$", a value or a payment amount, is to an amount or value (as the case may be) in the Currency.

1.8 Unless otherwise agreed in writing between the parties, the Convention on Contracts for the International Sale of Goods 1980 is excluded from this Contract.

## 2. ORDER, ACCEPTANCE AND APPLICATION

2.1 If the Purchaser:

(a) places an Order which is accepted by the company in writing or by actions;

(b) accepts delivery of the Goods;

(c) signs an authority to proceed;

(d) accepts a quotation from the Company that is expressed to be an offer capable of acceptance to form a contract,;

(e) makes any application for credit in respect of the Goods;

(f) makes any payment in respect of the Goods or performs any obligation under this Contract,

then:

(g) the Purchaser shall be taken to have agreed to and accepted:

(i) the terms of this Contract; and

(ii) that (notwithstanding any discussions, agreements, courses of conduct, understandings or arrangements between the Purchaser and the Company, or any statement, representation, request for proposal, or offer made by the Purchaser) this Contract, together with the terms of the quotation and/or any notice of acceptance of the Order given by the Company (if applicable):

(A) constitutes the entire agreement between the Purchaser and the Company in connection with the application for credit, Order, sale, purchase, delivery and supply of the Goods; and

(B) supersedes and will prevail over all prior discussions, agreements, understandings, courses of conduct or arrangements between the Purchaser and the Company, or any statements, representations, requests for proposal, or offers made by the Purchaser in connection with the application for credit, Order, sale, purchase, delivery and supply of the Goods;

(h) the Order and/or application for credit (as the case may be) is accepted by the Company on the basis that this Contract, together with the terms of any quotation and/or any notice of acceptance of the Order given by the Company (if applicable), constitutes the entire agreement between the Purchaser and the Company in connection with the application for credit, Order, sale, purchase, delivery and supply of the Goods.

2.2 For the avoidance of doubt, clause 2.1 does not prevent the Contract being varied in accordance with clause 27.1.

2.3 To the fullest extent permitted by law any prior representations, agreements and arrangements, including representations as to the suitability of the Goods, and any descriptions, illustrations and material contained in any advertisement, website, catalogue, price list or brochure are excluded from, and do not form part of, this Contract unless specifically stated in this Contract to the contrary.

2.4 All specifications, drawings, and particulars of weight and dimensions of the Goods are approximate only. Unless the accuracy of such specifications, drawings, and particulars of weight and dimensions of the Goods has been confirmed by the Company to the Purchaser in writing in respect of a particular Order, the Purchaser cannot claim against the Company for any deviation in such specifications, drawings, or particulars of weight or dimensions.

2.5 Unless agreed in writing by the parties, the Company does not make any promises, assurances, guarantees or representations whatsoever that the Goods comply with Australian Standards.

2.6 Any request by the Purchaser to cancel an Order must be made in writing. The Company may, at its discretion, accept or reject the request and specify the terms and conditions and reasonable charges upon which such request may be agreed to.

2.7 Acts and omissions (including, without limitation, in relation to the placement or alteration of Orders) of the Purchaser's directors, employees, former directors and/or employees, contractors, agents and any other person who purports to act on behalf of the Purchaser, shall be treated as the Purchaser's acts and omissions. The Purchaser is responsible for the acts and omissions of its directors, employees, former directors and/or employees, contractors, agents and any other person who purports to act on behalf of the Purchaser, even if they act outside their authority.

2.8 All Orders (including alterations to Orders) must be in writing, unless the Company agrees otherwise. If the Company permits the Purchaser to make an Order other than in writing, then that permission applies to that Order only, and is subject to such conditions the Company may impose.

## 3. PERFORMANCE

3.1 Any performance figures in relation to the Goods given to the Purchaser by the Company are estimates only.

3.2 The Company is not liable to the Purchaser or any other person for any loss or damage, including any consequential loss or damage (including for example, loss of profits or business opportunity), in connection with a failure of any Goods to attain such figures, unless the Company gives a written guarantee in relation to such figures.

3.3 The Purchaser may inspect and test the Goods at the premises of the Company or at other premises with the prior written approval of the Company to verify any of the estimated performance figures. The Purchaser must bear the costs of the inspection, including any transport and any tests except to the extent that inspection or testing is expressly included in the Price.

3.4 No performance figures other than performance figures obtained under such inspection and/or testing may be used by the Purchaser to support any claim by the Purchaser.

## 4. QUOTATIONS AND PRICE

4.1 Any quotation in relation to the Goods issued by the Company is an estimate of the cost of the Goods only and does not constitute an offer by the Company that is capable of acceptance by the Purchaser unless expressly stated to the contrary in the quotation. Any quotation may be withdrawn or altered by the Company without notice. Nothing in this Contract, or any verbal representation, shall oblige the Company to honour any quotation that has been altered or withdrawn by the Company.

4.2 If the Company does not alter or withdraw a quotation that is expressed to be capable of acceptance by the Purchaser, then it is valid for the period stated on the quotation or if no period is stated on the quotation, then it is valid for a period of 30 days from the date of the quotation. Nothing in this Contract, or any verbal representation, shall oblige the Company to extend or honour any quotation which has expired in accordance with the terms of this clause. Where the Purchaser places an Order in response to a quotation that is not expressed to be capable of acceptance by the Purchaser, then there is no contract formed until the Company accepts such Order in accordance with clause 2.1(a).

