

Trading Terms & Conditions

As at 9 November 2023

1. Agreement

1.1 These Terms apply to all transactions between the Supplier and the Customer including, but not limited to, the sale of Goods and the provision of Services on credit, whether or not the Customer has submitted an Application and/or been granted an Account.

2. Definitions

2.1 In these Terms, unless the context otherwise requires: "Account" means a credit account established by the Supplier in the Customer's name; "ACL" means the *Australian Consumer Law* in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*; "Agreement" means any agreement between the Supplier and the Customer for the sale or delivery of Goods or provision of Services by the Supplier to the Customer; "Application" means an application by the Customer for commercial credit only, which incorporates these Terms; "Consumer" means a person who acquires goods or services as a consumer within the meaning of Section 3 of the ACL; "Customer" means any person, firm, corporation or in the case of an unincorporated body, each proprietor jointly and severally, that has given the Supplier an Application or an Order, and includes the Customer's employees, agents, successors, administrators, and assigns; "Deliverable" means any event or deliverable identified in a relevant quotation or Order that is required to be provided to the Customer by the Supplier in accordance with the Agreement; "Due Date" means immediately upon delivery of the Goods or the provision of the Services or Deliverables covered by the invoice or statement or, where the Supplier has agreed to grant the Customer a Trade Credit Account, the date which is 30 days after the date of each invoice; "Goods" means any physical item that the Supplier agree to sell to the Customer; "GST" means Goods and Services Tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*; "Guarantor" means any person who guarantees the Customer's indebtedness to the Supplier; "Order" means any request by the Customer for the sale of Goods or provision of Services or Deliverables by the Supplier; "PPSA" means the *Personal Property Securities Act 2009 (Cth)* and its subordinate legislation; "Price" means the price at which the Supplier agrees to sell any Goods or provide any Services or Deliverables to the Customer; "Services" means any services provided by the Supplier to the Customer for a quoted or agreed Price; "Supplier" means Power On Australia Pty Ltd (ABN 48 110 752 442) and any of its subsidiary or related entities as defined by the *Corporations Act 2001 (Cth)*; "Supply" means any sale of Goods or provision of Services or Deliverables by the Supplier to the Customer, whether on credit or otherwise and whether on an Account or not; "Terms" means these Terms and Conditions; "Website" means www.poweronaustralia.com.au.

3. Conditions of Approved Credit Accounts

3.1 The Customer acknowledges that as part of the Customer's Application, the Supplier may check the Customer's credit history, and if the Customer is a company, the credit history of the Customer's directors, to enable the Supplier to evaluate the Customer's creditworthiness.

3.2 If the Customer is a company the Customer's directors may be required, as a condition of the Supplier approving the Customer's Application, to give the Supplier a personal guarantee for all debts or liabilities that the Customer owes to the Supplier from time to time.

3.3 The Supplier may, at any time and without having to provide a reason, refuse to extend further credit to the Customer, vary the Customer's credit limit or terminate the Customer's Account. For example, the Supplier may close any Account which has been inactive for a period of 12 consecutive months.

3.4 The Customer agrees to notify the Supplier of any changes to any of the details set out in the Customer's Application or subsequently notified to the Supplier.

3.5 The granting by the Supplier of an Account creates no obligation on the Supplier to Supply the Customer and the Supplier's refusal or failure to grant the Customer an Account does not prevent the Supplier from Supplying the Customer, whether on credit or otherwise.

4. Supply and Delivery

4.1 All Goods and Services sold or supplied by the Supplier to the Customer are sold or supplied on these Terms as amended from time to time by the Supplier by notice in writing to the Customer at the Supplier's discretion. Any alterations to these Terms will apply to all transactions between the Customer and the Supplier occurring after written notification of the altered Terms has been given to the Customer.

4.2 The Supplier may, in its absolute discretion, refuse to Supply the Customer, whether or not part of a contract has been performed, where Goods the subject of the Supply are unavailable for any reason or the Customer breach these Terms.

