

Supply Agreement

MOTORCYCLE SPECIALTIES
(AUSTRALIA) PTY LTD ACN 106 329
702

(Supplier)

and


(Recipient)

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Date

2021

Parties

Supplier Motorcycle Specialties (Australia) Pty Ltd
ACN 106 329 702
69 Fulcrum Street of Richlands, QLD 4077

Recipient

Background

- A. The Supplier performs the business activity of supplying motorcycle parts, accessories to motorcycle retailers and customers in Australia and worldwide.
- B. The Recipient wishes to receive supplies of the motorcycle parts and accessories from the Supplier upon and subject to the provisions of this Agreement.
- C. Unless otherwise agreed in writing by the Supplier, the terms and conditions in this Agreement will apply to all quotation, order, offer, sale, supply, service, delivery and replacement of all products supplied by the Supplier to the Recipient.

Operative Provisions

1. Interpretation

1.1 Capitalised Definitions

Meanings apply to capitalised terms used in this Agreement as specified in this provision, unless the context otherwise requires:

Associate Company in relation to any person, means any company in or in relation to which that person, or a Related Company of that person:

- (a) is a member, shareholder or director;
- (b) holds any Marketable Securities; or
- (c) in practice or effect controls the business activities of that person,

excluding any holding of Marketable Securities, not exceeding in total 5% of that class of Marketable Securities in, or any directorship of, a company which is admitted to the official list of ASX Limited;

Authorised Officer means any director, secretary or person notified in that capacity by any party to this Agreement in or under any provision of this Agreement to any other party to this Agreement, without withdrawal or cancellation of that notification as at that time;

Business Day means any day on which trading banks generally are open for business in Brisbane and excluding any public holidays;

Confidential Information in relation to any person, means information which at any time is in the knowledge, possession or control of that person, or any Subsidiary or agent of that person, relating to the business, operations or affairs of that person, or any Subsidiary of that person, including information relating to:

- (a) including but not limited to the Supplier's product catalogue (images and information contained therein), fitment chart information, product codes, marketing materials, parts list, dealer network, any and all of the Supplier's website, online and App contents;
- (b) Supplier's corporate or business development and expansion strategy;
- (c) Supplier's corporate or business structure;
- (d) Supplier's financial, Tax and accounting matters;
- (e) any relationship or arrangement with any agent of the Supplier;
- (f) Supplier's inventions, discoveries, trade secrets, knowhow, technology, techniques, processes, information, formulae, ideas or concepts, whether or not reduced to material form, drawings, designs, plans, models, and scientific, technical and product information;
- (g) Supplier's source and object codes;
- (h) Supplier's business and marketing plans and projections;
- (i) Supplier's customer information (including names of all past and present customers), customer lists and information proprietary to customers;
- (j) the names of all past, present, and prospective employees of the Supplier;
- (k) any documentary information that is marked "confidential", "private", "secret", "in confidence" or "not to be disclosed" belonging to the Supplier;
- (l) all notes, analyses, summaries, compilations, studies, projections, forecasts, budgets, price lists, or records of any party that is marked "confidential" or which by its nature is confidential and belonging to the Supplier;

- (m) Supplier's agreements and arrangements with third parties, whether legally enforceable or otherwise; and
- (n) Supplier's computer software;

Corporations Act means the *Corporations Act 2001* (Cth);

Credit Information means information that is Personal Information that relates to identification, consumer credit liability, repayment history, statements regarding information requests, types of credit, default information, payment information, new arrangement information, court proceedings, personal insolvency, pinions and publicly available information;

Delivery Acceptance means the acceptance by the Recipient, or the Recipient being treated as having accepted the delivery of any Supply Products upon the Supply Products leaving the Supplier's premises and being delivered to the Recipient;

Delivery Period means the period following execution of this Agreement for delivery of the Supply Product;

Dollar or \$ means the lawful currency of the Commonwealth of Australia;

Extra Supply means any extra, additional or supplementary supply by the Supplier to the Recipient at any time of any goods under any provision of this Agreement;

Force Majeure Event in relation to the Supplier, means any fact beyond the reasonable control of the Supplier which prevents, hinders or delays the Supplier from or in the performance of any liability of the Supplier under any agreement, including:

- (a) any act of God, peril of the sea or unavoidable accident of navigation;
- (b) war or hostilities, whether declared or undeclared, terrorist action, sabotage, riot, insurrection, civil commotion, strikes, lockouts, lockdowns, trade disputes, prohibitions, malicious damage, or national, federal, state, district or local emergency, whether factual or legal;
- (c) fire, flood, storm, cyclone, lightning strike, earthquake or landslide;
- (d) explosion, epidemic, quarantine, radiation or radioactive contamination;
- (e) failure, breakdown or shortage of any power, water, communications or other supplies from any public utility or supply of fuel, interruptions of transport, import or export delay, delay in delivery or carriage by the agents or distributors of the Supplier or manufacturers of the products, labour or material; and
- (f) any governmental requisition or illegality due to change of law,

but excluding any fact resulting from any action, or omission of default of that person;

General Accounting Standards means:

- (a) in relation to a body corporate, the accounting standards within the meaning of the Corporations Act and, where not inconsistent with those accounting standards and the Corporations Act, generally accepted accounting principles and practices in Australia consistently applied by a body corporate or as between bodies corporate; and
- (b) in relation to any other person or entity, accounting standards issued by the Australian Accounting Research Foundation on behalf of the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia which are applicable to persons or entities other than bodies corporate and, where not inconsistent with those accounting standards, generally accepted accounting principles and practices in Australia consistently applied;

Governmental Agency means any governmental, semi-governmental, administrative, fiscal, municipal, local, judicial or regulatory agency, department, instrumentality, body, utility, authority, commission, court or tribunal;

GST means any Tax under any GST Law;

GST Law has the meaning defined in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Guarantor means the person or persons providing guarantee to the Supplier for performance of this Agreement by the Recipient as specified in part D of schedule 1;

Improvement includes any invention, discovery, modification, adaptation or improvement, whether patentable or not, which can be used to reduce manufacturing or assembly costs of the Supply Products or improve the performance of any product or process, increase the service or shelf life of any product, broaden the applicability of any process employed in or toward the Supply Products or range of uses of any product thereof or create a wholly new product or component or process which replaces or is an enhancement of the subject matter of the Supply Products, devised by or for the Recipient;

Intellectual Property means any intellectual, industrial or commercial property, including:

- (a) any patent, trade mark, service mark or design;
- (b) any copyright;
- (c) any utility model, eligible layout right or plant variety right;
- (d) any business, trade or commercial name or designation, brand name, internet website domain name, logo, symbol, source indication or origin appellation;
- (e) any Confidential Information;
- (f) any Improvement;

- (g) any other industrial, commercial, agricultural or extractive right derived from intellectual knowledge or activity of any industrial, scientific, literary or artistic nature or description, whether relating to any manufactured or natural product or otherwise;
- (h) any Legal Action relating to any previous item;
- (i) any licence or other right to use or grant the user, or to become the registered proprietor or user of, any previous item; and
- (j) any document of title, letters patent, deed of grant or other document or agreement relating to any previous item, whether registered or unregistered or recorded or unrecorded, stored or incorporated in any medium of any nature or description;

Interest Rate means interest of fifteen percent (15%) per annum, calculated daily, from the Payment Date until payment is made in full in cleared funds by the Recipient to the Supplier;

Legal Action means any legal action, application, proceeding, dispute or litigation initiated in or by any Governmental Agency, arbitration, mediation or dispute resolution process, whether actual, current, anticipated, threatened or potential;

Liquidation includes winding up, dissolution, bankruptcy, death, administration under any law relating to individual health or welfare, receivership, management, voluntary administration, deed of company arrangement, scheme of arrangement, composition, moratorium, suspension of payment or property transfer for the benefit of creditors;

Modified Products means any Supply Products subject to any Products Modification effected in compliance with this Agreement;

Order means a request either written or orally made by a Recipient Agent to a Supplier Agent for Supply Products;

Payment Invoice means any written claim made, or to be made, by the Supplier to the Recipient requiring any Supply Payment under clause 4;

Payment Date means the due date for payment of any Supply Payment by the Recipient to the Supplier as stated on the Payment Invoice or if a date is not specified on the Payment Invoice, then the Payment Date means the date of the Payment Invoice and Supply Payment is due immediately;

Performance Site means the place or address nominated by the Recipient for delivery of the Supply Product.