4.3 To the extent that an Order made by a Purchaser is inconsistent with a quotation issued by the Company, including noting additional requirements or specifications, the Company is not obliged to honour any additional requirements or specifications not included or noted in the Company's quotation and the Company may apply reasonable additional charges as appropriate, and such additional charges shall form part of the Price.

4.4 The Price of the Goods:

(a) is the amount, confirmed by the Company, that the Purchaser is required to pay to the Company to purchase the Goods;

(b) excludes the cost of carriage;

(c) includes the cost of packaging; and

(d) is GST exclusive.

4.5 The Price of the Goods is subject to reasonable adjustment by the Company to take into account any alteration in costs associated with the delivery of the Goods or, in the case of delivery by instalments, prior to the final delivery of the Goods. For the

purpose of this clause 4.5, the Price of the Goods can be increased by the Company:

(a) at the Company's sole discretion and, with written notice to the Purchaser, if exchange rate fluctuations between the date of any quotation provided to the Purchaser and the date the Company purchases imported Goods causes the cost of those Goods to increase by more than 5%; and

(b) without notice to the Purchaser if any government authority imposes any further duty, tax or fee in respect of the Goods or this Contract.

4.6 The Purchaser agrees to pay to the Company any reasonable adjustment to the Price of the Goods pursuant to clause 4.5.

4.7 Any Price concession or discount the Company provides to the Purchaser is conditional on the Purchaser's full compliance with this Contract and shall not give rise to any expectation of any future Price concession or discount being offered to the Purchaser, and shall in no way oblige the Company to offer any future Price concession or discount to the Purchaser.

## 5. PAYMENT

5.1 The Purchaser agrees to accept and pay for the Goods in accordance with this Contract.

5.2 Payment of any invoice issued by the Company must be made:

(a) in full by the Due Date; and

(b) in the Currency applicable to the Order to which the invoice relates.

5.3 The provisions in clause 5.2 are a condition precedent to future deliveries and services under this Contract or any other contract between the Purchaser and the Company.

5.4 Without prejudice to any other right or remedy the Company may have:

(a) it may charge the Purchaser interest on any overdue amounts payable by the Purchaser to the Company at the then prevailing penalty interest rate fixed by the Attorney General under section 2 of the Penalty Interest Rate Act 1983 calculated daily on the amount overdue from the Due Date until payment is received in full. If no such rate exists, the Company may nominate an overdraft interest rate charged by a major Australian bank plus 2.5%;

(b) it may charge the Purchaser for any costs or expenses, including the Company's reasonable legal costs, incurred in recovering or seeking to recover from the Purchaser, or any Guarantor, any overdue amounts payable by the Purchaser to the Company; and

(c) if at any point in time there is an overdue amount payable by the Purchaser to the Company, then:

(i) the Company may, at its discretion, notify the Purchaser in writing of all monies payable by the Purchaser to the Company (whether or not the Due Date in respect of those monies has passed);

(ii) if the Company notifies the Purchaser in accordance with clause 5.4(c)(i), then notwithstanding clause 5.2, the Purchaser must, within 7 days of receiving the notification, pay all monies specified in the notice (whether or not the Due Date in respect of those monies has passed) to the Company; and

(iii) the Company may at its sole discretion suspend or cancel any existing credit arrangement with the Purchaser. The Company may then reinstate any credit arrangement with the Purchaser, on the same or different terms, at any time, at its sole discretion.

5.5 The Purchaser indemnifies the Company for any and all expenses incurred by the Company in enforcing the Company's rights against the Purchaser under this Contract or any guarantee provided by a Guarantor and will reimburse the Company as a debt due and payable for such expenses when requested to do so by the Company.

5.6 The Purchaser must not withhold payment of any invoice by reasons of set off, counter claim or otherwise.

## 6. DELIVERY

6.1 The Purchaser must provide the Company with adequate Delivery instructions for the Goods no later than 7 days after the Company informs the Purchaser that the Goods are ready for collection.

6.2 Where the Company agrees to provide Delivery of the Goods to the Purchaser:

(a) the Company may, on or at the time of acceptance of the Order approve and accept the Delivery time;

(b) the Company will use its best endeavours to deliver the Goods within the accepted or agreed time with the Purchaser, or if no such time is agreed, then at the Company's reasonable discretion; and

(c) any Delivery time is an estimate only and the Company shall not be responsible for any loss or damage suffered as a result of the failure to meet any Delivery date, whether agreed to by the parties to this Contract or otherwise. The Purchaser shall not be relieved of performance because of the Company's failure to meet a Delivery date.

6.3 If by any reason of any event beyond the reasonable control of the Company, including any Force Majeure Event, Delivery becomes impracticable or impossible in the Company's opinion, the Company may terminate this Contract by Notice to the Purchaser. In these circumstances, the Purchaser must pay to the Company any unpaid amounts in relation to such Goods (including any variation thereof) that were actually delivered.

## 7. COST OF CARRIAGE AND PACKING

7.1 The Price excludes the cost of carriage from the premises of the Company or another location nominated by the Company to the Purchaser unless otherwise agreed in writing between the Purchaser and the Company.

7.2 The Purchaser may specify the carrier to effect delivery of the Goods from the Company or another location nominated by the Company to the Purchaser. Where the Purchaser does not specify the carrier in its delivery instructions, the Company may nominate, arrange or retain the carrier.

7.3 The Purchaser must bear all carriage costs, including associated insurance costs, unless otherwise agreed in writing between the Company and the Purchaser.

7.4 The Price includes standard packing unless otherwise agreed in writing between the Purchaser and the Company.

## 8. TITLE AND RISK

8.1 The risk in the Goods passes to the Purchaser from Delivery.

8.2 The Company is not liable for any loss or damage or deterioration of the Goods after risk in the Goods has passed to the Purchaser.

