



PKM CIVIL PTY LTD

ABN: 48606306478

758 London Rd, , Chandler QLD 4155

TERMS AND CONDITIONS

1 Interpretation and Construction

1.1 Definitions

(a) In these Terms of Trade, the following words have their corresponding meanings, unless the context requires otherwise: "**PKM**" means **PKM CIVIL PTY LTD** and includes its agents, employees, successors in title and permitted assigns. "**Customer**" means any person, company or other entity that has requested the supply of goods and/or services from **PKM** and includes its employees, agents, successors in title and permitted assigns.

(b) "goods" means any goods available for sale to the **Customer** by **PKM**, at the **Customer's** request.

"Intellectual Property" means all processes, procedures, methodologies, methods, techniques and/or inventions whether registered trademarks, designs, patents or not registered.

(c) "Order" means any order made by the **Customer** for the supply of goods and/or services from **PKM**.

"Quotation" means any quotation issued by **PKM** to the **Customer** for the supply of goods and/or services.

"Price" means the price payable by the **Customer** for the supply of goods and/or services in accordance with **clause 4** of these Terms.

(d) "services" means any services rendered by **PKM** to the **Customer**, at the **Customer's** request.

(e) "Terms" means these terms of trade which apply to any supply of goods and/or services by **PKM** to the **Customer**, as amended from time to time.

1.2 Construction

(a) a reference to these Terms or another agreement includes any variation;

(b) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;

(c) The singular includes the plural and vice versa;

(d) The masculine includes the feminine and neuter and vice versa;

(e) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes and permitted assigns;

(f) An obligation, agreement, representation or warranty on the part of or in favour of two or more persons binds, and/or is for the benefit of them jointly and severally;

(g) A reference to anything is a reference to the whole or any part of it; and

(h) References to parties or clauses are, unless otherwise provided, references to the parties and clauses contained in these Terms.

2 Supply of Goods and/or Services

2.1 **PKM** may issue a Quotation upon the **Customer's** request for the supply of goods and/or services or **PKM** may accept an Order from the **Customer** for the supply of goods and/or services.

2.2 **PKM** may refuse to sell the goods (whether or not part of a contract has been performed) where the goods are unavailable for any reason whatsoever, a non-complying order is received or the **Customer** has defaulted under **PKM's** terms of credit. Quotations are estimates only and are subject to withdrawal, correction or alteration at any time prior to **PKM's** acceptance of the **Customer's** order.

2.3 Unless otherwise stated, any Quotation issued by **PKM** remains open for acceptance from the time stated on the Quotation and if no time stated, for **30** days unless withdrawn earlier.

2.4 **PKM** is entitled to terminate any Order at any time without cause, in **PKM's** absolute and unfettered discretion.

2.5 An Order for the supply of goods and/or services shall identify the goods or services ordered, the quantity required and refer to any Quotation pursuant to which the order is made.

2.6 All drawings, specifications, or descriptions provided by **PKM** with respect to goods and/or services including but not limited to weights, dimensions, or performance or other attributes are approximate only and do not form part of any agreement and any error in such descriptions do not void the agreement between **PKM** and the **Customer** and do not give rise to any claim.

2.7 **PKM** may specify a minimum order value and impose a surcharge should the **Customer** place an Order for goods and/or services value less than the minimum order value.

2.8 **PKM** may supply goods that vary from the goods and/or services ordered by the **Customer** and the **Customer** must accept the goods and/or services supplied by **PKM** provided that any such variations are not material. Any variation of an Order, as requested by the **Customer**, must be agreed in writing by **PKM**, in **PKM's** absolute discretion.

2.9 **PKM** reserves the right, whether or not an Order has been accepted and without notice to the **Customer** to withhold supply to the **Customer** and will not be liable for loss or damage resulting directly or indirectly from such action where **PKM** has: (a)insufficient goods to fulfil the order; (b)the goods ordered has been discontinued; and/or(c)**PKM** has determined, in its absolute discretion that credit should no longer be extended to the **Customer**.