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- 4.3 An Order for the sale of Goods shall identify the goods ordered, the quantity required and refer to any quotation pursuant to which the Order is made. The Supplier may supply Goods that vary from those ordered by the Customer and the Customer must accept the Goods supplied, provided that such variations are not material.
- 4.4 All samples, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or websites are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They will not form part of the Contract and no sale by the Supplier is a sale by sample.
- 4.5 Any variation or cancellation of an Order must first be agreed in writing by the Supplier.
- 4.6 If agreed by the Supplier, the Supplier shall deliver or arrange for delivery of the Goods or other Deliverables to an address nominated by the Customer, in which case:
- (a) Unless otherwise agreed, the Customer will be responsible for all freight charges, transit insurance and other costs associated with the delivery and the Customer agrees to indemnify the Supplier for and against any such costs of carriage which the Supplier reasonably incurs on the Customer's behalf;
 - (b) Where the Supplier engages a third-party to deliver the Goods or Deliverables, the Supplier does so as the Customer's agent;
 - (c) Delivery of the Goods or Deliverables to a third-party carrier, either nominated by the Customer or failing such nomination to a carrier at the Supplier's discretion for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer;
 - (d) The Customer or the Customer's authorised representative shall be present at the agreed place and time for delivery and if not, the Customer hereby authorises the Supplier or the carrier to unload the Goods or Deliverables at that place and the Supplier will not be responsible for any claims, costs or losses suffered by the Customer as a result of that delivery;
 - (e) Goods shall be delivered to ground level only at the place the Customer nominates for delivery, and to a position determined by the delivery driver(s) (at their sole discretion) as meeting reasonable safety standards;
 - (f) The Supplier may at the Supplier's option deliver Goods or Deliverables in any number of instalments, unless otherwise agreed in writing with the Customer; and
 - (g) If the Customer nominates a delivery date, the Supplier will take all reasonable steps to achieve delivery on or about that date, however, the Supplier does not promise or warrant that the Goods or Deliverables will be available on that date and the Supplier shall not be liable for any loss (including consequential loss), damages or claims arising from failure or delay in delivery. In no case shall the Supplier be liable for any amount payable by the Customer to a third party as a result of a failure or delay in delivery of Goods or Deliverables due to any cause whatsoever.
- 4.7 The quantity of any consignment of Goods or Deliverables as recorded by the Supplier on despatch from the Supplier's place of business will be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence to the contrary.
- 5. The Supplier's Obligations Concerning the Supply**
- 5.1 The Supplier must perform or provide the Services to the Customer:
- (a) with all due skill, care and diligence and in a good and timely manner;
 - (b) using good industry practice to ensure that delivery of Deliverables occurs by the relevant date for that Deliverable;
 - (c) in accordance with the requirements of the Agreement; and
 - (d) observe all reasonable and applicable directions made by or on behalf of the Customer in relation to the provision of the Services.
- 5.2 The Supplier will provide the Deliverables to the Customer which:
- (a) match the description of the Deliverables in the relevant quotation or Order; and
 - (b) are fit for the purposes set out in the relevant quotation or Order, on the due date specified in the quotation or Order.
- 6. The Customer's Obligations Concerning the Supply**
- 6.1 The Customer must:
- (a) Make available to the Supplier, free of charge, all facilities and resources as are reasonably necessary to enable the Supplier to carry out the Supplier's obligations under the Agreement;
 - (b) Make suitably qualified representatives available and ensure such representatives cooperate reasonably with the Supplier, and not frustrate or delay the Supplier, in carrying out the Services;
 - (c) Promptly furnish the Supplier with such information as the Supplier may reasonably request for the proper performance of the Supplier's obligations under the Agreement; and