8.3 The Company's rights under this clause 8 secure:

(a) the Company's right to receive the Price for all the Goods sold under this Contract; and

(b) all other amounts owing to the Company under this Contract or any other agreement between the Purchaser and the Company.

8.4 All payments received from the Purchaser must be applied in accordance with section 14(6)(c) of the PPS Act.

8.5 Until full payment in cleared funds is received by the Company for all Goods supplied by it to the Purchaser, as well as all other amounts owing to the Company by the Purchaser under this or any other Contract:

(a) legal title and property in all Goods supplied under this Contract remains vested in the Company and does not pass to the Purchaser;

(b) the Purchaser must store the Goods separately and in such a manner and maintain any labelling and packaging of the Company, so that the Goods are clearly and readily identifiable as the property of the Company;

(c) the Purchaser must not sell the Goods except in the ordinary course of its business;

(d) the Purchaser holds and agrees to hold the proceeds of any sale, lease or other dealing with the Goods for the Company in a separate bank account with a bank which does not (and will not in the future) provide finance to the Purchaser; and

(e) the Company may repossess the Goods if any amount due in respect of the Goods is outstanding or if the Company reasonably believes that any such amount will not be paid in full when it falls due for payment.

8.6 In addition to any rights the Company may have under Chapter 4 of the PPS Act, the Company may, at any time, demand the return of the Goods and shall be entitled without notice to the Purchaser and without liability to the Purchaser, to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Company, and for this purpose the Purchaser:

(a) grants the Company an irrevocable licence to enter upon any premises of the Purchaser for the purpose of taking possession of the Goods in accordance with this clause; and

(b) undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Company from and against all loss suffered or incurred by the Company as a result of exercising its rights under this clause 8.6.

If there is any inconsistency between the Company's rights under this clause 8.6 and its rights under Chapter 4 of the PPS Act, this clause 8.6 prevails to the extent permitted by law.

8.7 The Purchaser warrants that it does not intend to use the Goods predominantly for personal, domestic or household purposes.

8.8 The Purchaser must, at its own cost, insure and keep insured the Goods against such risks as a prudent owner of the Goods would insure at their full cost price, with a reputable insurance company.

8.9 The Purchaser may sell and deliver the Goods as the Company's fiduciary to a third party in the ordinary course of the Purchaser's business provided that:

(a) where the Purchaser is paid by the third party for the Goods, the Purchaser shall account to the Company in respect of the payment in accordance with the Purchaser's fiduciary obligations; and

(b) where the Purchaser is not paid by the third party the Purchaser agrees to assign to the Company its claim against the third party upon receiving the Company's written request to that effect.

8.10 For the purposes of this clause 8, where the Company supplies particular Goods of the same or similar nature on multiple occasions, where the Purchaser does not make payment in respect of particular Goods, the non-payment is treated as being first in respect of particular Goods of the same or similar nature still in the possession of the Purchaser, and then against particular Goods which have passed out of the possession of the Purchaser.

## 9. PPS ACT

9.1 Unless a contrary intention appears, words or expressions used in this clause 9 that are defined in the PPS Act have the same meaning as given to them in the PPS Act.

9.2 The Purchaser agrees that this Contract constitutes a security agreement for the purposes of the PPS Act and creates a security interest (as defined in the PPS Act) in all Goods previously supplied by the Company to the Purchaser and all future Goods supplied to the Purchaser.

9.3 The Purchaser agrees to do all such things, including providing any necessary consents, signing all necessary documents, and providing any further information, as reasonably required by the Company from time to time, to enable the Company to register a first ranking perfected security interest in respect of all Goods supplied by the Company to the Purchaser, or exercise any rights in connection with any security interest.

9.4 The Purchaser acknowledges that it shall be liable for the costs and expenses incurred by the Company in relation to the registration, maintenance, enforcement or discharge of any security interest, and must make payment to the Company for any such reasonable costs incurred by the Company on demand by the Company.

9.5 The Purchaser acknowledges that it shall assist the Company, to the extent required, in relation to the registration, maintenance, enforcement or discharge of any security interest.

9.6 Until such time as title to the Goods passes to the Purchaser, the Purchaser agrees not to register, or permit to be registered, a security agreement in relation to the Goods in favour of a third party without the prior written consent of the Company.

9.7 The Purchaser acknowledges that it shall not, without prior written notice to the Company, change its corporate or trading name or amend any registration documentation, or act in any manner, which would adversely impact on the Company's registered security interest.

9.8 The Company need not give any notice to the Purchaser or any other person (including a notice of verification statement) unless the notice is required to be given by the PPS Act and cannot be excluded.

9.9 The Purchaser agrees pursuant to section 115 of the PPS Act:

(a) that sections 125, 142 and 143 of the PPS Act do not apply to this Contract; and

(b) to waive its right to receive any notice, details, or other document from the Company under sections 95, 121(4), 130, 135, 132(3)(d) and 132(4) of the PPS Act.

9.10 Pursuant to section 125(3) of the PPS Act, the Company may delay disposing of, or taking action to retain, the whole or part of the collateral that it seizes under section 123 of the PPS Act, for as long as it sees fit in its absolute discretion.