3 Acceptance

3.1 The **Customer** warrants that it has the power to enter into this agreement, is solvent and able to pay its debts as and when they fall due, this agreement creates a binding and legal obligation and all information provided to **PKM** by the **Customer** is true and correct in all material respects.

3.2 The **Customer** agrees that it upon receiving a Quotation or making an Order for the supply of goods and/or services, these Terms apply and the **Customer** accepts the Terms without amendment and agrees to be bound by these Terms.

3.3 The **Customer** agrees that the Terms apply over any other document or agreement between the parties to the extent of any inconsistency.

3.4 If the **Customer** accepts the Quotation or places an Order as trustee of a **Customer** then in addition to that entity the trustee agrees to bind all trusts of which the entity is a trustee.

4 Payment, Credit and Price

4.1 The Price shall be the Price as determined by **PKM** in its absolute discretion as follows:

- (a) the price in accordance with the Quotation issued by **PKM** to the **Customer**;
- (b) the price of any invoices provided by **PKM** to the **Customer**; or

4.2 The **Customer** may be required to pay a non-refundable deposit, at the discretion of **PKM**.

4.3 Unless stated otherwise, the Price is taken to be exclusive of goods and services tax ("GST").

4.4 The **Customer** agrees that GST at the prevailing rate at the date of invoice will be included in the amount due and payable on the Price and is payable by the **Customer** in full at the same time as payment of the Price. The **Customer** must also pay any other taxes or duties that may be applicable in addition to the Price, unless such duties or taxes are expressly included in the Price.

4.5 All amounts and prices stated on the Quotation are those at the date of the Quotation. If the **Customer** requires any variation which affects the cost or rates for insurance, freight, cartage or shipping expenses, duties, exchange rates, sorting and stacking costs, costs of materials or any other amounts used to calculate the price or amounts stated on the Quotation or if those inputs increase in cost before acceptance or during the agreement, any increase in those amounts shall be added to the **Customer's** account and the **Customer** shall be liable for the increase in Price.

4.6 If the specifications, drawings or particulars for the goods and/or services are provided by the **Customer**, and the price is based on the basis of quantities then if any adjustment in quantities are required, the price provided in any Quotation is adjusted on the unit price as particularised on the Quotation, or otherwise as **PKM** shall reasonably determine having regard to the usual price contained on **PKM's** current price list at the time of the Quotation.

4.7 Unless stated otherwise, time for payment is of the essence and will be payable as nominated by **PKM**:

- (a) on or before delivery of the goods or provision of services;
- (b) the date specified on the invoice as being the date for payment;
- (c) the date which is **30** days following the date of any invoice provided to the **Customer** by **PKM**.
- (d) by way of instalments as per an agreed payment schedule; or
- (e) **30** days following the end of the month in which a statement is provided to the Customer.

4.8 Payment must be made by **cash, electronic funds transfer** or by any other payment method nominated by **PKM** from time to time.

4.9 **PKM** may charge a fee for overdue payments in accordance with **clause 5** or may charge to the **Customer** bank fees imposed on payments including credit card payments.

4.10 **PKM** may, in its absolute discretion, supply the goods and/or services on credit to the **Customer** in which case these Terms shall apply and the **Customer** acknowledges and agrees that any credit provided to the **Customer** by **PKM** is to be applied wholly or predominantly for commercial purposes.

4.11 The grant of any credit facility or nomination of any credit limit is in the absolute discretion of **PKM**. **PKM** may vary and/or withdraw any credit facility at any time and without any liability to the **Customer** or any other party.

4.12 The **Customer** shall not deduct any sum from the amount due on any invoice or statement for any reason whatsoever.

5 Unpaid Invoices, Interest and Costs

5.1 If invoices or monies outstanding are not paid in full by the due date for payment, **PKM** may charge the **Customer** interest on the unpaid amount to be accrued daily from the date when payment becomes due until the date of payment at the rate of two and a half percent (2.5%) per calendar month and interest shall compound at that rate both before and after any judgment obtained by **PKM**.