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- (d) Use best endeavours to cooperate with the Supplier to such extent as the Supplier may reasonably require to perform the Supplier's obligations under the Agreement.
- 6.2 The Customer must inspect all Goods and Deliverables upon taking delivery of them and, and in the case of Services, immediately after being advised that the Services have been completed, and the Customer must carry out any tests that a prudent Purchaser would carry out in relation to such Goods, Deliverables or Services. The Customer will have seven (7) days after delivery to notify the Supplier of any alleged defect in the Supply or any other reason why the Customer believes the Supply does not comply with the Customer's Order. If the Customer does not notify the Supplier of any defect or irregularity in the Supply within this time the Customer will be deemed to have accepted the Supply free of any defect or irregularity.
- 6.3 The Customer acknowledges and agrees that the Supply is not intended and will not be used by the Customer for the Customer's own personal, household or domestic purposes.
- 6.4 All returns must be approved by the Supplier and the Customer will be responsible for the cost of returning any Goods or Deliverables that the Supplier agrees to take back. The Supplier will only be obliged to credit the Customer with the Price of the Goods paid if the Goods are in a saleable condition.
- 6.5 Goods and Deliverables that have been specifically produced or purchased by the Supplier to meet the Customer's unique specifications are not returnable.
- 6.6 Unless otherwise agreed in writing, a restocking fee of 20% of the Price will apply for any Goods returned to the Supplier in good order, and provided that the Supplier has agreed in writing to accept the return of those Goods.
- 7. Price and Payment**
- 7.1 The Price in relation to any Supply shall be the price quoted by the Supplier or, if no price is quoted, the relevant price listed in any current price list published by the Supplier as at the date on which the Supplier receives the Customer's Order.
- 7.2 Any quotation is valid for a period of the shorter of 30 days from its date or the expiry date in the quotation, provided that the Supplier has not previously withdrawn it.
- 7.3 Any price list supplied or published by the Supplier shall be a guide only and is subject to change without notice.
- 7.4 All prices are listed or quoted exclusive of GST unless otherwise indicated.
- 7.5 If the Supplier has any liability to pay GST on any Supply, the Supplier will add an amount equivalent to the Supplier's GST liability to the tax invoice for the Supply and the Customer must pay that amount, in addition to the Price, when the Customer pays the invoice (unless the consideration for that Supply is specifically expressed to be inclusive of or exempt from GST).
- 7.6 The Customer must pay the full amount of any invoice or statement that the Supplier issues to the Customer by the Due Date.
- 7.7 Despite any other provision of the Agreement, the Customer acknowledges and agrees that for special and overseas orders of Goods, it is reasonable for the Supplier to charge a non-refundable deposit for such special and overseas Goods.
- 7.8 Notwithstanding anything else in these Terms, if the Customer commits an act of bankruptcy or does any act that would constitute a ground for the making of a winding up order by a Court, all monies due to the Supplier on the Customer's Account or otherwise will become immediately due and payable upon the commission of such act.
- 7.9 If the Customer fails to pay any amount owing to the Supplier by the Due Date, the Supplier reserves the right to charge the Customer:
- (a) An administration fee of \$20.00 per month at the end of each calendar month in which any amount remains overdue for payment by the Customer to the Supplier;
 - (b) Interest on the balance amount outstanding at the rate of 10% per annum from the Due Date, calculated daily; and
 - (c) All costs (including legal costs on a full indemnity basis), expenses or losses incurred or sustained by the Supplier as a result of any failure by the Customer and/or a Guarantor to comply with these Terms or a guarantee given in the Supplier's favour, including any costs incurred by the Supplier as a result of cheque that the Customer's bank fails to honour upon presentation for payment. Such costs and expenses may be recovered by the Supplier from the Customer as a liquidated debt and may be added to the Customer's Account and invoiced to the Customer.
- 7.10 A written statement signed by a Director, Credit Manager or other duly authorised person on the Supplier's behalf stating the balance of monies due to the Supplier by the Customer shall be prima facie evidence of the amount of the Customer's indebtedness to the Supplier at the date of that statement.
- 7.11 The Customer is not entitled to make any set-off against or deduction from any amount the Customer owes to the Supplier in respect of any amount that the Customer claims the Supplier owes to the Customer. The Supplier may at

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any time set-off amounts that the Supplier owes to the Customer against any sums the Customer owes to the Supplier.