## 10. UNCOLLECTED GOODS: CONTRACTUAL LIEN AND SECURITY INTEREST

10.1 The Purchaser warrants that it has full and unencumbered title to any Bailed Goods.

10.2 From the time the Company (or its subcontractors, servants or agents) receives the Bailed Goods into its custody, the Company shall have a special and general lien on the Bailed Goods and a right to sell the Bailed Goods whether by public or private sale or auction without notice, for any amounts due to the Company which have been unpaid for a period of 26 weeks.

10.3 In addition, the lien shall cover all of the costs and expenses of the lien, including the costs of a public or private sale or auction, including any legal costs and administration costs. The lien and rights granted by this clause 10 shall survive delivery of the Bailed Goods and the Company shall be entitled to retain the proceeds of sale of the Bailed Goods in respect of any outstanding amounts whatsoever referred to in this clause. The Purchaser accepts that any sums due and owing to the Company are secured debts and that any payment made to the Company in discharge of the lien does not amount to a preference, priority or advantage, in any manner or turn.

10.4 The Company may sell or otherwise dispose of such Bailed Goods pursuant to clause 10.3 as principal and not as agent and the Company is not the trustee or the power of sale.

10.5 From the time the Company (or its subcontractors, servants or agents) receive the Bailed Goods into its custody, the Bailed Goods and all of the Purchaser's present and future rights in relation to the Bailed Goods, are subject to a continuing security interest in the Company's favour for the payment of all amounts of any kind due to the Company whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Purchaser (or its principals, servants or agents). In addition the continuing security interest shall cover all the costs and expenses of exercising the lien, including the costs of public or private sale or auction, including any legal costs and administration costs.

10.6 For the purposes of this Contract, and in particular this clause as a whole, the Company shall be deemed to have custody and possession of the Bailed Goods whether the Bailed Goods are in the actual physical custody and possession of the Company (or its subcontractors, servants or agents on the Company's behalf), and whether or not the Company is in possession of any documents of title relating to the Bailed Goods. The Purchaser agrees that the Company has possession of the Goods within the meaning of section 24 of the PPS Act, even if the Bailed Goods are in the possession of the Company's subcontractors, servants or agents.

10.7 The Purchaser acknowledges that the Company may, at the Purchaser's cost, register a security interest in the Bailed Goods, and all of the Company's present and future rights in relation to the Bailed Goods, on the Personal Property Securities Register established under the PPS Act.

10.8 The Purchaser will not:

(a) permit to subsist any other security interest in relation to the Bailed Goods which would rank ahead of the Company's security interest; or

(b) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of, the Bailed Goods, whilst they are in the possession of the Company (or its subcontractors, servants or agents).

10.9 In the event of any inconsistency between this Contract and any laws dealing with Uncollected Goods, these terms and conditions will prevail to the extent permitted by law.

10.10 The Bailor is liable to the Company, and the Company may charge to the Bailor, the following charges in relation to any Goods or Uncollected Goods:

(a) a charge of $70.00 per square metre per month for storing the Uncollected Goods from the date of the expiration of the period specified in the Notice to Collect;

(b) an administration charge of $20.00, or such higher amount as may be reasonable, for each item of Bailed Goods; and

(c) any expenses of the Company incidental to the sale or such other disposition of the Uncollected Goods under this clause 10.

10.11 The charges under clause 10.10 are a debt due and payable to the Company.

10.12 Any Goods or Uncollected Goods stored by the Company are at the Bailor's risk.

11. **WARRANTY**

11.1 The Company gives the warranty contained in Schedule 1 in respect of the Goods (**Warranty**).

11.2 Subject to clause 13, where You are:

(a) a consumer within the meaning of the Australian Consumer Law, our Goods 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 Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure; or

(b) not a consumer within the meaning of the Australian Consumer Law, the guarantees referred to in clause 11.2(a) above do not apply.

11.3 The Warranty is given in addition to all statutory rights conferred on the Purchaser.

11.4 The Company does not make any promise, for example, that any part or repair facility in respect of the Goods will be available at any time or at any specified location, other than as expressly provided for in the Warranty.

11.5 The Company will use its reasonable endeavours to make available to the Purchaser the benefit of any guarantee or warranty given by the manufacturer to the Company in respect of any Goods not manufactured by the Company.

12. **REPAIRS AND REPLACEMENTS**

12.1 The Purchaser acknowledges and agrees that the Company shall carry out testing of any Goods or Bailed Goods, or component or part of the Goods or Bailed Goods, that:

(a) are to be serviced or repaired under this contract; or

(b) have been returned under clause 16; or

(c) are to be replaced or repaired under clause 11,

to the original specifications of those Goods.

12.2 Where testing occurs under clause 12.1, the Purchaser acknowledges and agrees that:

(a) the Purchaser will release and indemnify the Company and hold it harmless in respect of any breach or any damage that arises during the testing as a result of Normal Wear and Tear in the Goods or Bailed Goods or that component of the Goods or Bailed Goods that has not been repaired or replaced; and

(b) the Company shall not be liable for any consequential loss or damage in connection with the testing or that arises from the Goods being damaged during testing.

13. **LIMITATION OF LIABILITY**

13.1 With the exception of Consumer Guarantees, the Company excludes:

(a) any term, condition or warranty that may otherwise be implied into this Contract; and

(b) any liability for loss or damage incurred as a result of or in connection with the negligence of the Company; and

(c) any liability to the Purchaser or to any other person for any loss of profit or other economic loss, indirect, special, consequential, general or other similar loss or damage how so ever arising.

13.2 Subject to clause 13.3, the liability of the Company in respect of any breach of or failure to comply with any Consumer Guarantee is limited to the events set out in Schedule 1.