5.2 The **Customer** is not entitled to set off, deduct or otherwise withhold payment of any amount due and owing to **PKM** including in circumstances where the **Customer** has disputed the invoice or alleged amounts are owed or will become owing by **PKM** to the **Customer**.

5.3 The **Customer** is liable with respect of all costs and disbursements incurred by **PKM** or its agents in recovering payment of any outstanding invoice or in enforcing its rights under these Terms, including, but not limited to, legal costs determined on a solicitor/own client basis, internal administration fee, mercantile agents costs and bank dishonour fee.

5.4 **PKM** is entitled to retain any goods or other documents held on the **Customer's** behalf pending payment of any outstanding monies. If **PKM** has in its possession goods belonging to the **Customer** for repair or modification, pending payment of any outstanding monies, **PKM** shall have a lien on the goods and have the right to retain or sell the good, in accordance with laws relating to the sale or disposal of uncollected goods and the lien shall continue in force notwithstanding **PKM** commencing legal proceeding or obtaining judgment as against the **Customer** for recovery of outstanding monies.

6 Title

6.1 Until **PKM** receives full payment in cleared funds of all monies outstanding for all goods and/or service supplied by it to the **Customer**, as well as all other amounts owing to **PKM** by the **Customer** and the **Customer** has complied with its obligations in full pursuant to these Terms:

- (a) title and property in all goods vests in **PKM** and does not pass to the **Customer**;
- (b) the **Customer** must hold the goods as fiduciary bailee and agent for **PKM** and must return the goods, including goods in transit which have not yet been delivered, to the **Customer** upon **PKM's** request;
- (c) the **Customer** holds the benefit of its insurance of the goods on trust for **PKM** and must pay to **PKM** the proceeds of insurance in the event the goods are lost, destroyed or damaged;
- (d) the **Customer** must keep the goods separate from its goods and maintain **PKM's** labelling and packaging;
- (e) the **Customer** must not charge or otherwise grant an interest over the goods while they remain **PKM's** property;
- (f) the **Customer** must not convert, process or otherwise commingle the goods but if the **Customer** does so, then it holds the commingled good on trust for the benefit of **PKM** and must sell or dispose of the commingled good to **PKM**, on the direction of **PKM**;
- (g) the **Customer** may sell or dispose of the goods only in the ordinary course of business in its capacity as agent for **PKM** and if the **Customer** sells or disposes of the goods then the **Customer** must hold the proceeds on trust for **PKM** and deliver up the proceeds to **PKM** on demand;
- (h) the **Customer** must hold the proceeds of sale of the goods on trust for **PKM** in a separate account with a bank to who the **Customer** has not given security however failure to do so will not affect the **Customer's** obligation as trustee; and
- (i) **PKM** may without notice, enter any premises where it suspects the goods are and recover possession of the goods, notwithstanding that they may have been attached to other goods not the property of **PKM**, and for the purpose the **Customer** irrevocably licences **PKM** to enter such premises and indemnifies **PKM** from and against all costs, claims, demands, or actions by any party arising from such action;

6.2 **PKM** is entitled to commence legal proceedings to recover any outstanding monies from the **Customer** regardless of ownership of the goods.

7 Risk and Insurance

7.1 The risk in goods shall pass to the **Customer** upon pick up of the goods from **PKM's** premises or immediately upon dispatch from **PKM** to the **Customer** nominated address or otherwise on the date where **PKM** shall store or arrange storage on behalf of the **Customer**.

7.2 The **Customer** shall insure the goods against loss or damage on or before delivery. The **Customer** is liable for any such insurance and must maintain at its own cost a policy of insurance with a reputable Australian insurer to cover all risks which may reasonably arise.

7.3 Notwithstanding the passing of risk, all goods delivered by **PKM** to the **Customer** remain the property of **PKM** until all goods supplied by **PKM** to the **Customer** have been paid for in full. If the goods are lost, damaged or destroyed after delivery but prior to ownership passing to the **Customer** pursuant to clause 6, **PKM** is entitled to receive all insurance proceeds payable for the goods.

