EP Automotive Terms and Conditions of Trade

Important Notice

This is a legal document that sets out the terms and conditions under which EP Automotive Pty Ltd ACN: 673 197 174 as trustee for the Satalic Operating Trust ABN: 38 326 847 626 trading as EP Automotive supplies automotive repairs, maintenance, diagnostics, parts, and related services to customers.

Customers should read these Terms carefully before authorising any work. These Terms are intended to govern all dealings between EP Automotive and the Customer. To the maximum extent permitted by law, EP Automotive limits its liability in relation to the supply of Goods and Services, including in relation to customer-supplied components where accepted at EP Automotive's discretion. Where customer-supplied components are fitted, the Customer indemnifies EP Automotive against any loss, damage, liability, or third-party claim arising from or connected with those components.

Storage charges of $25.00 plus GST per day may apply where a completed vehicle is not collected within 48 hours after notification that the vehicle is ready for collection, excluding days the workshop is closed. Storage fees may also apply where a vehicle remains onsite for more than 7 days after an estimate has been issued and the Customer has neither approved the repairs nor collected the vehicle.

EP Automotive may issue interim invoices where:

- the total estimated repair cost exceeds $1,000.00; or
- parts are required to be specially ordered from third-party suppliers.

A deposit of up to 50% may be required for repairs involving five or more labour hours or where the estimated repair value exceeds $1,000.00.

If the Customer cancels a booking without providing at least 24 hours' notice, or cancels an order involving specially ordered parts, EP Automotive reserves the right to retain any deposit paid and recover any losses or costs incurred.

The Terms

1. Definitions

1.1. In this document, the following terms have the following meanings:

Application has the meaning given in the Application being that the Application consists of Part 1 'Customer Information', Part 2 'Application Terms and Conditions', Part 3 'Privacy Policy and Credit Information Policy', Part 4 'Deed of Guarantee and Indemnity', and these Terms.

Australian Consumer Law means the Australian Consumer Law provided in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

Claim means any claims including actions, complaints, debts, demands, dues, proceedings, suits or other legal recourse (whether in contract or tort (including negligence), at law or in equity) and including any causes of action or rights to bring or make any such claim.

Consequential Loss includes (i) any loss of income, revenue, profit or business; (ii) any loss of good will or reputation; (iii) any loss of value of intellectual property; (iv) lost opportunity costs; (v) special or indirect loss or damage; (vi) legal costs and expenses.

Contract means the contract between the parties for the sale and purchase of the Goods and/or Services which consists of each Order placed by the Customer, these Terms and, if applicable, any Warranty and/or the Application.

Customer means the person or entity identified as the Customer in the Application and, if no Application is applicable, then the person or entity placing the Order or any person or entity who purchases the Goods and/or Service from the Supplier.

Customer Supplied Parts means any parts or products sourced and supplied by a Customer which the Supplier uses in providing the Services to that Customer including but not limited to engines, powertrains, transmissions and any of their component parts.

Customer's Terms means any terms and conditions provided by the Customer to the Supplier at any time or in any manner, including any printed terms and conditions on the Customer's Order, or terms and conditions other than this Contract purported by the Customer to apply to the Order.

Estimate means any written or verbal quote estimating the Services, labour costs, Goods and/or materials.

Goods means the vehicle products and/or components and/or accessories supplied or to be supplied by the Supplier.

Guarantor means a Guarantor as defined in the Trading Account Guarantee.

Invoice means any invoice for or relating to the Goods and/or Services.

Loss means any loss, damage, debt, deficiency, diminution in value, charge, cost, expense, fine, outgoing, penalty or other liability of any kind or character (including legal fees, other professional fees, debt recovery fees and expenses on a full indemnity basis) that a party pays, suffers or incurs or is liable for, including all amounts paid in settlement for any claim, complaint, demand, proceeding, litigation, action, or other legal recourse whether under statute, contract, tort or otherwise, but does not include Consequential Loss unless otherwise specified in these Terms.

Order means any offer by the Customer to purchase Goods and/or Services from the Supplier whether written or verbal (includes telephone and online orders).