13.3 The liability of the Company in respect of any breach of or failure to comply with a Consumer Guarantee will not be limited in the way set out in clause 13.2 if:

(a) the Goods supplied are Goods 'of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 64A of the Australian Consumer Law;

(b) it is not 'fair or reasonable' for the Company to rely on such limitation in accordance with section 64A(3) of the Australian Consumer Law; or

(c) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the Australian Consumer Law.

14. **WARRANTY, COVENANT AND INDEMNITIES BY THE PURCHASER**

14.1 The Purchaser warrants the accuracy of any specification or information relating to the Goods or this Contract provided to the Company including via any third party who is the Purchaser's customer, supplier, contractor, subcontractor or agent.

14.2 The Purchaser covenants not to make any Claim against any employee, director, agent or subcontractor of the Company in connection with this Contract including in connection with any misrepresentation by, or negligence of, them or the Company.

14.3 Without limitation to any other right or remedy of the Company under this Contract or at common law, to the maximum extent permitted by law, the Purchaser must indemnify and hold harmless the Company and its employees, directors, officers, agents and subcontractors in respect of any and all Claims, losses and liabilities incurred by the Company and its employees, directors, officers, agents, contractors and subcontractors as a result of, or arising directly or indirectly from:

(a) a breach by the Purchaser of clause 14.1 or clause 14.2; and/or

(b) the supply or delivery of Goods by or on behalf of the Company, except to the extent such Claims, losses or liabilities arise directly from a breach of this Contract by the Company or, the gross negligence or wilfully wrongful act or omission of the Company or its employees, directors, officers, agents, contractors and subcontractors.

14.4 If the Purchaser fails to accept or to pay for the Goods in accordance with this Contract, then the Purchaser must (without prejudice to any other rights of the Company) indemnify the Company and hold it harmless in respect of any Claim, loss, damage, cost of labour or other overhead or expense, that is attributable to such failure.

14.5 The benefit of this clause 14 is held on trust by the Company for the benefit of its employees, directors, agents, contractors and subcontractors and can be enforced by the Company on their behalf.

15. **SUSPENSION AND TERMINATION**

15.1 If the Purchaser:

(a) defaults in any of its obligations under this Contract;

(b) suspends or ceases to carry on business; or

(c) is, or the Company in its reasonable discretion determines that it is likely to be, the subject of an Insolvency Event;

then the Company may immediately upon notifying the Purchaser, do one or more of the following:

(i) terminate this Contract or any other contract between the parties to this Contract including any credit arrangement;

(ii) suspend the performance of any or all of its obligations under this Contract until the end of the period in which the Purchaser has suspended or ceased to carry on business;

(iii) demand immediate payment for any Goods:

(A) already delivered or provided by the Company to the Purchaser for which payment in accordance with this Contract has not been received by the Company; and

(B) ordered by the Purchaser but not yet delivered or provided by or on behalf of the Company, other than that contained in the Warranty; and/or

(iv) exercise those rights under clause 8.6.

15.2 The rights of the Company provided for in clause 15.1 shall be without prejudice to any other rights the Company may have against the Purchaser.

16. **RETURN OF GOODS**

16.1 The Purchaser must not return Goods to the Company except upon the written consent of the Company obtained in advance of such return.

16.2 Any request by the Purchaser to return Goods to the Company must be made within 30 days of receipt of Goods by the Purchaser and must be returned to the Company within 14 days of the date of written consent (or otherwise within the Warranty Period).

16.3 Subject to clause 11, Goods specially procured or procured on indent or manufactured for the Purchaser are not returnable.

16.4 Responsibility for the return carriage of Goods rests solely with the Purchaser.

16.5 Any consent given under clause 16.1 may specify further terms and conditions and charges upon which a return may be made.

16.6 Where Goods are returned by the Purchaser under this clause, or the Company inspects the Goods for the purposes of a potential Warranty claim at a particular location, then the Company shall, in its reasonable discretion, determine whether the Purchaser has any rights against the Company in relation to those Goods under the Warranty. If the Company determines that the Purchaser has no such rights, then the Purchaser must:

(a) reimburse the Company for all related shipping costs incurred by the Company; and

(b) pay to the company reasonable labour costs and travel costs associated with

travelling to a particular location to test or inspect the goods; and

(c) in the case of goods previously serviced or repaired by the Company, pay to the Company an amount equal to the Company's reasonable costs incurred in inspecting and testing the goods; and

(d) in the case of products sold by the Company, pay to the Company an amount representing the Company's costs associated with undertaking inspection and repackaging, warehousing and handling and/or returns to suppliers, being 25% of the Price of the Goods,

by the applicable Due Date.

## 17. LAWFUL USE OF GOODS

17.1 The Purchaser must:

(a) acquaint itself with the requirements of all relevant Government and statutory bodies or other authority (including, but not limited to, a manufacturer's technical, copyright and operational requirements) in relation to the Goods and to the application(s) to which the Goods are put; and

(b) comply with such requirements at all times while the Goods are in its possession or under its control; and

(c) procure that any purchaser of the Goods from the Purchaser acquaints itself with and complies with such requirements.

17.2 The Purchaser must:

(a) comply with any instructions by the Company relating to the Goods; and

(b) indemnify the Company in respect of any breach of this clause 17.

## 18. INTELLECTUAL PROPERTY RIGHTS

18.1 No right or licence is granted to the Purchaser under any patent, copyright, registered design or other intellectual or industrial property right or interest other than the right to install, operate or resell the Goods in the ordinary course of the Purchaser's business.