8 Delivery

8.1 **PKM** accepts no responsibility or duty to deliver but may elect to arrange delivery at its discretion and without liability and the **Customer's** cost and risk in all things and if the goods are to be delivered, **PKM** shall deliver the goods to the address nominated by the **Customer** and:

- (a) the **Customer** shall pay all freight and other charges associated with the delivery and delivery may be made in instalments in **PKM's** discretion;
- (b) the **Customer** must take delivery of the goods whenever the goods are tendered for delivery;
- (c) the **Customer** by its representative shall be present at the agreed place and time for delivery. If not present, **PKM** may unload the goods at that place and in which case the goods will be at the sole risk of the **Customer** and **PKM** will not be responsible for any claims, costs or losses arising;
- (d) in the event that a delivery date is nominated by the **Customer**, **PKM** shall take all reasonable steps to achieve delivery on or about that date;
- (e) **PKM** does not represent that the goods will be available on that date and any date given for delivery is an estimate only and in the event that **PKM** is unable to deliver the goods on that date, it shall not be liable for any loss (including consequential loss) for any failure or a delay in delivery. **PKM** is not liable for any amount payable by the **Customer** to a third party as a result of a failure or delay in delivery by **PKM** due to any cause whatsoever; and
- (f) **PKM** may charge the **Customer** for frustrated delivery including where the **Customer** is unable to take delivery of the goods as arranged for an amount equal to **PKM's** reasonable costs.

8.2 All the goods shall be paid for prior to delivery, irrespective of whether delivery is a part of the Price. In **PKM's** discretion, the cost of delivery may be included in the Price or may be charged in addition to the Price.

9 Warranties

9.1 Except to the extent permitted by law, **PKM** does not provide any warranty in relation to any goods. The only warranties in relation to the goods are warranties provided by the manufacturer and not **PKM** and to the extent that the rights in any manufacturer's warranties are required to be assigned to the **Customer**, the manufacturer's warranties are assigned and title of those warranties passes with the goods in accordance with **clause 6** of these Terms. **PKM** shall not be liable to the extent that any manufacturer is liable under a manufacturer's warranty, unless required by law.

9.2 **PKM** expressly denies and excludes any warranties or conditions which would otherwise be implied to the maximum extent possible by law including but not limited to merchantable quality, suitability, fitness of purpose, quality, suitability, or otherwise. **PKM** acknowledges that these Terms do not exclude any statutory warranties which may be implied pursuant to the Competition and Consumer Act 2010 (Cth) and if the **Customer** is a consumer pursuant to this Act, then **PKM's** liability is limited as provided for in that Act.

9.3 The **Customer** acknowledges and agrees that:

(a) the **Customer** shall rely on its own knowledge and expertise in selecting the goods for any purpose and any advice or assistance given by or on behalf of **PKM** shall be accepted at the **Customer's** risk and shall not be deemed to have been given as an expert or adviser nor to have been relied on by the **Customer**; and

(b) **PKM** shall not be liable nor responsible for any failure to comply with any requirements of the **Customer** or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particulars provided with respect to the intended use of any Goods or otherwise) which are not precisely and accurately communicated in writing to **PKM** prior to agreement for supply of goods and/or services; and

(c) if the goods are second hand goods, and the **Customer** is not a consumer pursuant to the Competition and Consumer Act 2010 (Cth) the **Customer** acknowledges that that it has had the opportunity to inspect such goods prior to delivery and accepts them in an "as is-where is" condition and to the extent permitted by law, **PKM** does not give any warranty with respect to the goods and any warranty is excluded.

10 Defects, Return of Goods and Cancellations

10.1 The **Customer** shall inspect the goods immediately upon delivery and carry out any tests which a prudent **Customer** would carry out.

10.2 All claims for credit for damaged, defective or short delivered goods or for goods to be returned must be notified to **PKM** immediately. The **Customer** shall give written notice to **PKM** of any alleged defect, damage, fault, irregularity, shortage of quantity, failure to comply with description or quotation in the goods within 7 business days from the date of delivery.