Personal Information means information or an opinion about an identifiable individual, or an individual who is reasonably identifiable, whether the information or opinion is trusted or not and whether the information or opinion is recorded in a material form or not. This may include but is not limited to information such as the Recipient or Guarantor's name, address, telephone number, e-mail address, and any information about activities (online or otherwise) that is directly linked to the Recipient's information;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Products Delivery means delivery of any Supply Products by the Supplier to the Recipient in compliance with this Agreement;

Products Modification means any modification, alteration or variation to any Supply Products by:

- (a) the Supplier at the request of the Recipient; or
- (b) the Recipient or any third person and with the prior written consent of the Supplier;

Recipient Agent means:

- (a) the Recipient;
- (b) any employee or agent engaged by the Recipient; and
- (c) any director, secretary or chief or senior executive officer of the Recipient;

Related Company means a body corporate and a trust and in relation to:

- (a) a body corporate, means a related body corporate within the meaning of Division 6 of Part 1.2 of the *Corporations Act*; and
- (b) a trust, means a trust that would be a related body corporate within that meaning assuming that the trust was a body corporate and that a Subsidiary meant a subsidiary for the purposes of that meaning;

Retained Products means any Supply Products prior to full payment of the Supply Price for that Supply Product;

Security Interest means any security interest in connection with any asset which in substance, whether or not in form, is a security for the payment or performance of any liability, including:

- (a) any mortgage, charge, pledge, lien, trust or right created or conferred in relation to any asset;
- (b) any title retention interest or other legal or equitable proprietary title or interest retained or reserved in any asset, including any credit or conditional sale agreement, hire purchase agreement, finance lease or bailment; or
- (c) any other right conferred on, or agreement with, any creditor to be paid in priority or preference by recourse to any asset or its proceeds;

Specification Document means:

- (d) any agreement or document agreed at any time by the parties to be a specification document for the purposes of this Agreement;

Specified Products means any products as agreed between the Supplier and Recipient;

Specified Information means any Confidential Information held by, or connected with the Recipient;

Subsidiary in relation to:

- (a) a body corporate, means a subsidiary within the meaning of Division 6 of Part 1.2 of the *Corporations Act*;
- (b) a trust, means a trust that would be a subsidiary within that meaning if it were a company equating for this purpose:
 - (i) shares with the beneficial interests or units held in the trust; and
 - (ii) the board of directors with the trustee; and
- (c) a body corporate or subtrust owned or held as an asset of a trust, means a subsidiary within any previous meaning which would be applicable if the trust were a body corporate;

Supplier Agent means:

- (a) the Supplier;
- (b) any Related Company or Associate Company of the Supplier;
- (c) any employee or agent engaged by the Supplier or any Related Company or Associate Company of the Supplier; and
- (d) any director, secretary or chief or senior executive officer of the Supplier or any Related Company or Associate Company of the Supplier;

Supplier Direction means any lawful direction, regulation or requirement of the Supplier relating to the performance of this Agreement, as notified in writing at any time by the Supplier to the Recipient;

Supplier Information means:

- (a) any Confidential Information comprising Specified Information; any other Confidential Information which at any time is in the knowledge or possession of the Supplier relating to any business activity of the Supplier disclosed by any Supplier Agent to, or otherwise obtained or received by, any Recipient Agent; and
- (b) the fact of the creation of this Agreement or any present or future provision of or action performed under this Agreement;

Supply Commencement Date means the earlier of:

- a) date which the Supplier first supplied to the Recipient; or
- b) the date of this Agreement.

Supply Contract Document means each of:

- (a) this Agreement; and
- (b) each Specification Document;

Supply Date means:

- (a) in relation to any Supply Products, the date of delivery of actual possession of that Supply Products by the Supplier to the Recipient;

Supply Documentation means each document containing information or instructions relating to the use and operation of the Supply Products, and the number of copies of that document;

Supply Products means:

- (a) any Specified Products;
- (b) any Modified Products; and
- (c) any goods, accessories, materials, services and equipment supplied, or to be supplied, at any time under this Agreement by the Supplier to the Recipient;

Supply Payment relative to any Supply Products, means the consideration for the supply by the Supplier of that Supply Products as calculated by reference to and in compliance with the price, fee, rate, charge or cost specified by the Supplier, or as varied under any provision of this Agreement;

Supply Period means:

- (a) the Supply Date to the Supply Termination Date.

Supply Price means the amount specified by the Supplier;

Supply Product Purpose means the intended use of the Supply Product as specified by the Supplier;

Supply Specification means any written specification for the supply of goods to be supplied by the Supplier to the Recipient under this Agreement, comprising:

- (a) any document specified by the Supplier;
- (b) any Supply Variation;
- (c) any Supply Plan;
- (d) any Supply Standard; and
- (e) any Specification Document;

Supply Termination Date means the date of termination of this Agreement as stipulated in clause 14;

Supply Variation means any variation or addition to or deletion of any Specified Products, Modified Products or any variation or addition to or deletion of any previous variation, addition or deletion, under any provision of this Agreement;

Tax includes any tax, duty, charge or rate imposed or assessed under any legislation or by any Governmental Agency, together with any associated interest, penalty, fine, fee or other charge; and

1.2 Interpretational Rules

Rules of interpretation apply to this Agreement as specified in this provision, unless the context otherwise requires:

- (a) **(headings)**: headings and subheadings are for convenience only and do not affect interpretation;
- (b) **(plurality)**: words denoting the singular number include the plural, and the converse also applies;
- (c) **(gender)**: words denoting any gender include all genders;
- (d) **(variants)**: a defined word or expression has corresponding effect in relation to its other grammatical forms;
- (e) **(parties)**: any reference to a party to any agreement or document includes its executors, administrators, legal personal representatives, successors and permitted assigns and substitutes by way of assignment or novation;
- (f) **(amendments)**: any reference to any agreement or document includes that agreement or document as amended, ratified, supplemented, novated or replaced at any time;
- (g) **(provisions)**: any reference to a provision, comprising a clause or schedule is a reference to a provision of this Agreement, including each clause, subclause, paragraph and subparagraph of that provision, and any reference to this Agreement includes all provisions of this Agreement;
- (h) **(legislation)**: any reference to any legislation includes a reference to that legislation as amended, re-enacted, consolidated or replaced at any time, and includes all regulations, delegations, instruments and orders made under it;
- (i) **(inclusions)**: the words **include, including, for example**, and similar expressions are used without limitation;
- (j) **(components)**: any reference to any whole or collective item includes any part of that item;

- (k) **(time): at any time** includes reference to past, present and future time and the performance of any action from time to time and any liability at all times during any specified period;
- (l) **(claim): claim** includes any claim, demand, request, requisition, notice, direction, allegation, action, proceeding, damage or judgment arising in any manner and at any time, and whether present, immediate, unascertained, future or contingent;
- (m) **(cost): cost** includes any cost, charge, expense, disbursement, fee, commission, outgoing, premium, Tax, levy, fine, penalty or loss incurred at any time, whether directly or indirectly;
- (n) **(credit): credit** includes any present or future loan, advance, credit facility or other financial accommodation;
- (o) **(default): default** includes any default, breach, non-performance, non-compliance or repudiation;
- (p) **(financial indebtedness): financial indebtedness** means any liability in relation to moneys borrowed or raised or any financial accommodation of any nature or description;
- (q) **(liability): liability** includes any liability or obligation of any nature, whether present, prospective or contingent; and
- (r) **(loss): loss** means any loss, cost, damage or liability.

1.3 Liability

Any agreement in this Agreement by two or more persons named as the same separate party to this Agreement is a joint and several liability of each named person.

1.4 Performance

Any action required to be performed under any provision of this Agreement on or prior to a day which is not a Business Day must be performed on or prior to the immediately following Business Day.

1.5 Discretionary Decisions

Any provision in this Agreement that any party is entitled to make any decision for any purpose means that that decision may be made by that party:

- (a) **(absolute discretion):** at any time in the absolute and uncontrolled discretion of that party, without necessity for the consent of any person and without that party being under any liability, or being legally required or compelled by any person, to make that decision; and

- (b) **(subjective exercise)**: without that party being legally required or compelled to provide or communicate any reason to any person for making that decision, except where there is an express provision of this Agreement to contrary effect.