Purchase Price means the amount listed on the Invoice for Goods and/or Services, as varied in accordance with clause 6.5, and, for the purpose of a security interest or purchase money security interest, includes any credit charges and/or interest payable.

Services means the services relating to vehicles supplied or to be supplied by the Supplier.

Special Buy-In Orders means Goods which are not stocked by the Supplier and require the Supplier to purchase these Goods from a third party.

Supplier means EP Automotive Pty Ltd ACN: 673 197 174, ABN: 38 326 847 626.

Terms means these terms and conditions.

Trading Account means the trading credit account granted to the Customer by the Supplier pursuant to the Application and the Terms.

Trading Account Guarantee means the deed of guarantee and indemnity set out in Part 5 'Deed of Guarantee and Indemnity' of the Application.

Warranty means the Supplier's warranty (if any).

1.2. In these Terms, unless the context otherwise requires:

1.2.1. a reference to writing includes post and email, including email and other communication established through the Supplier's website (if any);

1.2.2. the singular includes the plural and vice versa;

1.2.3. the meaning of general words is not limited by specific examples introduced by “include”, “includes”, “including”, “for example”, “in particular”, “such as” or similar expressions;

1.2.4. a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms;

1.2.5. a reference to a party to these Terms or any other document or arrangement includes that party’s executors, administrators, successors and permitted assigns;

1.2.6. where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and

1.2.7. headings are for ease of reference only and do not affect the meaning or interpretation of these Terms.

2. Commencement

2.1. These Terms commence on the earlier of the Customer signing the Application or these Terms, or the Customer receiving an Estimate or placing an Order, each of which constitute acceptance of these Terms by the Customer and apply to all transactions between the Customer and Supplier relating to the provision of Services. The Customer agrees that these Terms prevail over the Customer’s Terms.

3. Estimate

3.1. The Customer agrees that the labour costs, material and other costs, and any time frame provided in the Estimate is an estimate only. The Supplier may amend the details of the Estimate verbally or in writing and such amended details supersede prior details in the Estimate or dealings between the parties. The Estimate is valid for 21 days from its original issue and is subject to the availability of, and changes to the cost of, Goods and/or materials. Freight charges, consumables and workshop supplies may not be included in the Estimate and will be added to the final invoice where applicable.

4. Order

4.1. The Supplier may accept or reject any Order in its absolute discretion. An Order is accepted when the Customer receives written or verbal acceptance from the Supplier or receives delivery of the Goods and/or Services, whichever occurs first.

5. Customer Communications

5.1 The Customer agrees that EP Automotive may contact the Customer by telephone call, SMS, email, or other electronic communication for the purposes of:

(a) providing estimates, repair updates, approvals, invoices, payment reminders, booking confirmations, and collection notifications;

(b) discussing repairs, diagnostics, parts availability, or additional work required; and

(c) communicating information relevant to the Goods and Services supplied.

5.2.2 The Customer acknowledges and agrees that SMS and electronic communications may form part of the contractual communications between the parties.

5.2.3 The Customer is responsible for ensuring their contact details remain current and accurate.

6. Payment

6.1. The Customer must pay to the Supplier the Purchase Price listed on the Invoice on delivery of the Goods and/or Services, or if the Customer has a Trading Account, payment terms are strictly thirty (30) days from the date of the Invoice and payment is due and payable on that date.

6.2. If the Customer makes payment by electronic funds transfer at point of sale (Eftpos) or credit card, the Customer is liable to pay to the Supplier the surcharge of up to 2.0%.

6.3. Despite clause 6.1:

6.3.1. the Supplier may require a 50% deposit from the Customer on accepting an Order for Services which require 5 or more hours of labour, for Goods and Service with an estimate Purchase Price of $1,000 or more and/or as otherwise indicated by the Supplier (Deposit);

6.3.2. the Supplier may issue the Customer with an interim Invoice:

(a) for the payment of a Special Buy-In Order any time after the Order is placed by the Customer for payment in full for the Special Buy-In Order; and

(b) for Customers who do not hold a Trading Account, if the estimated total cost for Goods and/or Services exceeds $1,000 the Supplier may issue an interim Invoice to the Customer at any time after the Order is placed by the Customer for payment of up to half the estimated Purchase Price for immediate payment.