- 7.12 The Customer may pay any amount the Customer owes to the Supplier in respect of any Goods, Deliverables, Services or on the Customer's Account by electronic funds transfer, cash or cheque (or, if a credit card facility is offered by the Supplier, by credit card). If any of the Customer's cheques are dishonoured upon presentation for payment, the Supplier will thereafter not accept any payment from the Customer in the form of a cheque.
- 7.13 As far as the context of any Supply allows, this Agreement shall be deemed to be a claim for payment under the *Building Industry Fairness (Security of Payment) Act 2017 (Qld)* or any equivalent legislation in any other Australian State or Territory that may apply and, for the purposes of that legislation, a "reference date" accrues:
- (a) each time The Customer places an Order with the Supplier;
 - (b) each time the Supplier delivers Goods or Supplies Services to the Customer; and
 - (c) on the last day of each calendar month.

8. Security

- 8.1 The Customer hereby grants a security interest in all the Customer's present and after-acquired property and in all the Customer's present and future rights in relation to any personal property and the Customer charges all beneficial interests (freehold and leasehold) in land wherever located held now or in the future by the Customer as security for the Customer's indebtedness to the Supplier and for the Customer's obligations under this Agreement.
- 8.2 The Customer will immediately execute a consent to caveat or mortgage in terms determined by the Supplier if required by the Supplier to secure the security interest created by this clause or any security interest the Customer has given or created in the Supplier's favour.
- 8.3 The Customer agrees that if the Customer fails to execute a consent to caveat or a mortgage within a reasonable time of being so requested by the Supplier, then the Customer irrevocably and by way of security appoints the Supplier and the Supplier's agent or solicitor to be the Customer's true and lawful attorney with authority to execute and register such instruments on the Customer's behalf and the Customer consent to the registration of this power of attorney.

9. Title and Risk

- 9.1 The risk in Goods, Deliverables and Services passes to the Customer upon delivery of those Goods or the supply of those Services or Deliverables to the Customer.
- 9.2 Where the Supplier sells Goods to the Customer, title to and property in Goods remains with the Supplier until:
- (a) The Supplier receives full payment for the Goods; and
 - (b) The Supplier receives full payment of all other monies whatsoever owing by the Customer to the Supplier.
- 9.3 So long as any money remains unpaid by the Customer to the Supplier in respect of any Goods:
- (a) The relationship between the Customer and the Supplier is fiduciary;
 - (b) The Customer will hold the Goods as bailee for the Supplier and will be responsible for any loss, damage or conversion of the Goods;
 - (c) The Customer must store the Goods in a manner that clearly shows that they remain the Supplier's property;
 - (d) The Supplier will be entitled to enter the Customer's premises (or those of any associated company or agent where the Goods are located) without liability for trespass or any resulting damages in order to retake possession of the Goods (if possible); and
 - (e) The Supplier may keep or re-sell any Goods repossessed pursuant to this clause.
- 9.4 Despite the provisions of this clause, where the Supplier has agreed to sell and the Customer has agreed to purchase Goods, the Supplier is entitled to maintain an action against the Customer for the purchase price of the Goods.
- 9.5 Where the Supplier supplies Goods to the Customer without first having received payment in full of all moneys payable in respect of the Goods (and any Services or Deliverables), the Customer acknowledges that the Supplier has a right to register and perfect a purchase money security interest pursuant to the PPSA.
- ### **10. Limitation of Liability**
- 10.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of these Terms;
 - (b) any use made or resale by the Customer of any of the Services, or of any product incorporating any of the Services; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.
- 10.2 Subject to clauses 12 and 13, and to the extent permitted by law:

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- (a) all warranties, representations, promises, conditions or statements regarding Goods and Services supplied, either express or implied, including statements as to the suitability or fitness of the Goods and Services not expressly referred to in these Terms are expressly excluded;
 - (b) all terms which would otherwise be implied are excluded except as stated in these Terms; and
 - (c) the Customer does not rely on any representation, warranty or other term which is not set out in these Terms.
- 10.3 To the extent permitted by law, the Supplier shall not be liable for any form of damages including, but not limited to incidental, special, consequential or general damages in connection with or arising out of the supply or use of Goods, Services and Deliverables and its sole and total liability, whether arising out of breach of contract, negligence of the Supplier, or its employees or agents, or otherwise howsoever shall be limited to (as determined by the Supplier):
- (a) in the case of Goods supplied by the Supplier - the replacement of the Goods or supply of equivalent Goods, the repair of the Goods, the payment of the cost of replacing the Goods or acquiring equivalent Goods or the payment of the cost of having the Goods repaired;
 - (b) in the case of Services supplied by the Supplier - the supply of the services again or the payment of the cost of having the Services supplied again.
- 10.4 The Customer will not hold the Supplier liable for any installation or works affected by any third party, distributor or agent to whom the Supplier may have supplied the Goods or Services, nor for any installation or works affected by third parties engaged direct by the Customer.
- 10.5 The Customer shall be responsible for and shall save, indemnify, defend and hold harmless the Supplier from and against any claims and losses in respect of:
- (a) loss or damage to any property, whether owned by the Customer, the Supplier or a third party; and
 - (b) personal injury or death of any person, arising from or in connection with the use of the Goods, Services or Deliverables.
- 11. Indemnity**
- 11.1 The Customer agrees to indemnify the Supplier for and against all claims, liabilities, loss, damage, costs or expenses that the Supplier may directly or indirectly suffer or incur as a result of:
- (a) Damage to any property or injury or harm to any person because of the Supplier's delivery of Goods under the Customer's direction or otherwise in accordance with the Customer's instructions;
 - (b) The Customer's use of the Goods in a reckless or unsafe manner or otherwise than in accordance with normal use or relevant specifications and guidelines;
 - (c) Any action by the Supplier to recover any amount the Customer owes to the Supplier or to secure, perfect or enforce any of the Supplier's rights under this Agreement;
 - (d) Any new or increased tax, levy, duty or other impost imposed as a result of any new or changed law that applies to this Agreement or its subject matter; or
 - (e) The Customer's negligence, breach of this Agreement or malicious or illegal acts or omissions;
- Except to the extent that such things are caused by the Supplier's negligence or the Supplier's breach of this Agreement.
- 11.2 The Supplier agrees to indemnify the Customer in respect of any liability that the Supplier may have to the Customer under the terms of this Agreement.
- 11.3 The ability of a party to make a claim under an indemnity in clause 11.1 or clause 11.2 will be subject to that party first having taken all reasonable steps to mitigate its liability, loss and damage.
- 11.4 The Customer agrees that the Supplier may invoice the Customer for any amount in respect of which the Customer is liable to indemnify the Supplier and the amount stated in the invoice shall be a debt due and payable by the Customer to the Supplier in accordance with these Terms.
- 11.5 Each indemnity in this Agreement is continuing, separate and independent from any other obligation and survives the termination, completion or expiration of this Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement.
- 12. Manufacturers' Warranties and Extended Warranties**
- 12.1 Where third party manufacturers' warranties are capable of assignment, the Supplier agrees to assign such warranties to the Customer.
- 12.2 If the Customer elects to purchase an extended warranty in relation to Goods, being a warranty for a period longer than the standard manufacturer's warranty, then during the warranty period as specified by the Supplier, the Supplier will conduct regular equipment inspections and maintenance services.
- 12.3 If the Customer elects to purchase an extended warranty in relation to Goods supplied, then where the Customer provides the Supplier with written notice of the extended warranty claim within the extended warranty period, as

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requested by the Customer, the Supplier will repair or replace products that it determines to be defective in material or workmanship.