2. Supplying Supply Products

2.1 Order, Acceptance and Supply

- (a) Any Order by the Recipient is subject to acceptance or rejection by the Supplier and the Supplier is not obligated to supply the Supply Products upon receipt of an Order.
- (b) Within a reasonable time after receipt of the Order, the Supplier may notify the Recipient that for any reason and without limitation, the Supplier decides not to supply the Supply Products and the Recipient shall hold the Supplier harmless from any damages or loss to the Recipient as a result of the non-supply of the Supply Products.
- (c) Subject to the written consent of the Supplier, the Recipient must not cancel any Order.
- (d) Upon acceptance of the Order the Supplier shall supply and the Recipient must accept the Supply Products during the Supply Period for the Supply Payment upon and subject to the provisions of this Agreement.

2.2 Contractual Relationship

- (a) **(Independent contractor)**: The Supplier acts in the capacity of an independent contractor, as between the Supplier and the Recipient, in the supply of the Supply Products or any liability under this Agreement.
- (b) **(Exclusions)**: This Agreement does not create, and must not be construed to create any express or implied relationship between the Supplier and the Recipient of:
 - (i) employment;
 - (ii) principal and agency;
 - (iii) partnership; or
 - (iv) joint venture.
- (c) **(Contractual freedom)**: This Agreement does not prohibit any party from executing any agreement with any third person relating to the supply or acquisition of goods, whether in the nature of or similar to the Supply Products or otherwise, as decided by that party, subject to compliance with any liability of that party under any other provision of this Agreement.

2.3 Sale and Purchase of Products

- (a) The Supplier shall sell, and the Recipient must purchase the Supply Products for the Supply Price upon and subject to the terms of this Agreement.

2.4 Products Title Transfer

Subject to clauses 2.5 and 2.6, the Supplier shall transfer to the Recipient the full, absolute and entire legal right, title and interest in the Supply Products, free and clear of:

- (a) **(security interests)**: any Security Interest; and
- (b) **(adverse interests)**: any other adverse right of any third party of any nature or description, upon full payment of the Supply Price for that Supply Products by the Recipient to the Supplier.

2.5 Retention of Title – Non PPSA Supplies

- (a) **(Application)**: This clause 2.5 applies to any Supply Products to which the PPSA does not apply.
- (b) **(Property and ownership)**: Notwithstanding any period of credit and that the Supply Products have been delivered to the Recipient, property and ownership in Supply Products remains with the Supplier and will not pass to the Recipient until the Supplier receives payment in full of all Supply Payments and all other amounts the Recipient owes to the Supplier for any reason.
- (c) **(Recipient undertakings)**: Until property passes to the Recipient, the Recipient agree that:
 - (i) the Recipient will keep the Supply Products insured to their full insurable value against loss or damage in the Supplier's name as unpaid vendor;
 - (ii) the Recipient will hold the Supply Products as bailee for and is in a fiduciary relationship with the Supplier;
 - (iii) the Recipient must not pledge, mortgage, lend against or otherwise encumber the Supply Products without the written consent of the Supplier;
 - (iv) the Recipient will keep the Supply Products separate and readily identifiable while the Supply Products is in the Recipient's possession or control; and
 - (v) if the Recipient has not paid in full for the Supply Products by the due payment date, the Supplier or its Suppliers may, in addition to the Supplier's other rights, enter the Recipient's premises, including the Performance Site (or other premises to which the Recipient have access and where any of the Supply Products is stored), during normal business hours, without notice, and search for and recover the Supply Products.
- (d) **(Rights on default)**: Upon default in payment of the purchase price of the Supply Products by the due payment date, the Supplier may take possession of and at the Supplier's discretion sell or otherwise dispose of the whole or any of the Supply Products removed, and credit any sale proceeds toward the moneys owed to the Supplier by the Recipient without prejudice to any other remedy available to an unpaid vendor at law or in equity.

- (e) **(No liability):** The Supplier is not liable for any damage caused to the Recipient or the Recipient's premises in exercising its rights under this clause 2.5.

2.6 A Security Interest Created

- (a) **(Security interest grant):** For the purposes of the PPSA, the Recipient grants a security interest to the Supplier in:
 - (i) all present and after acquired goods and whether supplied on consignment or otherwise; and
 - (ii) any Supply Products for which any of the Supply Products referred to in subparagraph (i) has been exchanged or traded or that has been acquired in lieu of those Supply Products,

sold or supplied by the Supplier, to secure payment for the Supply Products (and any interest or other charges payable in relation to the Supply Products) and to secure all monies payable by the Recipient to the Supplier at any time on any account. The Recipient further agrees that the Supplier's security interest in the Supply Products extends to the Proceeds (as defined in the PPSA) of the Supply Products. The Recipient acknowledges that the security interest will continue until the Supplier provides the Recipient with a final release.
- (b) **(Allocation of payments):** The Supplier may at its sole discretion and in such manner as it determines allocate payments made by the Recipient to outstanding amounts due in relation to any Supply Products supplied by the Supplier.
- (c) **(Undertakings):** Until payment is made the Recipient:
 - (i) will, where the Supply Products has been purchased for resale, store the Supply Products separately from Supply Products not supplied by the Supplier; and
 - (ii) will not move the Supply Products outside Australia and will not do or omit to do or allow to be done or omit to be one, anything which could adversely affect the Supply Products or the security interest created by this Agreement.
- (d) **(Rights on default):** To the extent permitted by law, if the Recipient defaults under this Agreement or under any other payment obligation to the Supplier:
 - (i) each security interest created in favour of the Supplier will become immediately enforceable;
 - (ii) the Supplier may, at any time, by notice to the Recipient declare all or any part of the moneys owing by the Recipient to be due and payable immediately, upon demand or at a later date as the Supplier may specify.
 - (iii) the Supplier may:
 - (A) take possession of and either sell or retain the Supply Products;

- (B) pay any expenses incurred in the exercise of any such powers out of the revenue from, or proceeds of realisation of, the Supply Products; or
 - (C) appoint a receiver in respect of any Supply Products (without the Recipient's consent) and any receiver is authorised to do anything referred to in this Agreement and otherwise to exercise all rights and powers conferred on a receiver by law.
- (iv) The Recipient will pay all of the Supplier's costs, losses and other liabilities (including legal expenses on a solicitor-client basis) incurred or sustained by the Supplier in connection with the exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any right arising pursuant to the security interest granted under this Agreement.
- (v) The Supplier:
 - (A) has the rights of a natural person in relation to the Supply Products;
 - (B) has all other rights conferred by law (including under the PPSA) in relation to the Supply Products; and
 - (C) may, in the Recipient's name or otherwise, at any time, do anything that the Recipient could do in relation to the Supply Products.
- (e) **(Other rights):** Nothing expressed in this clause 2.6 limits or otherwise adversely affects the Supplier's rights under the PPSA.
- (f) **(Sale):** Where the Supplier takes possession of the Supply Products, it may sell the Supply Products by any means at any time and from any sale proceeds, deduct all costs incurred in connection with the sale and all monies owed (even if not due and payable) to the Supplier by the Recipient on any account (to the extent to which the Supplier has priority over any other interested parties). The Supplier may recover from the Recipient any shortfall on any sale or attempted sale.
- (g) **(PPSA waivers):** The Recipient agrees to contract out of the provisions of sections 95, 96, 130, 132, 142 and 143 of the PPSA to the fullest extent permitted by law, and despite any other provision of this Deed.
- (h) **(Name change):** If the Recipient changes its name, the Recipient must give written notice to the Supplier of the Recipient's new name one week prior to the effective date of the change.
- (i) **(Further assurance):** If requested by the Supplier, the Recipient must promptly do all things (including signing any document) and provide all information necessary to enable the Supplier to perfect and maintain the perfection of any and each security interest granted to the Supplier by the Recipient (including by registration of a financing statement).

- (j) **(Costs)**: The Recipient will pay all reasonable costs, including legal costs on a solicitor-client basis, associated with the discharge or amendment of any financing statement registered by the Supplier, whether or not the change was initiated by the Recipient.

2.7 Products Use

- (a) The Recipient must use the Supply Products only for the Supply Product Purpose.
- (b) The Recipient agrees to waive any warranty or rights it may have to the full extent permitted under the law if the Recipient or its customers or associates do not use the Supply Products for the Supply Product Purpose.

3. Supply Scope

3.1 Products Substitution

The Supplier may at any time prior to Delivery Acceptance in relation to any Supply Products following notification to the Recipient:

- (a) **(substitution)**: substitute any component or component part; or
- (b) **(modification)**: perform any Products Modification, which the Supplier reasonably decides will not;
- (c) **(capacity)**: adversely affect performance or capacity;
- (d) **(configuration)**: materially alter configuration; or
- (e) **(prejudice)**: materially affect any liability of the Supplier, or have any prejudicial effect on any right of the Recipient, under this Agreement.