10.3 If the **Customer** does not provide written notice to **PKM** in accordance with **clause 10.2**, the **Customer** shall be deemed to have accepted the goods and the **Customer** is not entitled to reject the goods or claim any remedy whatsoever (including but not limited to damages) against **PKM**.

10.4 **PKM** will not accept claims that are not notified within 7 business days of delivery.

10.5 Returns of defective goods.

(a) The goods must be returned, at the cost of the **Customer**, to **PKM** premises from where they were purchased and in their original packaging (if applicable) in a similar condition to the condition of the goods on delivery;

(b) If goods are not returned after fourteen (14) days of the written notice of the claim to **PKM**, at the **Customer's** cost, then the **Customer** shall not be entitled to any credit;

(c) Unless otherwise agreed, no return or request for credit will be approved until **PKM** by its representative has inspected the goods on which the credit is claimed and agrees that the goods are defective. Until this inspection, the **Customer** is responsible for maintaining proper care of the goods and if this does not occur, **PKM** reserves its rights not to accept claims for damaged or defective goods or for goods returned;

(d) Subject to the Competition and Consumer Act 2010 (Cth), **PKM** is not liable for defective goods where the defect or damage was caused or partially caused by the **Customer** failing to properly maintain or store the goods, using the goods for a purpose other than what the good were design, the continuing use of the goods after the defect became apparent or should have been apparent to a reasonably prudent user of the goods, failure to follow any directions or instructions in relation to the goods provided by **PKM** or by fair wear and tear, accident or any event of force majeure;

(e) The **Customer** acknowledges and agrees that goods are custom made pursuant to the **Customer's** instructions, goods damaged or lost in transit, goods specially ordered for the **Customer** and not on the usual stock list; goods altered or damaged by the **Customer** shall not be accepted by **PKM** for return or credit; and

(f) Notwithstanding anything contained in this **clause 10**, if **PKM** is required by law to accept a return, then **PKM** will accept the return of goods on the conditions imposed by law.

10.6 Cancellations.

(a) **PKM** may cancel any contract to which these Terms apply or cancel delivery of goods at any time before the goods are delivered by providing written notice to the **Customer**. **PKM** shall repay the **Customer** any money paid by the **Customer** and **PKM** is not liable for any loss or damages in any respect arising from any cancellation.

(b) If the **Customer** cancels a delivery of goods, it remains liable and shall indemnify and keep indemnified **PKM** for any and all loss is suffered (whether direct or indirect) by **PKM** as a direct result of the cancellation (including but not limited to loss of profits).

(c) Notwithstanding **clause 10.6.b**, the **Customer** acknowledges that cancellation of custom made goods or goods specially ordered for the **Customer** will not be accepted by **PKM** following the Order being placed by the **Customer**.

11 Release and Indemnity

11.1 The **Customer** hereby releases and indemnifies and agrees to keep **PKM** indemnified from any and all costs, damages, liabilities, expenses or losses including indirect, consequential losses (including but not limited to loss of profit), that **PKM** may incur in relation to the **Customer** or any third party, where the cost, damage, liability, expense or loss is caused by or contributed to by the goods supplied or services performed, any defect or fault in workmanship or design or their use, a breach of these Terms or for any other reason whatsoever.

12 Limitation of Liability

12.1 The **Customer** agrees, to the fullest extent possible by law, in relation to any cost, damage, liability, expense or loss (including those contributed or caused by **PKM**'s negligence or breach of any condition or warranty):

(a) if the **Customer** is not a consumer pursuant to the Competition and Consumer Act 2010 (Cth), to limit any claim made to **PKM**, in **PKM**'s absolute discretion to:

(i) the value of any express warranty provided by **PKM** to the **Customer** or any warranty to which the **Customer** is entitled;

(ii) replacement of the goods or services and/or the supply of equivalent goods;

(iii) repair of the goods;

(iv) repay the purchase price in the event that the payment has been received from the **Customer**; or

(v) payment of the cost of replacing, repairing or acquiring equivalent goods;

(b) if **PKM** is required to replace the goods pursuant to the Competition and Consumer Act 2010 (Cth) but cannot do so for any reason whatsoever, **PKM** may refund the Price, if the Price has been paid by the **Customer**.

(c) **PKM** shall not be liable for any loss or expense arising after seven (7) days from the date of delivery (or at all once goods have been unpacked, affixed and/or otherwise used or applied) after which the **Customer** is deemed to have accepted the goods in their present state;

(d) **PKM** shall not be liable for any damages for personal injury or death, any damage to property and/or any contingent, consequential, direct, indirect, special or punitive damages whether due to negligent act or omission of **PKM** or its employees or agents or otherwise and the **Customer** acknowledges this limitation of liability and agrees to limit any claim accordingly; and

(e) no other term, condition, agreement, warranty, representation and/or understanding whether express or implied, in any extending to, otherwise relating to or binding upon **PKM** other than these Terms is made or given by or on behalf of **PKM**.

12.2 **PKM** shall not be liable to the **Customer** for any loss or damage to any persons or property for death or injury caused by any actual omission (including negligent acts or omissions) of **PKM**.

12.3 Notwithstanding **clause 12.1** and **clause 12.2**, a **Customer** shall not be entitled to make any claim upon **PKM** whatsoever if any amounts are outstanding from the **Customer** to **PKM**.

13 Intellectual Property Rights

13.1 The **Customer** acknowledges and agrees that it does not have any intellectual property rights in the goods and that all rights that **PKM** holds in the intellectual property associated with the goods supplied and has the right to use the intellectual property in the goods including where **PKM** has developed or designed the goods for the **Customer**, remain the property of **PKM**.

13.2 The **Customer** acknowledges that all designs or other specifications or particulars provided by it with respect to the goods will not cause **PKM** to infringe any intellectual property right in provision of the goods and/or services and the **Customer** indemnifies **PKM** against any action taken by a third party against **PKM** with respect to any infringement relating to such design or specifications.

14 Security

14.1 In order to secure the performance by the **Customer** of its obligations under these Terms, the **Customer**, and where the **Customer** is unincorporated each proprietor of the **Customer**, hereby charges with payment of the moneys and compliance with all obligations owed by the **Customer** to **PKM** all beneficial interests (freehold and leasehold) in real and personal property held now or in the future by the **Customer** or proprietor.

14.2 The **Customer**, and where applicable, each proprietor agrees that if demand is made upon it, him or her by **PKM**, the **Customer** or, if applicable, that proprietor will immediately execute a consent to caveat, or a caveat or mortgage, as required by **PKM** to secure the obligations pursuant to this **clause 14**.

14.3 The **Customer** indemnifies **PKM** in relation to all of its costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising **PKM**'s right pursuant to this **clause 14**.

14.4 The **Customer** or, if applicable, that proprietor irrevocably and by way of security appoints **PKM** and any director, credit manager or solicitor engaged by **PKM** to be its, his or her true and lawful attorney to give effect to this **clause 14** including but not limited to execute and register all documents.

15 PPSA

15.1 Defined terms in this **clause 15** have the same meaning as given to them in the Personal Property Securities Act 2009 (Cth) ("PPSR")

15.2 **PKM** and the **Customer** acknowledge that this agreement constitutes a Security Agreement and constitutes a Purchase Money Security Interest (PMSI) in favour of **PKM** over the goods supplied or to be supplied to the **Customer**, as Grantor, pursuant to these Terms.

15.3 **PKM** and the **Customer** acknowledge that **PKM**, as Secured Party, is entitled to register its interest in the goods supplied or to be supplied to the **Customer**, as Grantor, under this agreement on the Personal Properties Securities Register as collateral by registering a financing statement or financing change statement.

15.4 The **Customer** expressly waives its right to receive notification of or a copy of any verification statement with respect to the registration of a financing statement or a financing change statement relating to a security interest granted by the **Customer** to **PKM**.

15.5 The **Customer** agrees to indemnify **PKM** on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the following:(a) registration, amendment or discharge of any financing statement registered by or on behalf of **PKM**; and(b) enforcement or attempted enforcement of any security interest granted to **PKM** by the **Customer**.

15.6 If the **Customer** is in default of its obligations and **PKM** takes possession of any goods pursuant to its security interest, the **Customer** remains liable for the difference between the market value of the goods at the time they are sold by **PKM** and the amount of the **Customer's** obligations for which it is in default.

15.7 The **Customer** agrees and undertakes to immediately notify **PKM** of any change to its name, address or personal details and authorises **PKM** to register a financing change statement without prior consent of the **Customer**.

15.8 The **Customer** agrees and undertakes not to agree, encourage or in any way allow another person or entity to register a financing statement without the prior written consent of **PKM** and the **Customer** shall provide written notice to **PKM** upon becoming aware that any other person or entity are taking steps to register a security interest with respect to the **Customer**.

15.9 The **Customer** agrees that to the maximum extent permitted by law, sections 130, 142 and 143 of the PPSA will not apply.

15.10 The **Customer** agrees, to the extent possible under law permitted by law to waive the following rights under the PPSA:

(a) receipt of a verification statement pursuant to section 157 and a statement of account where there is no disposal pursuant to section 130(4) or pursuant to section 132 where there is a disposal;

(b) to recover any proceeds pursuant to section 140;

(c) to object to the purchase of the collateral by the secured party pursuant to section 129;

(d) to receive notice of an intention to seize collateral pursuant to section 123;

(e) to receive notice of disposal of collateral pursuant to section 130;

(f) to receive notice of retention of Collateral pursuant to section 134 or to object to that notice pursuant to section 137;

(g) to redeem Collateral pursuant to section 142;

(h) to reinstate a security agreement pursuant to section 143;

(i) to receive a notice of removal of accession under section 95; and

(j) any other right in favour of the **Customer** that can be lawfully contracted out of pursuant to section 115 of the PPSA which shall not apply to these Terms or any security.

16 Statement of Debt

16.1 A certificate signed by a director, secretary, credit manager or any other authorised person of **PKM** shall be prima facie evidence of the indebtedness of the **Customer** to **PKM** at that time.

17 Privacy and Credit Information

17.1 The **Customer** irrevocably authorises **PKM** to make enquiries exchange, collect and use a Customer's personal information including credit information and information relating to property, business or other solvency matters from time to time which **PKM** deems necessary including enquiries with persons nominated as trade references, financiers, credit providers, credit reporting bodies, government departments and/or other organisations ("Information Provider") for the following purposes:

(a) obtaining information on the credit position of the **Customer**;

(b) investigating the credit worthiness of the **Customer** in relation to the credit to be provided by **PKM**;

(c) for marketing purposes (unless the **Customer** has notified **PKM** that it wishes to opt out of direct marketing;

(d) to allow **PKM** to provide a credit facility for the supply of goods and/or services to the **Customer**;

17.2 The **Customer** acknowledges that the information exchanged under clause 17.1 includes any information in relation to the **Customer's** credit worthiness or credit history.

17.3 The **Customer** consents and irrevocably authorises:

17.4 Notwithstanding this clause 17, to the maximum extent permitted by law, **Customer** agrees, unless the **Customer** otherwise withdraws consent, to waive all rights under the Privacy Act 1988 (Cth).

17.5 to notify the credit provider in relation to a default of the **Customer**; and

17.6 to a credit reporting body to obtain a credit report or to permit a credit reporting body to maintain or update the **Customer's** credit file.

17.7 the Information Provider to disclose any information about the **Customer** in their possession to **PKM**;

17.8 **PKM** may use any information which it holds for the purposes listed in 17.1; and

17.9 **PKM** may disclose any of the **Customer's** information to any interested person (including overseas third parties) for any purpose listed in clause 17.1, to the extent permitted by the Privacy Act 1988 (Cth).

18 Default

18.1 Without prejudice to any other remedies available to **PKM**, if the **Customer** becomes insolvent or appoints an administrator, receiver, receiver and manager, liquidator or trustee in bankruptcy or is in breach of any these Terms (including term for payment), all monies become immediately due and owing to **PKM** and **PKM** may immediately:

(a) terminate or suspend supply of goods and/or services;

(b) retain all monies paid and/or take immediate possession of goods which have not been paid for;

(c) cease all future deliveries;

(d) cancel all or any part of any order unfilled; and/or

(e) recover from the **Customer** any loss of profits arising as a result of the default of the **Customer**.

18.2 If **PKM** exercises its rights pursuant to **clause 18.1**, it is not liable to the **Customer** for any consequential loss or damages suffered by the **Customer**.

19 Force Majeure

19.1 **PKM** shall not be or be deemed to be in default or breach of any agreement as a result of force majeure. Force Majeure includes national emergency, war, prohibitive government regulations or any other cause beyond the reasonable control of **PKM** including strike and lockouts or trade disputes which means that the goods and/or services which are the subject of the Quotation and/or Order cannot be provided by **PKM** to the **Customer**.

20 Customer Restructure

20.1 The **Customer** shall notify **PKM** immediately in writing of any change to its structure or management including change of director, shareholder, partnership, trustee or management or its details (including changes to name, address or contact details). The **Customer** agrees that if it fails to comply with this **clause 20**, it is liable and shall indemnify **PKM** for any resulting loss suffered by **PKM**.

21 Miscellaneous

21.1 **Notices.** A notice, demand, waiver, approval or other document given or required to be given pursuant to these Terms must be in writing and may be given to the recipient by way of personal service, prepaid post, facsimile transmission or email transmission at the address of the party as provided from time to time.

21.2 **Severance.** In the event that any term or provision or part of a term or provision of these Terms cannot be given effect or is declared void for any reason then the term or provision or part which cannot be given effect shall be severed and read down restrictively and the remaining terms and provisions shall remain valid, binding and enforceable on the parties in all respects.

21.3 **Waiver.** No rights under these Terms will be waived unless agreed in writing and signed by **PKM**. **PKM** does not waive a right by giving an extension or forbearance to the **Customer**. No waiver of these Terms shall be construed as a continuing waiver of the term or provision. A waiver by **PKM** of any matter does not prejudice its rights in respect of any matter. Any non-exercise or partial exercise of or any delay in exercising any right or remedy does not constitute a waiver of that right or remedy.

21.4 **Variation.** All goods and/or services sold by **PKM** are sold and supplied on these Terms, as amended from time to time by **PKM** in its absolute discretion or otherwise agreed by **PKM** in writing. The **Customer** agrees that it shall be deemed to have notice of change to these terms and be bound by any subsequent versions of the terms as they appear on **PKM**'s website from time to time, whether or not the **Customer** has actual notice of any variation.

21.5 **Assignment.** The **Customer** is not entitled to assign the benefits or obligations under this agreement to any entity without **PKM**'s prior written consent, which may be given in **PKM**'s absolute discretion. **PKM** may assign all or any part of the benefits and obligations under this agreement without the requirement for the **Customer**'s consent.

21.6 **Jurisdiction.** These Terms and any contract between **PKM** and the **Customer** shall be governed by the laws of State where **PKM** has its principal place of business and each party irrevocably submits to the non-exclusive jurisdiction of the courts of the said state.

21.7 **Entire Agreement.** These terms supersede all previous agreements, discussions and representations between **PKM** and the **Customer** and constitute the entire agreement in relation to the agreement for provision of goods and/or services between **PKM** and the **Customer**.

21.8 This agreement may be executed in any number of counterparts and each counterpart shall together constitute one agreement. This agreement may be executed by facsimile, electronically or by electronic signature and the receiving party may rely upon the same as if it was an original document or signature.