6.4. All representations made in the Invoice are made on the basis that errors and omissions are excepted.

6.5. The Supplier reserves the right to vary the Purchase Price and make an additional charge in the event of a variation to the Order for Goods and/or Services (including any Special Buy-In Order), including where the Supplier incurs further costs in the following circumstances:

6.5.1. the Customer providing inadequate, late or incorrect information or materials in relation to the vehicle and/or Customer Supplied Parts;

6.5.2. the Supplier agreeing to provide additional Goods not included in the Order or Estimate, including alterations to the Goods to be supplied or additional Goods due to the Customer's request for additional Services;

6.5.3. the Supplier agreeing to provide additional Services not included or specifically excluded in the Order or Estimate, including additional or altered Services or visits to or by the Customer with the Supplier; and

6.5.4. if the Customer cancels a Service or Good (with or without the Supplier's agreement), any Loss resulting from the cancellation that is incurred by the Supplier, and notice will be provided verbally or in writing by the Supplier within a reasonable time.

6.6. The Customer agrees that a discount on the Purchase Price is not available (for example, senior discount or defence discount), if the Customer makes payment of the Purchase Price using the supplier payment plan option, also including for example Afterpay.

6.7. Unless the Supplier otherwise notifies the Customer in writing, the price charged for the Goods and/or Services is exclusive of any goods and services tax, sales tax, excise, duty and/or any identified or new taxes that come into existence after the effective date of the Contract.

6.8. Where any goods and services tax, sales tax, excise, duty and/or any identified or new taxes apply to any supply made under the Contract, the Supplier may recover from the Customer an additional amount on account of those taxes and the Supplier will deliver to the Customer a compliant Invoice.

6.9. The Supplier does not accept cheques as payment for the Purchase Price unless otherwise agreed in writing.

6.10. Unless agreed in writing by the Supplier, the Customer must not withhold payment of the Purchase Price due to a dispute or any other query arising in respect of the Order, the Purchase Price or any other matter connected with the Contract.

6.11. The Supplier may, in its complete discretion, apply any payment received from the Customer to any amount owing by the Customer to the Supplier.

7. Failure to Pay, Storage and Lien

7.1. If an amount owing by the Customer remains unpaid for a period of 48 hours (excluding days the Supplier is not open) after the Supplier provides the final Invoice and advises the Customer the vehicle is ready for collection, the Supplier may charge the Customer $25.00 excluding GST per day (or part thereof) to store the Customer's vehicle until the amount has been paid in full and the vehicle is collected.

7.2. If a vehicle is onsite at the Supplier's workshop or premises and the Supplier provides an Estimate to the Customer, then within 7 days of the Supplier providing the Estimate to the Customer, the Customer must either approve the supply of Goods and/or Services in the Estimate or collect the vehicle and, if the Customer fails to do so, the Supplier may charge the Customer $25.00 excluding GST per day (or part thereof) to store the Customer's vehicle from the end of the 7 day period until the amount has been paid in full and the vehicle is collected.

7.3. If the Customer is in default for the failure to pay debts to the Supplier as and when they are due, the Customer must also pay on demand to the Supplier, interest on all overdue amounts owed by it to the Supplier at the rate equal to the interest rate set out in these Terms.

7.4. All costs and expenses associated with collecting overdue amounts (for example, where the collection of the debt is referred to a debt collector or a law firm, or in respect of legal proceedings), including (but not limited to) legal fees, interest, storage charges and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under these Terms.

7.5. In addition to any lien existing at common law, the Customer agrees the Supplier can exercise a lien on the Customer's vehicle until the Customer has paid all amounts owing by the Customer to the Supplier.

8. Uncollected Goods

8.1. The Customer acknowledges that it has read and understood the Supplier's sign in store which states: the Unclaimed Goods Act 1987 (SA) covers inspection, custody, storage, repair and other treatment of goods. Under this Act, uncollected goods may be sold six months after the date on which they were ready for collection.