3.2 Range of Supply Products

- (a) The Recipient acknowledges and agrees for the Supplier to add, change or remove from its range of Supply Products on the Supplier's website, brochure, or any marketing materials, at any time and without notice to the Recipient.
- (b) The Recipient agrees to hold harmless the Supplier from any loss to the Recipient as a result of the Supplier adding, changing or removing its range of Supply Products.

4. Supply Payment

4.1 Recipient Liability

The Recipient is liable to pay to the Supplier:

- (a) **(supply products)**: the Supply Price for any Supply Products.

4.2 Supply Price

- (a) **(Modification)** The Supplier reserves the right to increase the Supply Price at any time before the Supply Delivery to include any new or increased tax, duty or other import levy or variation in costs because of new law or regulations.
- (b) **(Completion)**: The Recipient must following the Delivery Acceptance of any Supply Products pay to the Supplier the Supply Price by the Payment Date.

4.3 Payment Procedure

- (a) **(Payment Invoice)**: The Supplier must deliver to the Recipient a Payment Invoice for any Supply Payment due by the Recipient to the Supplier under this Agreement.
- (b) **(Claim details)**: Any Payment Invoice must specify:
 - (i) that it is a GST tax invoice;
 - (ii) the ABN of the Supplier;
 - (iii) the Supply Product for which the Supply Payment is due;
 - (iv) the Supply Dates for those Supply Products;
 - (v) the aggregate total amount of the claim for the Supply Payment;
 - (vi) any other amount then due and payable to the Supplier; and
 - (vii) the GST amount comprised in the total amount of the Payment Invoice.
- (c) **(Tax invoice compliance)**: The Payment Invoice must comply with any GST law relating to the form or content of GST tax invoices, in addition to any other requirement of this provision.

4.4 Recipient Payment

- (a) **(Payment)**: Subject to an alternative Payment arrangement agreed in writing between the Supplier and the Recipient, the Recipient must pay any Supply Payment by the Payment Date.
- (b) **(Interest)**: The Recipient must pay interest on any Supply Payment or other amount that is not paid on or prior to the due Payment Date for that Supply Payment at the Interest Rate, to accrue from day to day from the due date down to and including the actual date of payment in full. The Supplier has the discretion to waive the Interest accrued.
- (c) **(Method)**: The Recipient must pay the Supply Payment to the Supplier in cash or cleared funds. To avoid doubt, the Recipient's obligation to pay the Supply Payment is not met until the Supplier receives the cash or cleared funds for the full Supply Payment.

4.5 Disputed Claims

- (a) **(Dispute application):** This provision applies to any Payment Invoice where the Recipient disputes the total or any partial amount of the Supply Payment by the Supplier claimed in that Payment Invoice or claim or assertion of any defect or faulty Supply Product (**disputed claim**).
- (b) **(Dispute notification):** The Recipient must in relation to any disputed claim:
 - (i) notify the Supplier of the disputed claim within 14 days following receipt by the Recipient of that Payment Invoice;
 - (ii) specify in reasonably sufficient detail the reasons of the Recipient for the disputed claim, including photographic evidence of the defect or faultiness and condition of the Supply Product upon delivery and proof of purchase; and
 - (iii) pay any undisputed amount of the Payment Invoice in compliance with this provision.
- (c) **(Consultation):** Each party must promptly consult and cooperate with the other party to resolve any disputed claim.
- (d) **(Dispute resolution process):** Clause 17 applies in the event that the parties fail to resolve the disputed claim.
- (e) **(Interest):** The Recipient must pay interest under clause 4.4 as from the due Payment Date in relation to the amount of any disputed claim, in the event that that amount is resolved or decided under this Agreement to have been properly payable by the Recipient to the Supplier as at that Payment Date.
- (f) **(Replacement):** The Supplier at its full discretion can decide to replace the Supply Product with a similar or same Supply Product or apply a credit for the Recipient or a refund to the Recipient.
- (g) **(Returns):** The Supplier shall not accept the return of any Supply Product unless the return of the Supply Product has been consented in writing by the Supplier. Any cost for return of the Supply Product consented by the Supplier, must be paid by the Recipient. The Supply Product permitted to be returned, must be delivered to an address nominated by the Supplier with its original packaging.

4.6 GST

- (a) **(Supplier liability):** Any GST liability resulting from or in relation to any supply of any Supply Products by the Supplier, or any Supply Payment by the Recipient, is the sole liability of the Supplier, to the exclusion of the Recipient.
- (b) **(Legal compliance):** Each party must at any time comply with any GST Law in performing this Agreement.

- (c) **(Tax invoices):** The Supplier must, upon request by the Recipient, issue to the Recipient tax invoices in proper form and in compliance with any GST Law connected with any supply of any right and property by the Supplier under this Agreement.

5. Supply Delivery

5.1 Delivery Performance

- (a) Subject to any changes in writing between the parties, the Supplier shall supply the Supply Products and the Supply Documentation to the Performance Site.
- (b) Supply Delivery is completed when the Supply Product is delivered at Performance Site between 9am to 5pm on a Business Day.
- (c) The Recipient shall hold harmless the Supplier of any and all liability for any loss, damage or delay as a result of late or non-delivery of the Supply Products.
- (d) The Supplier can deliver the Supply Products in any number of instalments or parts to the Performance Site.

5.2 Delivery Costs

The Recipient must pay any costs, charges, fees and tax for the delivery of the Supply Product.

6. Supply Risk

6.1 Products Risk

Any Supply Products supplied by the Supplier under this Agreement is at the risk of the Recipient upon removal from any premises of any Supplier Agent for the purpose of Products Delivery by the Supplier to the Performance Site.

6.2 Delivery Risk

The Recipient has sole liability for any loss caused by any carrier or other agent engaged by any Supplier Agent or Recipient Agent for the purpose of Products Delivery to the Performance Site.

6.3 Products Insurance

The Recipient must at any time during the continuance of this Agreement in relation to any Retained Products following Delivery Acceptance of that Retained Products and in compliance with any Supplier Direction:

- (a) **(insurances):** procure in compliance with any Supplier Direction in the name of the Recipient and the Supplier:
 - (i) insurance against all risks of loss or damage due to any cause of any Retained Products of an insurable nature to its full reinstatement value or a lesser amount approved by the Supplier; and

- (ii) public risk, workers' compensation, product liability and any other insurance reasonably requested by the Supplier in relation to the Retained Products;
- (b) (**premium payments**): pay any cost necessary for the protection of any insurance;
- (c) (**insurers**): procure each insurance with an independent, reputable and solvent insurer approved by the Supplier;
- (d) (**information**): provide to the Supplier upon request any certificate of currency and upon request any other specific information reasonably requested by the Supplier in relation to any insurance;
- (e) (**protection**): not perform or permit any action which may cause any prejudicial effect to any insurance or potential claim under any insurance;
- (f) (**collection**): perform any action and provide any document, evidence and information necessary to enable the Supplier to recover any moneys due at any time under any insurance;
- (g) (**notification**): notify the Supplier of any fact giving rise to any claim under any insurance, and any material amendment to any insurance, immediately following notice of that fact or amendment by the Recipient;
- (h) (**validity**): not perform or permit any action which may cause the termination of, or a material change or reduction in, any insurance without the prior written consent of the Supplier;
- (i) (**rectification**): permit the Supplier without liability to procure any insurance at the full cost of the Recipient in the event of any default by the Recipient under this provision or the invalidity of any insurance; and
- (j) (**separate cover**): promptly upon request by the Supplier complete, or provide relevant information for the completion of, any proposal for separate or additional insurance that the Supplier decides to procure.

6.4 Insurance Contents

The Recipient must, to the extent reasonably and commercially practicable, procure that any insurance effected under this Agreement contains provisions reasonably satisfactory to the Supplier, including provisions that:

- (a) (**loss payee**): the Supplier is named as loss payee;
- (b) (**deductibles**): the amount of any excess or deductible payable by the insured in relation to any claim does not exceed the customary amount for any insurance of a similar nature or any amount specified in any Supplier Direction;
- (c) (**set-off waiver**): the insurer waives any set-off as against the Supplier;

- (d) **(premium waiver)**: the insurer waives any claim for insurance cost against the Supplier;
- (e) **(termination restriction)**: the insurer must not terminate the insurance because any insurance cost remains unpaid, unless the insurer has given prior written notice of not less than 15 days to the Supplier and the cost has not been paid by any person prior to the expiry of that notice period; and
- (f) **(invalidation restriction)**: the insurer must not refuse or reduce a claim or invalidate the insurance in relation to the interest of the Supplier by reason of any default by any other person under or relating to the insurance.