13. Warranty Claims

- 13.1 Any warranty claim in connection with the Goods or Services provided by the Supplier must be made by the Customer to the Supplier in writing to the address as follows: PO Box 5322, Daisy Hill, QLD 4127, Australia. The Customer is responsible for the costs associated with making the warranty claim.
- 13.2 In order to make a warranty claim during the warranty period, you must provide proof of purchase to the Supplier showing the date of purchase of the Goods and Services, a description of the Goods and Services and the price paid for the Goods and Services.
- 13.3 Where the warranty claim is accepted then the Supplier will, at its sole discretion, either repair or replace any defective Goods or part thereof with a new or remanufactured equivalent during the warranty period at no charge to you for parts or labour, or resupply the Services. You acknowledge and agree that you will be solely liable for any postage or shipping costs incurred in facilitating the warranty claim and that the Supplier will have no further liability for a breach of the warranty in clause 12.1 or otherwise arising in respect of such Goods or Services.
- 13.4 The warranty shall be the sole and exclusive warranty granted by the Supplier and shall be the sole and exclusive remedy available to you in addition to other rights and under a law in relation to the Goods and Services to which this warranty relates.
- 13.5 All implied warranties including the warranties of merchantability and fitness for use are limited to the warranty period.
- 13.6 The warranty does not apply to any appearance of the supplied Goods where the exterior of which has been damaged or defaced, scratched or tarnished, or which has been subjected to misuse, abnormal service or handling, or which has been altered or modified in design or construction.
- 13.7 If, after investigation, the Supplier determines that the Goods the subject of a Warranty Claim are not defective then the Customer must reimburse the Supplier for all costs incurred in processing and investigating the Warranty Claim.
- 13.8 The Supplier will not be liable for a breach of a Warranty in relation to Goods unless:
 - (a) The Customer gives written notice of the defect to the Supplier within 14 days of the time when the Customer discovers or ought to have discovered the defect; and
 - (b) The Supplier is given a reasonable opportunity after receiving the notice to examine the Goods, and the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost for the examination to take place there.
- 13.9 The Supplier will not be liable for a breach of a Warranty in relation to Goods if:
 - (a) The Customer makes any further use of the Goods after giving notice under condition 13.8(a); or
 - (b) The defect arises because the Customer failed to follow the Supplier's instructions as to the storage or use of the Goods or (if there are none) good trade practice; or
 - (c) The Customer alters the Goods without the written consent of the Supplier.
- 13.10 Where the ACL applies the Customer may have the benefit of guarantees which cannot be excluded, however, to the extent permitted by law, all express or implied warranties, representations, guarantees, terms and conditions other than those expressly contained in this Agreement are expressly excluded from this Agreement.
- 13.11 If the Customer acquires Goods from the Supplier as a Consumer, the Supplier's Goods come with guarantees that cannot be excluded under the ACL. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 13.12 If the Customer acquires Services from the Supplier as a Consumer, the Supplier's Services come with guarantees that cannot be excluded under the ACL. For major failures with the Service, the Customer is entitled:
 - (a) to cancel the Customer's service contract with the Supplier; and
 - (b) to a refund for the unused portion, or to compensation for its reduced value.The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure the Customer is entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel the Customer's contract and obtain a refund for the unused portion of the contract.
- 13.13 If the Customer acquires Goods and Services from the Supplier as a Consumer, the Supplier's Goods and Services come with guarantees that cannot be excluded under the ACL. For major failures with the service, the Customer is entitled:
 - (a) to cancel the Customer's service contract with the Supplier; and
 - (b) to a refund for the unused portion, or to compensation for its reduced value.

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The Customer is also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done the Customer is entitled to a refund for the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.

13.14 The inclusion of paragraphs 13.10 to 13.13 above:

(a) Is not to be taken as indicating that a particular Supply is subject to the consumer guarantees in the ACL; and
(b) Does not operate to qualify clause 10.3 to the extent that it applies.

14. PPSA

14.1 In this clause, the terms "security agreement" and "security interest" have the same meaning as that given to them by the PPSA.

14.2 The Customer agrees that the Customer will, if requested by the Supplier, sign any documents, provide any information or do anything else the Supplier requests, to ensure that any security interest created in the Supplier's favour by these Terms is, to the fullest extent possible under the PPSA, perfected in accordance with Part 2.2 of the PPSA.