18.2 Copies of documents in relation to the Company or the Goods such as drawings, plans and specifications that the Company submits to the Purchaser remain the property of the Company. The Purchaser must treat the information contained in those documents as strictly confidential. The Purchaser must use the information contained in those documents only to install or operate the Goods. The Purchaser must not use this information in any other way to the advantage of the Purchaser or the detriment of the Company.

18.3 By purchasing the Goods, the Purchaser does not gain any licence or right under any of the Company's intellectual or industrial property such as a patent, registered design, trademark or copyright, or confidential information, and shall indemnify the Company in respect of any breach of this clause 18.

## 19. WEBSITES

19.1 By placing an Order via a Company website, the Purchaser:

(a) makes an offer to purchase the Goods selected according to the terms of this Contract; and

(b) agrees to the terms of use of the Company website, including conditions regarding the content, trademarks and links contained on the Company website.

The Company reserves the right to refuse service or supply, or cancel Orders at its sole discretion.

19.2 It is the Purchaser's responsibility to ensure that any Goods or information available via a Company website meet the specific requirements of the Purchaser, including but not limited to, fitness for purpose.

19.3 Unless otherwise agreed in writing, the Company makes no warranties, representations, statements or guarantees (whether express, implied in law or residual) as to the accuracy, timeliness, performance, completeness or suitability of the information or Goods found or offered on a Company website, for any particular purpose. The Purchaser acknowledges that such information and materials may contain inaccuracies or errors and the Company expressly excludes liability for any such inaccuracies or errors to the fullest extent permitted by law.

## 20. GOODS MADE TO THE PURCHASER'S SPECIFICATION

20.1 If the Goods are manufactured to the design or specification of the Purchaser, the Purchaser warrants that the design, specification and Goods do not infringe any intellectual property right of a third party (such as a patent, copyright, trademark or registered design) or other like protection of any other person, and comply with any applicable statute, statutory instrument or regulation.

20.2 The Purchaser must indemnify the Company and hold it harmless in respect of any breach of clause 20.1.

## 21. SERVICE EXCHANGE

21.1 Where the Purchaser wishes to exchange a Core on a Service Exchange basis and the Company can provide such service at the time, the Purchaser will offer to exchange the Core with Refurbished Goods by sending the Company an Order authorising the Company to;

(a) repair the Purchaser's Core; and

(b) charge the Core Deposit applicable to the Refurbished Goods.

21.2 If the Company accepts the Order, then the Purchaser must pay the Core Deposit to the Company at that time or on credit terms at the Company's sole discretion and the Company will:

(a) exchange the Core with Refurbished Goods of the same, comparable, or superseded model and part number;

(b) accept delivery of the Purchaser's Core in accordance with clause 21.5;

(c) inspect and assess for acceptance and then repair, rebuild or refurbish, and test the Core to the extent which enables the Core to be placed into the Company's inventory and issued to the Purchaser or another customer as Refurbished Goods; and

(d) invoice the Purchaser for the cost of repairing, rebuilding, refurbishing and testing the Core including the costs of labour, materials, machinery and equipment, and consumables at the Company's then prevailing standard Price.

21.3 Where the Purchaser has paid the Core Deposit the Company will;

(a) return the Core Deposit less the cost of repairing, rebuilding, refurbishing and testing the Core as invoiced to the Purchaser under 21.2(e);

(b) retain the Core Deposit if the Purchaser does not supply a Core in accordance with clause 21.5; or

(c) retain the Core Deposit or part thereof at the Company's reasonable discretion if the Core does not meet the core acceptance standards published separately and available by contacting the Company, in which case the Company will allow the Purchaser to collect such Core provided it does so within 7 days of the Company notifying the Purchaser that the Core does not meet such standards.

21.4 The Purchaser agrees:

(a) to pay the Core Deposit for the Refurbished Goods;

(b) to deliver the Core to the Company in accordance with clause 21.5;

(c) to return to the Company at the Purchaser's cost, with the Core or otherwise, any apparatus, frame or structure provided by the Company to support the Refurbished Goods during transport and delivery to the Purchaser, or pay to the Company the reasonable replacement cost of any such apparatus, frame or structure;

(d) to pay the invoice from the Company for the cost of repairing, rebuilding, refurbishing and testing the Core less the applicable Core Deposit paid;

(e) to only use the Refurbished Goods for the purpose for which the goods were designed;

(f) to advise the Company of any malfunctioning of the Refurbished Goods as soon as practically possible and to cease using the Refurbished Goods as soon as it becomes aware of any malfunction;

(g) not to alter or make any addition to the Refurbished Goods without the prior written consent of the Company; and

(h) where the Purchaser undertakes servicing and maintenance of the Refurbished Goods resulting in the replacement of existing parts of the Refurbished Goods, to use only genuine new or reconditioned parts, components and other items, and such parts will become the property of the Company.

21.5 Cores must be delivered to the Company within 14 days of Delivery of the Refurbished Goods and if the Purchaser fails to comply with this clause 21.5 the Purchaser must pay the Core Deposit to the Company immediately upon being invoiced for the Core Deposit.

21.6 Title to and ownership of the Core passes to the Company at the time of acceptance of the Core by the Company according to the core acceptance standards published separately and available by contacting the Company.

21.7 The Company provides the same Warranty for Refurbished Goods supplied in accordance with Service Exchange as for

Goods as set out in clause 11 and Schedule 1.

21.8 Freight charges for the delivery of Refurbished Goods and the supply of Cores are payable by the Purchaser.

21.9 Where any term of this clause 21 conflicts with another clause of this Contract, the terms of this clause 21 prevails to the extent of the inconsistency.