6.5 Insurance Proceeds

The Recipient must apply any insurance proceeds received in relation to any Retained Products which has been destroyed, lost or damaged to the extent necessary in the reinstatement of the Retained Products, except that:

- (a) **(excess proceeds)**: any proceeds received in excess of the cost of reinstatement, or where reinstatement is impossible or impractical, must be paid to the Supplier to be applied to that extent in payment of the unpaid balance of the Supply Price; and

6.6 Force Majeure

- (a) **(Liability exclusion)**: The Supplier is not liable to the Recipient for any loss incurred as a direct result of the Supplier failing or being prevented, hindered or delayed in the performance of its liability under this Agreement by reason of a Force Majeure Event.
- (b) **(Notification)**: If the Supplier is affected by a Force Majeure Event, it must as soon as practicable notify the Recipient in writing of any anticipated delay due to that Force Majeure Event and use all reasonable efforts to perform its liability under this Agreement.
- (c) **(Termination)**: The Supplier may terminate this Agreement immediately on providing written notice to the Recipient, if the delay due to the Force Majeure Event continues for a period in excess of 30 days from the date of notification.

7. Supply Variation

7.1 Performance Variation

- (a) **(Performance difficulty)**: The Recipient is liable to pay to the Supplier, as an Extra Supply, any cost incurred by the Supplier resulting from:
 - (i) **(supply delay)**: any delay in delivery of any Supply Products for any reason of any nature or description, excluding any default by the Supplier under this Agreement.

- (ii) **(supply change)**: any change in timing or complexity, or any fact affecting performance, of any Supply Products by the Supplier, which could not be reasonably anticipated or associated by the Supplier in relation to or with the performance or supply of any goods similar to that Supply Products; or
 - (iii) **(delivery change)**: any change in performance of Products Delivery requested by the Recipient and agreed by the Supplier requiring performance at a site different from any specified Performance Site or at a time prior or subsequent to the Delivery Period.
- (b) **(Payment increase)**: The Supplier may increase the Supply Payment for any Extra Supply under this provision by an amount calculated in compliance with this Agreement.

7.2 Variation

- (a) **(Variation request)**: Any party may at any time during the Supply Period by written notice propose to the other party any variation to the Supply Products or Supply Specification.
- (b) **(Variation details)**: The party proposing any variation must specify details of the variation in the variation notice.
- (c) **(Supply adjustments)**: The Supplier shall within a reasonable time notify the Recipient of:
 - (i) any increase in the Supply Payment;
 - (ii) delay in delivery of any Supply Products estimated by the Supplier in, or in response to, any variation notice.
- (d) **(Variation response)**: The party receiving any variation notice must within a reasonable period notify the proposing party that the recipient party approves, rejects or requires any variation to or additional information or explanation relative to any proposed variation.
- (e) **(Consultation)**: Each party must reasonably consult with and cooperate with the other party to resolve and adopt any variation proposal by mutual agreement.
- (f) **(Variation document)**: Any variation agreed under this provision must be effected by a variation document created and executed by the parties.
- (g) **(Variation failure)**: Each party must continue to perform this Agreement in compliance with its then current provisions, in the event of any failure by the parties to agree to any variation proposal or variation document.

7.3 Products Modification

- (a) **(Recipient liability)**: The Recipient has the sole liability for any cost resulting from or connected with any Products Modification or the investigation or testing of any proposed Products Modification.
- (b) **(Supplier cost)**: The Recipient is liable to the Supplier, as an Extra Supply, for any cost incurred by the Supplier in performing any Products Modification requested by the Recipient.
- (c) **(Recipient indemnity)**: The Recipient must indemnify the Supplier at any time against any loss incurred by the Supplier resulting from any Products Modification for any reason, including any infringement of any Intellectual Property of any third person.
- (d) **(Title retention)**: The Supplier at any time retains the full, absolute and entire legal right, title and interest to or in any Modified Products, comprising Retained Products, whether effected by a Products Modification in compliance with this Agreement or otherwise.
- (e) **(Recipient assurance)**: The Recipient must at any time upon request by the Supplier execute any document and perform any action necessary or desirable to transfer to the Supplier any Intellectual Property in any Products Modification.

8. Representations

8.1 General Representations

The Recipient represents and warrants to the Supplier that as at the date of this Agreement:

- (a) **(particulars of Recipient)**: the Recipient has completed and provided to the Supplier all the required details of the Recipient in part A, B and C of schedule 1 of this Agreement;
- (b) **(legal compliance)**: the execution or performance of this Agreement by the Recipient does not contravene any provision of:
 - (i) the constitution or trust deed of the Recipient;
 - (ii) any agreement, deed or document;
 - (iii) any law; or
 - (iv) any governmental consent relating to the Recipient or its assets; and
- (c) **(corporate compliance)**: the Recipient has full power, and has procured all approvals, for the execution and performance by that party of this Agreement, which has been executed in compliance with its constitution and any applicable law.
- (d) **(guarantee)**: if the Recipient is a body corporate or trust or upon request by the Supplier, all directors or trustees of the Recipient agree to guarantee the performance

of the Recipient under this Agreement in accordance with the terms and conditions in part D of schedule 1.

- (e) **(warranty)**: to the full extent permitted by law, releases the Supplier of any implied or express warranties. To the extent permitted by law, the Supplier provides no warranty to the Recipient for the Supply Products.

9. Supply Liability Limitation

9.1 Products Use Acknowledgment

The Recipient expressly agrees with the Supplier that at any time during the Supply Period:

- (a) **(use responsibility)**: the Recipient must have sole and exclusive liability for the use, supervision, management, control and security of any Retained Products; and
- (b) **(information)**: the Supply Documentation contains sufficient information for the adequate use by the Recipient of the Supply Products, except where the Supplier has notified the Recipient of any fact, defect or variation decided by the Supplier to be necessary for the proper use of the Supply Products.

9.2 Defect Disclaimer

The Supplier is not liable at any time under or in relation to this Agreement for any defect in any Supply Products resulting from any action or omission by the Recipient or any third person, including any failure to maintain the operating environment specified in, or use of that Supply Products in compliance with, the Supply Specification or Supply Documentation.

9.3 Representation Exclusion

The Recipient expressly agrees with the Supplier that for the purposes of the creation of this Agreement:

- (a) **(non-reliance)**: the Recipient has not relied upon any representation or warranty by the Supplier; and
- (b) **(independent assessment)**: the Recipient has made its own independent assessment of any information connected with or relevant to this Agreement or the performance of the Supply Products and relied exclusively upon that assessment.

9.4 Loss Disclaimer

The Supplier is not liable at any time during or subsequent to the Supply Period for any loss incurred by the Recipient resulting from any supply by the Supplier of any Supply Products or any failure by the Supplier to perform any liability of the Supplier under this Agreement.

9.5 Implied Terms Exclusion

Any agreement that would be implied into this Agreement by any law must be excluded, to the fullest extent permitted by law.

9.6 Statutory Terms

This Agreement must contain any agreement as an implied provision to the extent that its implication is compelled by any law, despite anything in this provision to contrary effect.

9.7 Statutory Liability Limitation

The liability of the Supplier for any default under any implied agreement compelled by any law is limited in the event of any default, in the decision of the Supplier:

- (a) **(products)**: relating to any Supply Products:
 - (i) where there has been a major failure for the purposes of the *Australian Consumer Law*, a replacement or refund and compensation for any other reasonably foreseeable loss or damage; or
 - (ii) where any supply Products fails to be of acceptable quality but not a major failure for the purposes of the *Australian Consumer Law*, repair or replacement of the relevant Supply Products.