9. Credit

9.1. This clause applies to Customers holding a Trading Account.

9.2. The Supplier may grant the Customer credit under a Trading Account in its sole discretion upon the terms of the Contract and on basis of information provided in the Application and such other documents and information as may be required by the Supplier.

9.3. The Customer acknowledges and agrees that the Contract applies to the Trading Account.

9.4. Until the Supplier grants the Customer credit under a Trading Account by notice in writing and, if applicable, the Supplier receives a Trading Account Guarantee, the Supplier will only supply Goods and/or Services to the Customer on the basis of cash in advance or on delivery of the Goods and/or Services.

9.5. The Customer acknowledges and agrees that the credit to be provided by the Supplier is to be applied wholly and predominantly for business purposes, or investment purposes other than investment in residential property (Credit Purpose) and the Customer agrees not to use the credit for a purpose other than the Credit Purpose.

9.6. The granting of credit does not oblige the Supplier to extend any particular amount of credit to the Customer.

9.7. Any credit granted may be revised by the Supplier if it is in the Supplier's legitimate business interests to revise the credit granted on providing seven (7) days written notice to the Customer of the change in credit limit taking effect. The Supplier reserves the right to suspend and/or terminate the Trading Account in writing upon any breach by the Customer of the Contract or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency as determined by the Supplier in its sole discretion.

9.8. If one or more Guarantor is deceased, becomes bankrupt or otherwise withdraws from being a Guarantor in accordance with the Trading Account Guarantee, then the Customer must promptly notify the Supplier and the Supplier in its absolute discretion may suspend and/or terminate the Trading Account in writing.

9.9. The Customer agrees that upon the termination of the Trading Account, any and all monies owing on the Trading Account shall become immediately due and payable.

9.10. The Customer must notify the Supplier in writing if there is any material change in the Customer's financial position and/or if the Customer is subject to any legal proceeding.

9.11. No later than 14 days before any change in ownership, change in the registered particulars, change in shareholding or directorship (including resignation), of the Customer (Change), the Customer must notify the Supplier in writing of the proposed change (Change Notice).

9.12. On receiving the Change Notice, the Supplier may do any one or more of the following:

9.12.1. accept the Change in writing, which may include conditions the Supplier reasonably considers to be in its legitimate business interests;

9.12.2. temporarily suspend the Trading Account to afford the Supplier an opportunity to consider if it is in its legitimate business interests to continue to provide the Trading Account in light of the Change; and/or

9.12.3. if the Supplier considers in its reasonable opinion that it is not in its legitimate business interests to continue to provide the credit under the Trading Account, and/or to provide Goods and/or Services under the Contract, the Supplier may terminate the Trading Account and/or the Contract in writing signed by the Supplier.

9.13. The Customer and the Guarantor(s) are liable for any Goods and/or Services supplied by the Supplier after a Change, regardless of whether a Change Notice has been provided to the Supplier, unless the Supplier has accepted the Change in writing in accordance with these Terms, and the Customer has complied with all of the Supplier's conditions.

10. Supply of Goods and Customer Supplied Parts

10.1. The Supplier supplies Goods in connection with the supply of the Services.

10.2. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Goods at specific times requested by the Customer during the term of the Contract.

10.3. The Supplier may agree to provide additional Goods not included or specifically excluded in an Order or Estimate, in this event, the Purchase Price may be varied in accordance with these Terms.

10.4. The Customer acknowledges and agrees that the Supplier may, in its absolute discretion, refuse to fit any goods supplied by the Customer including parts or products sourced and/or supplied by the Customer and used by the Supplier in providing Services.

10.5. If the Supplier agrees to fit the Customer Supplied Parts, the Customer warrants that any Customer Supplied Parts are free from any pre-existing defects or faults and are suitable for the supply of Services and the Customer acknowledges and agrees:

10.5.1. the Supplier is not the supplier of the Customer Supplied Part for the purpose of the Australian Consumer Law and if the Supplier offers a Warranty, then the Warranty does not apply to the Customer Supplied Parts;

10.5.2. fitment of the Customer Supplied Parts is conditional on the Customer entering into a separate deed regarding supply and fitment of Customer Supply Parts, unless the Supplier waives such condition in the Supplier's absolute discretion;

10.5.3. if the Customer Supplied Part is being delivered to the Supplier's premises, or needs to be returned to the supplier of the Customer Supplied Part, the Customer must arrange such delivery and is liable for all transport charges, insurance, damage to the Customer Supplied Part and damage to the Supplier's property in connection with such delivery; and

10.5.4. to the extent permitted by law the Customer indemnifies the Supplier from and against all existing and future Claims of whatsoever nature, wherever and however arising, known or unknown and by any third party which arises out of or in connection with the Customer Supplied Parts.

10.6. Except as required by law, the Supplier will be under no obligation to accept Goods returned for any reason.

10.7. Without limiting any rights that may be available under the Australian Consumer Law that are not lawfully excluded under these Terms, if the Customer is seeking to make a claim pursuant to a third party manufacturer warranty, the Good may be sent back to the manufacturer for inspection and the remedy in relation to that claim will depend on the decision of the third party manufacturer.

11. Provision of Services

11.1. Obligations and rights in relation to the cancellation of Services, are provided in clause 17.

11.2. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Customer during the term of the Contract.

11.3. Subject to otherwise complying with its obligations under the Contract, the Supplier shall exercise its independent discretion as to the most appropriate and effective manner of providing the Services and of satisfying the Customer's expectations of those Services.

11.4. The Customer agrees that the Supplier may, at any time, appoint or engage an agent to perform an obligation or right of the Supplier arising out of or pursuant to these Terms, an Estimate or Order.

11.5. The Supplier may agree to provide additional Services not included or specifically excluded in the Order or the Estimate, in this event, the Purchase Price may be varied in accordance with these Terms.

12. Default

12.1. The Customer will be in default if:

12.1.1. the Customer breaches the Contract;

12.1.2. payment for the Goods and/or Services has not been received by the Supplier in full by the due date for payment;

12.1.3. the Customer becomes insolvent or unable to pay the Customer's debts as and when they are due and payable;

12.1.4. the Customer, being an individual, commits an act of bankruptcy or becomes an insolvent under administration;

12.1.5. the Customer, being a body corporate, becomes an externally administered body corporate or any proceedings are filed or steps taken that may result in the Customer becoming an externally administered body corporate;

11.1.6. the Supplier forms the reasonable opinion that the Customer's credit worthiness or credit standing alters from that indicated in its application.

12.2. Without prejudice to any other rights of the Supplier, if the Customer defaults, the Supplier may do one or more of the following:

12.2.1. without notice to the Customer, make all money owing by the Customer to the Supplier, on the Trading Account or on any account whatsoever, immediately due and payable (including any costs incurred as a result of trying to recover the outstanding amount);

12.2.2. treat the whole of the Contract, any part of the Contract and/or any other contract with the Customer as repudiated and sue for breach of contract;

12.2.3. refuse to supply any further Goods and/or Services to the Customer;

12.2.4. without notice to Customer, commence taking steps to collect the overdue amount, including, but not limited to, debt collection action and any associated legal proceedings;

12.2.5. cancel all or any part of any Order that remains unfilled (and make all amounts owing, whether or not due for payment, immediately payable);

12.2.6. without notice to the Customer, vary any credit the Supplier has provided to the Customer under the Trading Account;

12.2.7. suspend or terminate the Trading Account by providing notice in writing; and/or

12.2.8. if the Customer is in default for the failure to pay debts as and when they are due and payable, charge interest on any money owing until payment at the rate of 10% per annum calculated daily.

13. Risk and Title

13.1. Legal and equitable title to the Goods will remain with the Supplier and will not pass to the Customer until such time as full payment in cleared funds is made to the Supplier for the Goods and for any and all monies owed by the Customer to the Supplier in respect of the Goods and related Services. Until title to such Goods passes, the Customer holds the Goods as bailee for the Supplier and that a fiduciary relationship exists between the Customer and the supplier in respect of those Goods.

13.2. Risk in the Goods passes to the Customer on the Customer making payment in accordance with these Terms or on the Customer collecting the Goods, whichever is the earlier.

14. Limitation of Liability

14.1. Any limitation of liability in this clause and/or in this Contract does not apply if it would restrict, modify or exclude the Customer's rights in a way that is not permitted under Australian Consumer Law or any other applicable law.

14.2. To the extent permitted by law and except as otherwise expressly provided in the Contract, all express and implied warranties, guarantees and conditions under statute or general law as to merchantable quality, description, quality, suitability or fitness of the Goods, Services or Customer Supplied Parts for any purpose or as to design, assembly, installation, materials or workmanship or otherwise is expressly excluded.

14.3. The Customer will ensure when placing Orders that there is sufficient information to enable the Supplier to execute the Order. To the extent permitted by law, the Supplier takes no responsibility if the Customer places an Order for incorrect Services, product type or quantity is ordered and/or if the specifications are wrong or inaccurate and the Customer will be liable for the expenses incurred by the Supplier for any work required to rectify and/or resupply the Order.

14.4. The Customer agrees that if it is aware (or should be aware) that the Goods and/or Services the subject of an Order are for a particular purpose, or are required to possess special characteristics, the Customer will clearly specify that purpose or those characteristics in any such Order. However, to the extent permitted by law:

14.4.1. the Customer is responsible for ensuring the Goods, Services or Customer Supplied Parts are fit for the Customer's intended purpose; and

14.4.2. the Customer acknowledges it is not relying on any representation by the Supplier or its representatives as to the suitability of the Goods, Services or Customer Supplied Parts for the purpose intended by the Customer and that the Customer is responsible for undertaking its own due diligence in respect of the Goods, Services or Customer Supplied Parts and their respective fitness for a particular purpose.

14.5. To the extent permitted by law, the Customer indemnifies the Supplier against any damages arising out of fitment of the Goods or Customer Supplied Parts which occurs due to the Customer's failure to undertake proper due diligence with respect to the suitability of the Goods or Customer Supplied Parts for the intended purpose.

14.6. To the extent permitted by law, for Goods and/or Services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability in relation to the sale of Goods and/or Services to the Customer is limited as follows:

14.6.1. the Suppliers liability for any Claim is limited at the Supplier's option to:

a) for Goods replacing the Goods with equivalent goods, repairing the Goods (or payment for the repair of goods) or providing a refund for the Goods;

b) for the Services providing a remedy to the Customer, which may include, re-supplying the Services or providing a refund for the Services;

14.6.2. the Supplier is not liable for any Loss to a person or property arising from or caused in any way by the Goods, Services or Customer Supplied Parts; and

14.6.3. the Supplier will not be liable for any Consequential Loss.

15. Warranty

15.1. The Customer acknowledges and accepts the terms and conditions of any applicable Warranty.

16. Personal Property Securities

16.1. Terms defined in the Personal Property Securities Act 2009 (Cth) (PPSA) have the same meaning when used in this clause.

16.2. The Customer acknowledges and agrees that under the PPSA:

16.2.1. the Contract constitutes a security agreement and each Order is incorporated into the Contract, which includes these Terms;

16.2.2. as security for payment of the Purchase Price of the Goods, the Customer grants the Supplier a security interest being a purchase money security interest in favour of the Supplier:

a) in all Goods supplied or to be supplied as specified in an Order or any Order; and

b) in any present or after acquired property representing the proceeds of sale of the Goods, including where the Customer uses the Goods, or allows the Goods to be used to manufacture or produce another product or in accession to other goods;

16.2.3. as security for the performance by the Customer of the obligations set out in the Contract the Customer grants the Supplier a security interest:

a) in all Goods supplied by the Supplier to the Customer from time to time as specified in an Order or any Order; and

b) in any present or after acquired property representing the proceeds of sale of the Goods, including where the Customer uses the Goods, or allows the Goods to be used to manufacture or produce another product or in accession to other goods;

16.2.4. the Supplier may register a financing statement on the Personal Property Securities Register, including, a financing statement that describes the Goods as ‘other goods’ (or a description the Supplier otherwise considers appropriate for the Goods), specifies the security interest as a purchase money security interest and specifies that the security interest is taken in all Goods and in any present or after acquired property representing the proceeds of sale of the Goods.

16.3. The Customer must provide information and do anything the Supplier reasonably requires to register, maintain and enforce the Supplier’s security interest.

16.4. The Customer indemnifies the Supplier and agrees to reimburse the Supplier on demand for costs incurred in respect of registering, maintaining and enforcing the Supplier’s security interest.

16.5. The Customer waives the requirement to be provided information under various provisions of the PPSA and agrees that as provided for in:

16.5.1. PPSA section 157 – the Customer waives its right to receive a verification statement from the Supplier; and

16.5.2. PPSA section 115 – the Customer waives its right to receive information, or has contracted out of receiving information, under the various provisions set out in clause 16.7 of these Terms.

16.6. To the extent permitted by PPSA section 275, for the purpose of confidentiality, the Supplier and the Customer agree that the Supplier and the Customer must not disclose the information referred to in section 275(1) unless otherwise agreed in writing between the Supplier and the Customer.

16.7. To the extent permitted under PPSA section 115, the Supplier and the Customer agree the following PPSA sections are contracted out of, section 95, section 96(b), section 118 (to the extent of providing notice), section 121(4), section 125, section 129(2), section 130 (to the extent that it requires the secured party to give a notice to the grantor), section 132(3)(d), section 132(4), section 135, 142 and 143;

16.8. The Customer irrevocably grants the Supplier, or an agent of the Supplier or person authorised by the Supplier, the right to enter upon the Customer’s property or premises, without notice or liability, to enforce its rights under the PPSA.

16.9. The Customer agrees that any rights of the Supplier under the Contract are in addition to the rights of the Supplier under the PPSA.

16.10. The Customer agrees not to allow a third party to obtain a security interest in the Goods or charge the Goods in anyway while title in the Goods remains with the Supplier without the Suppliers prior written consent.

17. Cancellation

17.1. The Supplier may in its absolute discretion cancel or postpone appointments in relation to Services (and any Goods in respect of the Services), if it is reasonable for the Supplier to do so or it is in the Supplier's legitimate business interests to cancel or postpone the appointment (for example, due to non-delivery of a required part, unavailability of a part or labour shortage) and, to the extent permitted by law, the Supplier will not be liable for Loss or Consequential Loss.

17.2. Unless expressly agreed to in writing by the Supplier:

17.2.3. an Order for Goods, including Goods that are Special Buy-In Orders in connection with Services, cannot be cancelled by the Customer; and

17.2.4. an Order for Services cannot be cancelled by the Customer unless 24 hours' notice is provided to the Supplier.

17.3. If the Customer fails to comply with clause 17.2.:

17.3.1. the Supplier may retain the Deposit and the Deposit will not be refunded, but, at the discretion of the Supplier, may be applied as a credit to any future Order; and/or

17.3.2. the Customer may, at the discretion of the Supplier, be liable for any reasonable administrative costs incurred by the Supplier and the Supplier will provide to the Customer a compliant Invoice itemising the reasonable administrative costs.

17.4. If the Customer cancels an Order that is a Special Buy-In Order, then if the Supplier is unable to cancel the Order with the third party, the Customer will be liable for the Purchase Price for the Special Buy-In Order or if the Supplier cancels the Order with the third party and suffers Loss in doing so, the Customer will be liable for that Loss.

18. Termination and Survival

18.1. Either party may terminate the Contract on giving the other party a minimum of forty (40) days written notice.

18.2. The Supplier may, in its absolute discretion, no earlier than forty (40) days before the termination takes effect, suspend the Trading Account by giving the Customer notice in writing. Despite clause 9.9, such suspension will not affect the payment terms of Orders placed by the Customer more than forty (40) days prior to the termination taking effect. To avoid doubt, the Customer may continue to purchase Goods and Services within forty (40) days of the termination taking effect by making payment for the Goods or Service in advance or on delivery.

18.3. If a notice to terminate the Contract is expressed only in terms of terminating these Terms, then the effect of that termination notice is that the Application and Trading Account terminate on the same date as these Terms except for:

18.3.1. the Trading Account Guarantee, which terminates only according to its terms; and

18.3.2. the obligations of the Customer under the Application survive the termination of the Application.