## 22. WORK HEALTH AND SAFETY

22.1 To the fullest extent permitted by law, the Company is not liable for any Claim regarding the Goods made to the Purchaser's specification brought under or in relation to Work Health and Safety Laws.

22.2 The Purchaser warrants that it has provided the Company with all relevant information required for the Goods to comply with Work Health and Safety Laws.

22.3 The parties agree that the Company is entitled to rely fully on the information provided by the Purchaser in relation to the design and specification of the Goods.

22.4 If the Goods are manufactured to the design or specification of the Purchaser, the Purchaser warrants that the design, specification and Goods comply with Work Health and Safety Laws.

22.5 The Purchaser covenants that it is responsible for, and will not threaten to make or initiate, or make or initiate any Claim against the Company in relation to:

(a) loss or damage caused by errors or omissions in the information provided by the Purchaser, or any third party who is the Purchaser's customer, supplier, contractor, subcontractor or agent, to the Company; or

(b) any modifications to the Goods made or caused by the Purchaser or any other person.

22.6 Nothing in this clause is intended to exclude or limit any duties imposed on the Company by Work Health and Safety Laws that cannot be excluded or limited.

## 23. ASSIGNMENT AND SUBCONTRACTING

23.1 The Company may assign, sub-contract or sub-let this Contract or the production, manufacture or supply of the whole or any part of the Goods without seeking the consent of the Purchaser.

## 24. WAIVER

24.1 Any waiver by the Company must be in writing signed by the Company.

24.2 Failure by the Company to enforce any right or remedy is not a waiver of any right or remedy, or a waiver in respect of a continuing breach.

## 25. SEVERABILITY

If any provision of this Contract is invalid or unenforceable in any jurisdiction, it is, to the extent possible, to be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down, and it can be severed to the extent of the invalidity or unenforceability, it is to be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.

## 26. GOVERNING LAW AND JURISDICTION

26.1 This Contract is governed by and must be construed under the laws in force in New South Wales, Australia.

26.2 Each party submits to the exclusive jurisdiction of the courts:

(a) of the State or Territory of Australia in which the Order was made if the Company has a Company Branch in such State or Territory; and

(b) where the Order has been made from a State or Territory of Australia where the Company does not have a Company Branch or from outside Australia, then, the courts of New South Wales, Australia,

and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

26.3 The Purchaser indemnifies the Company for any and all Claims, losses, costs and expenses suffered or incurred by the Company in connection with a breach by the Purchaser of clauses 26.1 or 26.2 and/or in connection with the Purchaser seeking to pursue or defend a Claim or otherwise enforce its rights:

(a) in a state or territory other than the jurisdiction determined under clause 26.2; or

(b) pursuant to the laws of a state or territory other than the state of New South Wales.

## 27. VARIATION

27.1 Any variation of this Contract must be in writing and authorised by a Director of the Company, the Company Secretary, or the Company's appointed legal representative, and must refer to the provision(s) being amended.

27.2 Notwithstanding clause 27.1, the Company may amend or vary the terms of the Contract by giving Notice to the Purchaser and;

(a) referencing specific terms being amended or varied; or

(b) providing the amended or varied Contract in its entirety.

27.3 Any Notice under clause 27.2 shall apply to any Order placed from the date 30 days after Notice is given to the Purchaser.

## 28. CHANGE OF OWNERSHIP

The Purchaser must notify the Company of any material change of ownership of the Purchaser within 7 days of any such change. The Purchaser and its Directors and Guarantor(s) agree to indemnify the Company against any loss or damage incurred by the Company as a result of the Purchaser's failure to notify the Company of any such change.

## 29. NOTICE

29.1 Any Notice must be in writing and delivered by hand or sent by post, email or facsimile as follows:

(a) if the Company: the registered office of the Company; and

(b) if the Purchaser: as per the Application for Credit details, the Order details or any registered office of the Purchaser, if the Purchaser is a registered business or operating under a registered business name or is a company.

29.2 A Notice is regarded as given by the sender and received by the addressee:

(a) if the Notice is delivered by hand, when delivered to the addressee;

(b) if the Notice is sent by post within Australia, at 9:00am on the 6th business day following the date of postage;

(c) if sent by facsimile, when the transmission is successfully completed (as reported by the sender's machine), unless the addressee informs the sender that the transmission is illegible or incomplete by telephone or Notice within 2 hours of the transmission being received; and

(d) if sent by electronic mail, is sent to the receiving party at the receiving party's most recent email address provided in connection with an Application for Credit or Order, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.

29.3 A Notice delivered or received:

(a) on a day which is not a business day or after 4.00 pm (recipient's time) is regarded as received at 9:00 am on the following business day; and

(b) before 9.00 am (recipient's time) on a business day it is regarded as received at 9.00 am that day.

29.4 Each party must ensure that the email address(es) used:

(a) in the Application for credit; and

(b) in connection with an Order,

are maintained and, where necessary, updated periodically to ensure that all Notices can be delivered or received in accordance with clause 29.3. Each party is solely responsible for maintaining its email address(es) and notifying the other party of any change to such address(es).

## 30. PRIVACY

30.1 The Company may use and disclose to third parties personal information held by the Company, including information relating to the Purchaser's commercial dealings and transactions with the Company for reasons including to:

(a) arrange for the delivery of the Goods;

(b) facilitate the Company's internal business operations, including fulfilment of any legal requirements;

(c) undertake credit reference checks and verification of the Purchaser's financing arrangements;

(d) arrange or facilitate any Warranty repairs or services; and

(e) provide the Purchaser with information and promotional material about products and services that may be of benefit to the Purchaser.