10. Recipient Undertakings

10.1 Positive Undertakings

The Recipient must at any time during the continuance of this Agreement in connection with the Supply Products:

- (a) **(operating procedures)**: use any Retained Products only in compliance with the Supply Documentation and any normal operating procedures as notified by the Supplier;
- (b) **(possession)**: possess and use any Retained Products to the exclusion of any other person;
- (c) **(location)**: use any Retained Products only at the Performance Site;
- (d) **(protection)**: protect any Retained Products from misuse, damage, destruction, loss or unauthorised use of any nature or description;
- (e) **(inspection)**: permit the Supplier access to the Performance Site or other premises of the Recipient during any usual business hours and inspect any Retained Products;
- (f) **(directions)**: comply with any Supplier Direction in relation to:
 - (i) the delivery of any Supply Products to or at the Performance Site;
 - (ii) the use of any Retained Products in compliance with, or the performance of any liability of the Recipient under, this Agreement; and

- (iii) the security of any Intellectual Property of the Supplier connected with the Supply Products; and
- (g) **(default rectification)**: permit any Supplier Agent to perform any action necessary or desirable to rectify any default under this Agreement by the Recipient to the satisfaction of the Supplier, without liability or prejudice to any other right of the Supplier, and at the full cost of the Recipient in all respects.

10.2 Negative Undertakings

The Recipient must not at any time during or subsequent to the Supply Period, directly or indirectly, without the prior written consent of the Supplier:

- (a) **(confidential information)**: disclose or use, or attempt to disclose or use, any Confidential Information or Supplier Information:
 - (i) known to any Recipient Agent by reason of the engagement of the Supplier under this Agreement or otherwise, except in compliance with this Agreement; or
 - (ii) to the actual or potential detriment of the Supplier,subject to clause 12;
- (b) **(intellectual property)**: use any Intellectual Property of the Supplier, including any use for the purpose of any communication to any client, customer, supplier or agent of the Recipient;
- (c) **(financial liabilities)**: borrow or raise any credit or create any other liability on behalf of the Supplier, except under a written request or written authority by the Supplier;
- (d) **(agency holding out)**: represent or hold out to any person in any manner that any Recipient Agent is an employee, agent, joint venturer or partner of the Supplier;
- (e) **(document copies)**: copy or reproduce any Supply Documentation, except in compliance with this Agreement;
- (f) **(product utilisation)**: manufacture any product or use any process based on or derived from any Supplier Information;
- (g) **(customer contact)**: disclose to any person, use or contact in connection with any Supplier Information to seek, solicit or canvass business from, or interfere in any manner with, any customer of the Supplier, being a current customer or a customer at any time during the period of 2 years prior to the date of this Agreement, except in relation to any existing customer of the Recipient;
- (h) **(employee recruitment)**: engage, interview or contact to solicit engagement of, or entice away from the Supplier, any Supplier Agent at any time during the period of 12 months following termination of this Agreement;

- (i) **(supplier contact)**: disclose to any person, use or contact in connection with any Supplier Information, to perform, or attempt to perform, any business activity with, or interfere or attempt to interfere with any business activity of the Supplier with, any current or former supplier, creditor or lessor of the Supplier, except in relation to any existing business activity with any existing customer of the Recipient;
- (j) **(transfers)**: transfer any Retained Products;
- (k) **(security interest)**: create any Security Interest affecting or relating to any Retained Products;
- (l) **business capacity**): perform any action restricted under this provision in any manner or by any means:
 - (i) in any business capacity;
 - (ii) personally or by or through any other person;
 - (iii) on account of the Recipient or any other person; or
 - (iv) verbally, directly or by telephone, electronically or in writing by any letter, circular, advertisement or document; or
- (m) **(procurement)**: procure, counsel or, to the extent of the power and control of the Recipient, permit any person to perform, or attempt to perform, any action restricted under this provision.

11. Intellectual Property

11.1 Recipient Assets

All the legal right, title and interest to or in any Intellectual Property comprised in the Supplier Information held by the Recipient at any time during this Agreement is at any time retained by and remains vested in the sole, exclusive, absolute and entire beneficial ownership of the Supplier.

11.2 Future Assets

All the legal right, title and interest to or in any Intellectual Property comprised in any asset or Confidential Information:

- (a) **(recipient source)**: created, developed or derived from the Supplier Information; or
- (b) **(supplier creation)**: originally or exclusively created, developed, written, conceived or implemented for the Recipient or during or resulting from performance of the Supply Products under this Agreement,

at any time by any Recipient Agent, whether in compliance with or in default under this Agreement, is and becomes vested in the sole, exclusive, absolute and entire beneficial ownership of the Supplier.

11.3 Recipient Assurance

The Recipient must in relation to each Recipient Agent at any time execute any document and perform any action necessary or desirable to transfer any Intellectual Property specified in clause 11.2 to the Supplier.

12. Confidentiality

12.1 Confidentiality Liability

The Recipient upon receiving Confidential Information during the Supply Period, and after termination or expiration of this Agreement, for any reason must keep that Confidential Information confidential and must:

- (a) **(disclose restriction)**: not publish or disclose the Confidential Information to any person except with the prior written consent of the Supplier or as permitted under this provision;
- (b) **(performance use)**: not use the Confidential Information for any purpose, except where strictly necessary for the performance of its liability under this Agreement; and
- (c) **(legal compliance)**: comply with all applicable privacy and consumer laws.

12.2 Permitted Exemptions

This provision does not apply to any Confidential Information which:

- (a) **(public information)**: at the date of this Agreement is in, or at any time subsequent comes into the public domain, except through default under this Agreement by the recipient party or any agent of the recipient party;
- (b) **(prior knowledge)**: can be shown by the recipient party to the satisfaction of the disclosing party to have been known by the recipient party before disclosure by the disclosing party to the recipient party;
- (c) **(third party access)**: subsequently comes lawfully into the possession of the recipient party from a third party;
- (d) **(legal process)**: is required by compulsion of law to be disclosed to a third party; or
- (e) **(future assets)**: in relation to the Supplier, is subject to clause 11.2 or clause 11.3.

13. Privacy and Credit Information

13.1 Personal, credit and credit eligibility information

- (a) The Recipient agrees for the Supplier to collect and hold Personal Information, Credit Information and credit eligibility information about the Recipient and the Guarantor and the following individuals if the Recipient is a:

- (i) Body corporate – the directors and shareholders of the body corporate;
 - (ii) Partnership – the partners;
 - (iii) Trust – the trustee and beneficiaries; or
 - (iv) Sole trader – the sole trader.
- (b) The Recipient agrees for the Supplier to collect this information directly from information provided by the Recipient, particulars of the Recipient, from third parties such as credit reporting bodies and publicly available information. This includes the Recipient's credit application history, repayment history, default history, details of any previous business relationships, any court action (including bankruptcy proceedings) relating to any credit provided to or applied for by the Recipient and any information typically included in reports prepared by credit reporting bodies.
- (c) The Recipient agrees for the Supplier to collect the information under this clause 13 to assess whether to supply Product Supply to the Recipient, provide a credit account to the Recipient, in the ongoing management of the Recipient's account with the Supplier and as permitted or required by law.
- (d) From time to time, the Supplier may send direct marketing materials or communications to the Recipient. If the Recipient do not wish to receive these communications, the Recipient can notify the Supplier.
- (e) The Recipient agrees for the Supplier to disclose Personal Information and Credit Information of the Recipient to other related companies of the Supplier. The Supplier may also disclose the Recipient's information to credit reporting bodies, for the purpose of ensuring that Credit Information held by those organisations is up-to-date and so that they can assess the Recipient's credit worthiness. The Supplier will only disclose the Recipient's information in accordance with the *Privacy Act 1988* and the Privacy (Credit Reporting) Code 2014.
- (f) The Supplier maintains Personal Information in accordance with its privacy policy on the Supplier's website and will only disclose Personal Information to third parties without the consent of the Recipient if the disclosure is:
- (i) necessary to protect or enforce the Supplier's legal rights or interests or to defend any claims;
 - (ii) necessary to prevent or lessen a serious threat to a person's health or safety;
 - (iii) required or authorised by law; or
 - (iv) permitted by another exception in the *Privacy Act 1988*.

14. Termination

14.1 Voluntary Termination

Any party may terminate this Agreement at any time by written notice of not less than 1 month to the other party to that effect.