14.3 The Customer agrees that, until any security interest created in the Supplier's favour by these Terms has been perfected, the Customer will not register or permit to be registered or enter into any security agreement that allows any other party to register a security interest that may adversely affect the priority or enforceability of the Supplier's security interest.

14.4 In relation to security interests that are not used predominantly for personal, domestic or household purposes, section 115 of the PPSA allows the parties to contract out of certain provisions of the PPSA ("Removable Provisions"). To the extent that those Removable Provisions would have the effect of conferring rights on the Customer or imposing obligations on the Supplier that the Customer or the Supplier would not otherwise have had, they are hereby contracted out of and will not apply to any Agreement or transaction between the Customer and the Supplier or to any security interest created in the Supplier's favour. The Customer also agrees to waive the Customer's right to receive a verification statement under section 157 of the PPSA or any notices under any of the provisions listed in section 144 of the PPSA.

14.5 Notwithstanding section 275 of the PPSA, the Customer and the Supplier agree to keep confidential all information of the kind referred to in section 275, unless compelled by law to disclose such information.

15. General

15.1 Where the Customer is a partnership or trustee the Customer warrants that the Customer has the right to be fully indemnified out of trust or partnership assets in relation to any liability incurred by the Customer in connection with any Supply provided by the Supplier to the Customer.

15.2 This Agreement is governed by the laws of the State of Queensland and the Customer agrees to submit to the non-exclusive jurisdiction of the courts in the State of Queensland. The Customer agrees that proceedings may be commenced in any court in Queensland and the Customer consents to that court having jurisdiction, notwithstanding that it may not otherwise have jurisdiction, but for this clause.

15.3 If any provision of this Agreement is illegal, void or unenforceable, it will be severed from this Agreement and the remainder of the Agreement will remain valid and enforceable.

15.4 No amendment or variation to these Terms or this Agreement will be effective unless it is in writing. The Supplier may vary these Terms at any time and any such variation will be incorporated into this Agreement with effect from the date on which the Supplier notifies the Customer of such variation. The Supplier may provide this notice by publishing the varied Terms on the Supplier's Website and within 24 hours of the Supplier doing so the Customer will be deemed to have received notice of the variation.

15.5 Any provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

15.6 The Supplier may at any time assign the Supplier's rights and interests or novate the Supplier's duties and obligations (in whole or in part) under this Agreement and the Customer hereby consents to any such assignment or novation by the Supplier. The Customer may not assign or attempt to any of the Customer's rights or obligations under this Agreement without the Supplier's prior written consent in writing, which consent may be given or refused at the Supplier's absolute discretion and subject to such terms as the Supplier sees fit.

15.7 Notices in connection with this Agreement may be given in the manner permitted by addressing and delivering or transmitting the notice to the address or contact number listed:

(a) for the Supplier, as set out in this Agreement or as published on the Supplier's Website as at the time the notice is given; or

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- (b) for the Customer, as stated in the Customer's Application or notified by the Customer to the Supplier from time to time.
- 15.8 Notices shall be deemed to have been received at the time they would normally be received in the ordinary course according to the method of delivery used, except where the sender receives information or becomes aware or ought reasonably to be aware of circumstances that would indicate to a reasonable person that the notice had not been received.
- 15.9 If by reason of Force Majeure a party is unable to perform or carry out any obligation under the Agreement (other than an obligation to make a payment), then that obligation is suspended for so long and to the extent that it is affected by the Force Majeure. In that case, the affected party must give notice to the other party with reasonable particulars including, so far as it is known, the probable extent to which the party will be unable to perform or carry out or will be delayed in performing or carrying out its obligations. A party is not liable for any failure or delay in the performance of any of its obligations under the Agreement (other than an obligation to make a payment) to the extent that the failure or delay is attributable to Force Majeure, regardless of the length of time for which the Force Majeure continues. In this clause, Force Majeure means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the Internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars).
- 15.10 Any failure by the Supplier to enforce any clause of this Agreement, or any forbearance, delay or waiver of the Supplier's rights or indulgence granted by the Supplier to the Customer will not be construed as a waiver of the Supplier's rights under this Agreement.