30.2 The Purchaser can request access at any time to personal information held by the Company relating to the Purchaser, and the Company will process the request within a reasonable time. The Purchaser may ask the Company at any time to correct personal information held by the Company relating to the Purchaser which the Purchaser believes is incorrect. Access and correction requests will be granted in accordance with the *Privacy Act 1988* (Cth).

SCHEDULE 1 - WARRANTY
(CLAUSE 11 - WARRANTY)

**This Warranty forms part of and is to be read in conjunction with the Contract.**

1. **DEFINITIONS IN THIS SCHEDULE 1**

**Warranty Period** means the period of six months from the date of delivery of the Goods to the Purchaser.

2. **GOODS**

2.1 Subject to clauses 3 and 4 of this Warranty, and in the absence of a third party manufacturer warranty, the Company agrees, in relation to any faulty workmanship or material defect in Goods that are purchased by the Purchaser and reported by the Purchaser to the Company during the Warranty Period, to any one or more of any the following:
- (a) in the case of goods:
  - (i) to replace the goods or supply equivalent goods;
  - (ii) to repair the goods;
  - (iii) to pay the cost of replacing the goods or acquiring equivalent goods; or
  - (iv) to pay the cost of having the goods repaired; and
- (b) in the case of services:
  - (i) to supply the services again; or
  - (ii) to pay the cost of having the services supplied again.

2.2 For the avoidance of doubt, the Company has sole discretion as to any one or more of the alternatives specified in clauses 2.1(a) or 2.1(b).

2.3 This Warranty does not cover anything which is not expressly included in the Warranty.

2.4 Where a component or part of the Goods are repaired or replaced by the Company pursuant to clause 11, the liability of the Company will be limited to that particular component or part.

3. **EXCLUSIONS**

3.1 To the extent permissible by law, the Warranty does not cover:
- (a) anything caused or contributed to by:
  - (i) Normal Wear and Tear and the gradual reduction in operating performance of the Goods;
  - (ii) the Company being the subject of a Force Majeure Event;
  - (iii) an accident, abuse, neglect of a person other than of the Company, including any wilful, negligent or inappropriate act or omission of a person other than of the Company which occurs during transportation of Goods, the loading and/or unloading of Goods, installation of Goods, or moving of Goods;
  - (iv) vandalism, power outages, surges, inadequate or improper voltage or current, or use and instalment of Goods contrary to any instruction or manual;
  - (v) repair or modification of the Goods carried out:
    - (A) without the proper written consent of the Company; or
    - (B) by a person other than the Company or its agent;
  - (vi) any criminal, deliberate, wilful, dishonest or fraudulent act, error or omission of the Purchaser or any of its officers, employees or agents; or
  - (vii) any breach by the Purchaser of a law or regulatory requirement;
- (b) costs of removal, reinstallation, recommissioning or shipping of the Goods;
- (c) damage occurring during transportation, freight, installation of the Goods or while moving the Goods; or
- (d) any defect or faulty workmanship in relation to the Goods:
  - (i) not notified to the Company within the Warranty Period; or
  - (ii) where the Purchaser continues to use the Goods after the Purchaser knew or discovered or ought reasonably to have known or discovered the defect or faulty workmanship.

4. **WARRANTY CLAIMS AND ASSOCIATED COSTS**

4.1 If a Purchaser wishes to lodge a claim under this Warranty in relation to the Goods then the Purchaser must notify the Company immediately and during the Warranty Period. Further information regarding the Warranty claim procedure can be obtained by contacting the Purchaser's nearest Company Branch.

4.2 The Company may, under this Warranty, direct that the Purchaser returns the Goods to:
- (a) the location from which the Goods were originally dispatched to the Purchaser; or
- (b) another location, provided that the cost of returning the Goods to such a location does not exceed the cost of returning the Goods to the location from which the Goods were originally dispatched to the Purchaser.

4.3 Where the Company directs the Purchaser under clause 4.2 of this Warranty, the Purchaser must return the Goods in accordance with such direction.

4.4 The Company may at its discretion require the Purchaser to issue a purchase order with respect to additional inspection, testing and / or assessment required in order for the Company to assess a Warranty claim and the Purchaser shall be obliged to issue such documentation prior to any further inspection, testing and / or assessment being undertaken by the Company under the Warranty terms.

4.5 In the event that the Company reasonably determines that a claim is not accepted under this Warranty, the Purchaser shall be liable for any costs incurred by the Company associated with a Warranty claim, including all costs incurred by the Company in inspecting, testing and / or assessing the Goods as part of any claim, including reasonable labour costs and travel costs associated with travelling to a particular location to inspect, test and / or assess the Goods.

4.6 In the event that the Purchaser does not accept a Warranty claim, the Purchaser shall be notified of the Company's decision and will be issued with an invoice for the costs incurred by the Company associated with a Warranty claim pursuant to clause 4.5 of this Warranty.

4.7 Where a third party manufacturer warranty applies, the Purchaser agrees to comply with any applicable warranty terms and conditions, to the extent that they contain additional warranty requirements.

4.8 The Purchaser shall be required to pay any invoice issued to the Purchaser pursuant to clause 4.6 of this Warranty by the Due Date.

4.9 The Purchaser shall indemnify the Company in respect of any and all Claims, losses, expenses and liabilities incurred by the Company arising indirectly or directly out of any Warranty claim not accepted by the Company.

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