14.2 Recipient Default Termination

The Supplier may immediately terminate this Agreement at any time prior or subsequent to the Supply Termination Date by written notice to the Recipient, effective immediately or upon the date specified in the notice upon the occurrence of any default by, or fact relating to, the Recipient, comprising:

- (a) **(performance default)**: any default under this Agreement resulting from:
 - (i) destruction, transfer or loss of possession of the Retained Products by the Recipient for any reason;
 - (ii) failure to comply with any Supplier Direction within a reasonable period; or
 - (iii) failure to perform any provision of, or liability under, this Agreement, except for a rectifiable default, which is rectified within 30 days following written notice from the Supplier requiring rectification;
- (b) **(attachment)**: the fact of any attachment against any asset of the Recipient;
- (c) **(security enforcement)**: the enforceability of any Security Interest over any asset of the Recipient securing payment for any amount subsequent to the occurrence of any default event under that Security Interest;
- (d) **(receivership)**: the appointment of any receiver, manager or receiver and manager over, or possession taken by any holder of any Security Interest over, any asset of the Recipient;
- (e) **(insolvency)**: cessation of payment generally by the Recipient or the inability of the Recipient, or the Supplier reasonably deciding that the Recipient is unable, to pay all its debts as and when they become due and payable;
- (f) **(administration)**: the appointment of any administrator of the Recipient;
- (g) **(liquidation)**: any Legal Action, not being in the decision of the Supplier a disputed action, being commenced, judicial order made, resolution passed or proposal initiated for the Liquidation of the Recipient; or
- (h) **(business cessation)**: the cessation or proposal for cessation of business generally by the Recipient.

14.3 Supplier Default Termination

The Recipient may immediately terminate this Agreement at any time prior or subsequent to the Supply Termination Date by written notice to the Supplier, effective immediately or upon the date specified in the notice, upon the occurrence relative to the Supplier of:

- (a) **(default)**: any material default under this Agreement, except for a rectifiable default which is rectified within 30 days following written notice from the Recipient requiring rectification; or
- (b) **(liquidation)**: the fact of any Legal Action or other action proposing or initiating Liquidation.

14.4 Notice Effect

This Agreement terminates upon expiry of the notice period, or immediately, as specified in any termination notice given by any party under, and in compliance with, this provision.

14.5 Termination Effect

Termination of this Agreement releases any party from any further performance of any liability under this Agreement subsequent to termination but does not:

- (a) **(continuing liability)**: affect any provision of this Agreement expressed to operate or have effect subsequent to termination; or
- (b) **(accrued rights)**: have any prejudicial effect on any accrued right of any party in relation to any default under this Agreement by the other party occurring prior to termination.

14.6 Supplier Remedies

- (a) **(Accrued payments)**: The Supplier, following termination of this Agreement under this provision, retains the right to receive any unpaid Supply Payment which has accrued due on or prior to the termination date, in addition to any other right against the Recipient provided under this Agreement or by law.
- (b) **(Damages exclusion)**: The Supplier, to the fullest extent permitted by law, has no liability of any nature or description to the Recipient for any damages, compensation or additional payment, whether arising in contract or tort or under any legislation or otherwise, for any loss incurred by the Recipient resulting from any termination of this Agreement by the Supplier under this provision.
- (c) **(Specific relief)**: The Recipient acknowledges that monetary damages alone would not be a sufficient remedy for a default under clause 14.2, clause 15 or clause 16 and, in addition to any other legal remedy, the Supplier is entitled to any interim, interlocutory or permanent injunction to prevent default under, or compel specific performance of, that provision, without prejudice to any right of enforcement of any other provision.

15. Post-Termination Liability

The Recipient must upon termination of this Agreement, whether prior or subsequent to the expiry of the Supply Termination Date:

- (a) **(redelivery)**: promptly deliver to the Supplier in the manner and at the time as specified in any Supplier Direction all Retained Products and all copies of any Supply Documentation possessed by the Recipient; and
- (b) **(supplier access)**: grant to any Supplier Agent, or where necessary procure the grant to any Supplier Agent of, an irrevocable licence to have access to any business or other premises of the Recipient during usual business hours and take possession of any Retained Products and Supply Documentation and exercise any right of the Supplier under any Supply Contract Document.

16. INDEMNITIES

16.1 Recipient Indemnity

The Recipient must indemnify the Supplier Agent against any loss, including but not limited to legal fees, costs of rectifying damages, incurred by the Supplier Agent resulting from any default by the Recipient under or in connection with this Agreement or the performance of the Supply Products.

16.2 Intellectual Property Indemnity

- (a) **(Recipient default indemnity)**: The Recipient must indemnify the Supplier against any loss incurred by the Supplier, directly or indirectly, resulting from any default by the Recipient under this provision.

17. Dispute Resolution

17.1 Disputes

This provision applies to any dispute or difference (**dispute**) arising between the parties in relation to:

- (a) **(interpretation)**: this Agreement or its interpretation;
- (b) **(rights)**: any right or liability of any party under this Agreement;
- (c) **(faulty Supply Products)**: any faulty Supply Products; or
- (d) **(action)**: the performance of any action by any party under or arising out of this Agreement, whether prior or subsequent to its termination.

17.2 Dispute Negotiation

- (a) **(Arbitration restriction):** A party must not refer a dispute to arbitration under this Agreement, unless that party has complied with this provision.
- (b) **(Dispute notification):** A party claiming that a dispute has arisen must notify the other party specifying details of the dispute.
- (c) **(Negotiation):** Each party must refer a dispute to an Authorised Officer for consideration and use its best efforts to resolve the dispute through negotiation within 5 Business Days following the dispute notification or longer period agreed between the parties.
- (d) **(Referral):** Each party must refer the dispute to its chief executive officer, in the event that the Authorised Officers of the parties fail to resolve the dispute within the specified period.
- (e) **(Mediation):** Each party must following reference to its chief executive officer use its best efforts to resolve the dispute by agreement or through an agreed mediation procedure.
- (f) **(Process termination):** A party in compliance with this provision may terminate the dispute resolution process by notice to the other party at any time after 5 Business Days following reference of the dispute to its chief executive officer.
- (g) **(Restriction release):** A party is not required to comply with this provision in relation to any dispute where the other party is in default under this provision in relation to that dispute.

17.3 Arbitration

- (a) **(Submission):** Each party must submit any dispute which remains unresolved following the negotiation process specified in this provision to arbitration under the Rules for the Conduct of Commercial Arbitration of the Institute of Arbitrators of Australia applicable at the time of submission.
- (b) **(Legal representation):** Each party is entitled to legal representation at any arbitration.

17.4 Urgent Relief

A party may at any time apply to a court of competent jurisdiction for any equitable or other remedy for reasons or urgency, despite anything contained in this provision.

18. Costs

Each party must pay its own costs in relation to:

- (a) **(documentation):** the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and

- (b) **(performance)**: the performance of any action by that party in compliance with any liability arising, under this Agreement, or any agreement or document executed or effected under this Agreement,

unless this Agreement provides otherwise.

19. Duties

19.1 Payment

The Recipient must promptly within the initial applicable period prescribed by law pay any stamp duty or other Tax payable in relation to the execution, performance and registration of this Agreement, or any agreement or document executed or effected under this Agreement.

19.2 Indemnity

The Recipient must indemnify the Supplier against any loss incurred by the Supplier in relation to any stamp duty or other Tax specified in this provision, whether through default by the Recipient under this provision or otherwise.

20. Assignment

20.1 Supplier Assignment

The Supplier may at any time during the continuance of this Agreement in relation to the supply of the Supply Products, without the prior written consent of the Recipient:

- (a) **(rights)**: transfer, or create any Security Interest affecting or relating to, all or any part of this Agreement, or any right of the Supplier under this Agreement;
- (b) **(subcontracts)**: create any subcontract relating to the performance of all or any Supply Products; or
- (c) **(liabilities)**: novate or transfer this Agreement, or any liability of the Supplier under this Agreement,

to or with any Related Company or Associate Company of the Supplier or any purchaser of any business of the Supplier.

20.2 Recipient Assignment

The Recipient must not at any time transfer any right or liability under this Agreement without the prior written consent of the Supplier.

21. Notices

21.1 Form

Any notice must be in writing and signed by the sender or any solicitor acting for the sender or, if a corporate party, an Authorised Officer of the sender or under the seal of the sender or any power of attorney.

21.2 Service Method

Any notice may be served by delivery in person or by post or facsimile transmission to the address or number of the recipient specified in this Agreement or most recently notified by the recipient to the sender.

21.3 Receipt

Any notice is effective for the purposes of this Agreement upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report prior to 4.00 pm local time on a Business Day in the place in or to which the written notice is delivered or sent or otherwise at 9.00 am on the next Business Day following delivery or receipt.

22. Governing Law and Jurisdiction

22.1 Governing Law

This Agreement is governed by and construed under the law in the State of Queensland.

22.2 Jurisdiction

Any Legal Action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of Queensland.

22.3 Submission

Each party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

23. General Provision

23.1 Amendments

Any amendment to this Agreement has no force or effect, unless effected by a document executed by the parties.