18.4. If the Contract is terminated for whatever reason, any rights or liabilities of the parties that accrued prior to the termination are not affected or prejudiced, the Customer's obligations under this Contract survive termination of this Contract and clauses 6, 7, 9, 12, 13, 14, 16, 17 and 18 together with any other clauses that by their nature survive termination, survive termination.

19. Force Majeure

19.1. With the exception of the payment of the Purchase Price for Services and/or Goods by the Customer in accordance with this Contract, neither party has any liability under this Contract or may be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from circumstances beyond the reasonable control of that party (including without limitation as a result of any strike, war, cyber-attack, terrorist attack, trade dispute, fire, flood, tempest, theft, epidemic, pandemic or breakdown in machinery of any kind, disruption to electricity (or any other utility), or breakdown or disruption of any electronic communication support system).

19.2. The party affected by these circumstances must promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

19.3. If such circumstances continue for a continuous period of more than 6 months, either party may terminate this Contract by written notice to the other party.

19.4. If the Supplier is unable to fulfil or complete an Order placed by the Customer within the time frame required by the Customer due to a circumstance in clause 19.1 or 19.2, then the Supplier may cancel the Order without the Customer having a Claim against the Supplier for Loss arising from such a cancellation.

20. General

20.1. Where more than one Customer completes the Contract, each will be liable jointly and severally.

20.2. The Contract is binding on the Customer, their heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.

20.3. Delivery of an executed counterpart of this Contract by email in PDF or other image format, will be equally effective as delivery of an original signed hard copy of this Contract.

20.4. The Supplier's rights under the Contract, may only be waived by notice in writing. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

20.5. The failure by the Supplier to enforce any provision of this Contract will not be treated as a waiver of that provision or affect the Supplier's right to subsequently enforce that provision.

19.6. If the Customer is a trustee of a trust:

20.6.1. the Customer warrants that the Customer as trustee has the power under the trust deed to enter into this Contract and to comply with its obligations under this Contract, including using the trust assets to meet the Customer's obligations under this Contract;

20.6.2. the Customer agrees that the Contract binds the Customer in their capacity as trustee and in the Customer's own capacity; and

20.6.3. the Customer agrees that the Customer is liable for the failure to meet an obligation under this Contract in its capacity as trustee and in the Customer's own capacity.

20.7. The Supplier may assign, license or sub-contract all or any part of its rights and obligations under the Contract, to another person without notice to the Customer. The Customer may not assign or otherwise transfer any or all of its rights and obligations under this Contract without the prior written agreement of the

Supplier.

20.8. The Supplier may vary these Terms at any time by providing notice to the Customer, and such variation will apply to all Orders made after notice is given. For Customers without a Trading Account, the Customer acknowledges that the Supplier may use these Terms on its website, in which event, the Terms on the Supplier's website will apply to any future dealings as between the parties commencing on or after the variation, including future Orders placed by the Customer, and the Customer is deemed to have notice of any such Terms and/or variations.

20.9. If a provision of the Contract would, but for this clause, be unenforceable, then the provision must be read down to the extent necessary to avoid that result and, if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.

20.10. The Customer must pay all of the Supplier's costs and expenses in connection with the Contract, including legal expenses (on an indemnity basis), stamp duty and costs incurred in the recovery of monies owing by the Customer to Supplier, or in otherwise enforcing the Supplier's rights against the Customer, under the Contract.

20.11. The Customer has no right of set-off in any suit, Claim or proceeding brought by the Supplier against the Customer for default in payment or brought by the Customer against the Supplier. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

20.12. The Contract constitutes the entire agreement between the Supplier and the Customer with respect to the Goods and/or Services supplied under the Contract. All prior negotiations, proposals and correspondence are superseded by the Contract and the Contract will in all circumstances prevail over the Customer's Terms. No subsequent correspondence or document or discussion will modify or otherwise vary the Contract unless such variation is in writing and signed by the Supplier.

20.13. The Contract is governed by the laws of South Australia. The parties submit to the exclusive jurisdiction of the courts of South Australia.

20.14. Nothing in this Contract is intended to have the effect of contravening Australian Consumer Law or any other applicable legislation.