23.2 Third Parties

This Agreement confers rights only upon a person expressed to be a party, and not upon any other person.

23.3 Pre-Contractual Negotiation

This Agreement:

- (a) **(entire agreement)**: expresses and incorporates the entire agreement between the parties in relation to its subject-matter, and all the terms of that agreement; and
- (b) **(collateral agreement)**: supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject-matter or any term of that agreement.

23.4 Further Assurance

Each party must execute any document and perform any action necessary to give full effect to this Agreement, whether prior or subsequent to performance of this Agreement.

23.5 Continuing Performance

- (a) **(Merger exclusion)**: The provisions of this Agreement do not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.
- (b) **(Representation)**: Any representation in this Agreement survives the execution of any document for the purposes of, and continue subsequent to, performance of this Agreement.
- (c) **(Indemnity)**: Any indemnity agreed by any party under this Agreement:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Agreement or any other agreement; and
 - (ii) survives and continues subsequent to performance of this Agreement.

23.6 Waivers

Any failure or delay by any party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

23.7 Remedies

The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by law.

23.8 Severability

Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

23.9 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

Schedule 1

Part A

Particulars of Recipient

Name of Recipient (including Australian Business number)	
If Recipient is a company – Australian Company Number Director/s name/s	
Trading Name	
Business Address	
Postal Address	
Contact Number	
Fax	
Email	
Recipient is a subsidiary/Division of	
Estimated monthly purchases	

Part B

Recipient Credit Details

RECIPIENT CREDIT DETAILS

Mastercard / Visa Card	
Credit Card Number	
Expiration Date	
Cardholders Name	
Bank Name	
Branch	
Contact	
Phone	

Part C

Recipient Referees/trade references

Referee's business name (must be able to provide trade reference/business reference) Referee's contact number Referee's address	
Referee's business name (must be able to provide trade reference/business reference) Referee's contact number Referee's address	
Referee's business name (must be able to provide trade reference/business reference) Referee's contact number Referee's address	

PART D – GUARANTEE

1. Guarantee

The Guarantor unconditionally and irrevocably guarantees as a continuing security to the Supplier payment by the Recipient of all moneys, liabilities, debts and obligations due or payable from or by the Recipient to the Supplier under or in connection with any present or future agreement, deed or document (**Supply Agreement**) created between the Recipient and the Supplier relating to the extension of credit or financial accommodation to the Recipient or any other person at the request of the Recipient (**Secured Moneys**), including moneys, liabilities, debts and obligations incurred or arising:

- (a) (**liability**): at any present or future time, whether actually or contingently;
- (b) (**default**): as a result of any breach of or default under the Supply Agreement; or
- (c) (**account**): by way of principal, interest, cost, charge, expense, disbursement, fee, tax, stamp or other or similar duty, indemnity, damages or monetary judicial order.

2. Secured Moneys

2.1 Demand Payment

The Guarantor must pay to the Supplier, upon demand by the Supplier at any present or future time, the amount of the Secured Moneys due from and payable by the Recipient to the Supplier at that time under, and in the manner and currency specified in, the Supply Agreement.

2.2 Costs

The Guarantor must at any present or future time indemnify the Supplier upon written demand for any cost, charge, expense, disbursement, fee, tax, including GST tax, or stamp or other or similar duty incurred by the Supplier at any time in connection with the Supply Agreement, this Guarantee or the Secured Moneys relating to:

- (a) (**security agreements**): preparation, negotiation, execution or performance, or any termination, amendment, consent, claim, demand or waiver;
- (b) (**security rights**): any exercise or enforcement of any right or power conferred on the Supplier;
- (c) (**credit increases**): any advance or extension of further, additional or increased credit or financial accommodation by the Supplier, or agreement by the Supplier to increase the amount secured; or
- (d) (**payments**): the receipt or payment of any moneys, including moneys paid by the Supplier by way of reimbursement to any third party.

2.3 Set-off exclusion

The Guarantor must make any payment required under this Guarantee without set-off, counterclaim or other deduction or withholding, except for the deduction or withholding of any tax compelled by law.

3. Indemnity

The Guarantor must as a separate and additional liability of the Guarantor as a principal debtor, and not as a surety, indemnify the Supplier against, and pay to the Supplier upon written demand by the Supplier an amount equal to, all Secured Moneys that are or may become invalid, unenforceable, illegal or irrecoverable for any reason or under any circumstances as a liability to the Supplier by the Guarantor as a surety, despite any other provision of this Guarantee.

4. Guarantee Protection

This Guarantee, and the liability of the Guarantor under this Guarantee, are not affected at any time by:

- (a) **(waiver)**: the granting to any person by the Supplier of any waiver;
- (b) **(agreements)**: any agreement, deed or document created with, or action or omission performed, representation or warranty made or non-disclosure of any fact or information by, the Supplier or any person;
- (c) **(secured moneys)**: any increase or variation in the amount of the Secured Moneys occurring for any reason;
- (d) **(document amendment)**: any amendment to or transfer, release or termination of any agreement, deed or document or any right, power or liability of any person under any agreement, whether for or without consideration;
- (e) **(enforcement decisions)**: any exercise or enforcement, or any failure or invalidity in the exercise or enforcement, by the Supplier of any right or power conferred on the Supplier under any agreement, deed or document or by law;
- (f) **(invalidity)**: any actual or potential invalidity, unenforceability, illegality or not coverability of any agreement, deed or document or consent or any payment made or due to the Supplier under any agreement for any reason;
- (g) **(incapacity)**: any incapacity or absence of power or authorisation of, or other fact relating to, any person in connection with the execution of any agreement, deed or document or otherwise, including any change in the constitution or membership of any person; or
- (h) **(residual)**: any other breach, default, waiver or fact which, except for this provision, might legally operate:
 - (i) to release or discharge or have any prejudicial effect on; or

- (ii) in any manner to release or discharge the Guarantor from performance of, or limit or provide a defence to any legal action to enforce,

this Guarantee, or any liability of the Guarantor under or in connection with this Guarantee.

5. Termination

The Guarantor is not entitled to terminate or limit this Guarantee, or any liability of the Guarantor under this Guarantee, until the Secured Moneys have been paid in full.

6. Governing law

This Guarantee is governed by and construed under the law of the State of Queensland.

7. General provision

7.1 Continuing security

This Guarantee is a continuing security and is not wholly or partially discharged by the payment at any time of any Secured Moneys, settlement of account or other fact and applies to the balance of the Secured Moneys at any time until a final termination of this Guarantee by the Supplier.

7.2 Further assurance

The Guarantor must upon request by the Supplier at any time execute any document and perform any action necessary to give full effect to this Guarantee, whether prior or subsequent to performance of this Guarantee.

7.3 Waivers

Any failure or delay by the Supplier to exercise any right or power under this Guarantee does not operate as a waiver and the single or partial exercise of any right or power by the Supplier does not preclude any other or further exercise of that or any other right or power by the Supplier.

Executed as a deed.

Guarantor/s to Sign:

SIGNED, SEALED AND DELIVERED by)
_____ in the presence)
of:)
)
)

Witness signature
Full Name of witness:

Full Name:

SIGNED, SEALED AND DELIVERED by)
_____ in the presence)
of:)
)
)

Witness signature
Full Name of witness:

Full Name:

SIGNED, SEALED AND DELIVERED by)
_____ in the presence)
of:)
)
)

Witness signature
Full Name of witness:

Full Name:

EXECUTED as an agreement.

SUPPLIER:

EXECUTED by **MOTORCYCLE**)
SPECIALTIES (AUSTRALIA) PTY LTD)
ACN 106 329 702 pursuant to section 127)
of the *Corporations Act 2001* (Cth) in the)
presence of:)

Director/Secretary
Full Name:

Director
Full Name:

RECIPIENT IF COMPANY:

EXECUTED by _____)
_____)
pursuant to section 127 of the)
Corporations Act 2001 (Cth) in the)
presence of:)

Director/Secretary
Full Name:

Director
Full Name:

RECIPIENT IF SOLE TRADER:

SIGNED, SEALED AND DELIVERED by)
_____ in the presence)
of:)
)
)

Witness signature
Full Name of witness:

Full Name:

RECIPIENT IF TRUST:

EXECUTED by _____)
AS TRUSTEE FOR _____)
pursuant to section 127 of the)
Corporations Act 2001 (Cth) in the)
presence of:)

Director/Secretary
Full Name:

Director
Full Name: