

## Terms and Conditions of Sale

**Effective Date: 6 December 2018**

### 1 GENERAL

- 1.1 These Terms and Conditions will apply in relation to any quotation, order or agreement for the provision of goods ("**Goods**") and/or services ("**Services**") by Power On Australia Pty Ltd ABN 48 110 752 442 ("**the Supplier**") to a customer ("**the Customer**") on and from the Effective Date.
- 1.2 Subject to any variation under clause 1.5, these Terms and Conditions are the only terms and conditions upon which the Supplier is prepared to deal with the Customer and they will govern each Contract to the entire exclusion of all other terms or conditions. Without limiting the foregoing, no terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, documents, correspondence, receipts, acknowledgements or elsewhere will form part of the Contract and the Customer waives any right which it otherwise might have to rely on such terms and conditions.
- 1.3 Each request for Goods and Services by the Customer to the Supplier will be deemed to be an offer by the Customer to buy the Goods and Services subject to these terms and conditions and no such offer by the Customer will be accepted until the Supplier either expressly by giving notice of acceptance in writing, or impliedly by fulfilling the Customer's order, in whole or in part, accepts the offer. In the absence of such confirmation the Supplier will not accept responsibility for any incorrect deliveries.
- 1.4 A Contract will only come into existence between the Supplier and the Customer when the Supplier has accepted the Customer's offer in accordance with clause 1.3 ("**Contract**").
- 1.5 These Terms and Conditions apply to all the Customer's purchases and any variation to these terms and conditions shall have no effect unless expressly agreed in writing and signed by an authorised person of the Supplier. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 1.6 Unless otherwise agreed in writing, price is subject to change without notice and all Goods and Services will be charged at the price ruling at the time of invoice.
- 1.7 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the shorter of 30 days from its date or the expiry date in the quotation, provided that the Supplier has not previously withdrawn it.
- 1.8 Deliverable means any event or deliverable identified as a ("**Deliverable**") in a relevant quotation or order that is required to be provided to the Customer by the Supplier in accordance with the Contract.
- 1.9 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.
- 1.10 These Terms and Conditions are subject to the laws of the State of Queensland and any proceedings may be commenced in any competent Court situated in Brisbane.
- 1.11 In the event that the whole or any part or parts of any clause in these Terms and Conditions is found to be unenforceable by a Court then such clause or part thereof shall be to that extent severed from these Terms and Conditions without effect to the validity and enforceability of the remainder of these Terms and Conditions.

### 2 ACCOUNT TERMS

- 2.1 The Supplier may in its absolute discretion and without explanation refuse the Customer credit facilities, or suspend or discontinue the supply of Goods and Services to the Customer, or increase or vary the Customer's credit limit at any time.
- 2.2 Unless otherwise agreed by the Supplier in writing, the price for the Goods and Services will be the price set out in the Supplier's quotation, and will be exclusive of any GST and all costs or charges in relation to packaging, loading, unloading, carriage and



insurance, however, the Supplier will not be bound by any error in a quotation and the Supplier reserves the right to correct any error in a quotation on notice to the Customer or to withdraw a quotation at any time..

- 2.3 Credit terms are as set out in the Supplier's quotation. All Goods delivered by the Supplier and Services provided to the Customer must be paid for in full by the date of the invoice ("**the Due Date**"). Despite any other provision of this Contract, 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.
- 2.4 The Customer will make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer. A counterclaim by the Customer in any court proceedings issued by the Supplier will, to the maximum extent permitted by law, not serve to delay or defer the Supplier's right to receive payment.
- 2.5 If the Customer defaults under clause 2.4 interest will be charged, at a rate of 10% per annum calculated on daily balances on monies owed by the Customer to the Supplier both before and (as a separate and independent obligation) after any judgment.
- 2.6 The Customer must pay all of the Supplier's expenses incurred in connection with the enforcement of, or the preservation of an rights under these Terms and Conditions.

### 3 DEFAULT

- 3.1 If there is any default by the Customer in making due payment to the Supplier of any monies owing by the Customer, or if an administrator, liquidator or provisional liquidator or receiver and manager or controller is appointed in respect of the Customer or the Customer goes into bankruptcy or commits any act of bankruptcy, or if there is a breach by the Customer of any of these Terms and Conditions then:-
  - (a) all monies payable by the Customer to the Supplier shall at the Supplier's election become immediately due and payable notwithstanding that the Due Date for payment of any of the monies shall not have expired;
  - (b) the Supplier may terminate these Terms and Conditions forthwith;
  - (c) the Supplier is hereby irrevocably authorised by the Customer to enter into the Customer's premises or any premises under the control of the Customer or as agent of the Customer for the collection of the Goods as ordered and use reasonable force to take possession of the Goods without liability for the tort of trespass and will not be liable for any payment or compensation to the Customer whatsoever.
- 3.2 The Supplier's partial exercise of, or failure to exercise, any right under these Terms and Conditions or failure to insist on strict performance of any part of these Terms and Conditions does not operate as a waiver and does not preclude any further exercise of the right.

### 4 RISK / TITLE IN GOODS

- 4.1 The Goods will be at the sole risk of the Customer as soon as they are dispatched from the Supplier's premises.
- 4.2 Property and title to the Goods will not pass to the Customer until those Goods, and all other amounts owed to the Supplier by the Customer, have been paid for in full in cleared funds and until then:-
  - (a) the Customer must hold the Goods as a fiduciary and bailee for the Supplier and owes the Supplier the duties and liabilities of a bailee;
  - (b) the Customer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Supplier owes to the Customer;
  - (c) the Goods must be stored separately in a manner (at no cost to the Supplier), and accounted for in such a way, so as to enable them to be identified as Goods of the Supplier and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix the Goods with other products or items such that the Goods are no longer separately identifiable then the Customer and Supplier will be owners in common of the new product;
  - (d) the Customer will not deliver the Goods or any document of title to the Goods to any person except as directed by the Supplier;
  - (e) the Customer must not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (f) the Customer must maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request, the Customer will produce the policy of insurance to the Supplier;
  - (g) the Customer may sell the Goods in the ordinary course of its business as bailee for the Supplier and will keep separate records in relation to the proceeds of the sale of any Goods which have not been paid for, and account to the Supplier for the proceeds of sale if required to do so and hold the proceeds of sale in a separate account on trust for the Supplier and immediately remit such funds to the credit of the Supplier; and



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- (h) the Supplier may require the Customer to return the Goods to it on demand and may enter upon the premises of the Customer to inspect or repossess the Goods.
- 4.3 The Customer's right to possession of the Goods will terminate immediately if:
  - (a) the Customer fails to make payment of any amounts due to the Supplier in respect of the Goods;
  - (b) the Customer becomes insolvent or unable to pay its debts; commits an act of bankruptcy or is made bankrupt; assigns assets for the benefit of creditors generally; makes a composition or other arrangement with creditors; convenes a meeting of creditors (whether formal or informal); being a Supplier, goes into liquidation, administration or receivership; any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; ceases to trade; or if anything analogous to the foregoing occurs in relation to the Customer;
  - (c) the Customer fails to comply with any of its obligations under the Contract or other agreement between the Supplier and the Customer; or
  - (d) the Customer encumbers or in any way charges any of the Goods before title has passed to the Customer.
- 4.4 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 4.5 Despite clause 4.2, the Supplier will be entitled to maintain an action against the Customer for the purchase price of the Goods.

## 5 SERVICES

- 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 Contract; 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.
- 5.3 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 its obligations under the Contract;
  - (b) make suitably qualified representatives available and ensure such Customer representatives cooperate reasonably with Supplier, and not frustrate or delay the Supplier, in carrying out the Services;
  - (c) promptly furnish the Supplier with such information as it may reasonably request for the proper performance of its obligations under the Contract; and
  - (d) use best endeavours to cooperate with the Supplier to such extent as the Supplier may reasonably require to perform its obligations under the Contract.
- 5.4 Risk in each Deliverable vests in the Customer at the time it is delivered to the Customer. Property and title to the Deliverable will not pass to the Customer until those Deliverables, and all other amounts owed to the Supplier by the Customer, have been paid for in full in cleared funds. Upon payment of all amounts owed to the Supplier by the Customer, the Supplier assigns all right, title and interest in the Deliverable to the Customer.

## 6 SECURITY INTEREST

- 6.1 In this clause: PPS Act means the *Personal Property Securities Act 2009* (Cth); PPS Property means any property over which a Security Interest can be legally granted under the PPS Act; PPSR means the Personal Property Securities Register established under section 147 of the PPS Act; Security Interest has the meaning given to that term under the PPS Act; 'accession', 'account', 'amendment demand', 'control', 'financing change statement', 'financing statement', 'perfected', 'proceeds', 'purchase money security interest', 'registration event' and 'verification statement' have the meanings given to them under the PPS Act.
- 6.2 The Customer acknowledges that this document provides written evidence of a security agreement for the purposes of the PPS Act.
- 6.3 The Customer acknowledges and agrees that any Security Interest created by this Agreement, or any transaction contemplated by it, extends to, and acts as a Security Interest in respect of, any proceeds (including any account) derived from, or from a dealing with, the Goods and accession to the Goods.
- 6.4 The Customer agrees to do anything which the Supplier may require from time to time to:
  - (a) enable the Customer to register fully valid and effective financing statements or financing change statements with respect to any Security Interest over PPS Property created by these terms and conditions or any transaction contemplated by them; and



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- (b) ensure that any Security Interest which is purported to be reserved or created by these terms and conditions, or any transaction contemplated by them, is:
- (i) a first ranking perfected Security Interest over all PPS Property;
  - (ii) perfected by control to the extent possible under the PPS Act; and
  - (iii) if applicable, recorded as a purchase money security interest on the PPSR.
- 6.5 The Customer agrees:
- (a) to not, without first providing at least 14 days written notice to the Supplier, change its name, ACN, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the PPSR in connection with any Security Interest created by these terms and conditions or any transaction contemplated by them;
  - (b) to pay all costs in connection with the registration, discharge or amendment of any financing statement or financing change statement; and
  - (c) to not, without the prior written consent of the Supplier, lodge or serve a financing change statement or an amendment demand in relation to any Security Interest created by these terms and conditions or any transaction contemplated by them.
- 6.6 The Customer acknowledges that the Goods are not intended, and shall not be used, for personal, household or domestic purposes.
- 6.7 The Customer irrevocably waives the right to receive from the Supplier any verification statement or notice in relation to a registration event in accordance with section 157(3)(b) of the PPS Act.
- 6.8 The Customer and the Supplier agree that:
- (a) to the extent that section 115(1) of the PPS Act allows them to be excluded, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
  - (b) to the extent that section 115(7) of the PPS Act allows them to be excluded, sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137,
- do not apply to any enforcement by the Supplier of any Security Interest in the PPS Property.
- 6.9 Where the Supplier is unable to determine whether any Goods are the Goods in respect of which the Customer's right to possession has terminated, the Customer will be deemed to have sold all Goods of the kind sold by the Supplier to the Customer in the order in which they were invoiced to the Customer.
- 6.10 On termination of this Contract, howsoever caused, the Supplier's (but not the Customer's) rights contained in this clause 5 will remain in effect.

## 7 DELIVERY, ACCEPTANCE AND RETURNS OF GOODS

- 7.1 Delivery dates are estimates only. The Supplier will not be liable for any delay, loss or damage direct or indirect howsoever arising from the transport, positioning or storage of the Goods by or to the Customer whether negligently or otherwise and shall not be liable to any penalty or damages for failure to deliver within the time stated due to strikes or any other kind of industrial dispute, accident, war or cause beyond its control.
- 7.2 Any dates specified by the Supplier for delivery of the Goods are intended to be an estimate and time for delivery will not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.
- 7.3 Delivery will be deemed to have been effected upon dispatch by the Supplier to the premises of the Customer or to the premises of a freight forwarding agent or carrier ("**the Specified Premises**") and the Customer shall be liable for all and any freight and carrying charges and insurance in respect of the Goods unless the Supplier shall direct otherwise, or where the Parties agree otherwise in writing.
- 7.4 No order may be cancelled, nor Goods returned unless pursuant to these Terms and Conditions, once delivery has been effected.
- 7.5 Unless otherwise agreed in writing, a restocking fee of 20% of the price for the Goods will apply for any Goods returned to Supplier in good order, and provided that the Supplier has agreed to accept the return of those Goods in writing.
- 7.6 It is the responsibility of the Customer to be present at the Specified Premises to acknowledge acceptance, to examine the Goods upon arrival and to satisfy itself that the Goods are of the description, quality and character ordered, and are suitable for the purposes for which they are required. Subject to clause 8, the Supplier shall not be liable for any loss or damage (direct, indirect or consequential loss) howsoever arising from the failure of the Customer or any third party to be present, or so satisfy itself, or if the Customer fails to accept delivery of any of the Goods when they are delivered, or if the Supplier is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisation.
- 7.7 Subject to the other provisions of these conditions the Supplier will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Supplier's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days and in that event, termination will be the sole remedy of the Customer.



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- 7.8 The quantity of any consignment of Goods 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 proving the contrary.
- 7.9 The Customer will provide at the delivery address and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.
- 7.10 Instalments:
- (a) The Supplier may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract.
  - (b) Each instalment will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Customer to repudiate or cancel any other Contract or instalment.
- 7.11 Any claims for non delivery, short delivery, incorrect Goods supplied and pricing and/or calculations must be made, by written notice to the Supplier, within seven (7) days of the date of delivery, otherwise no action may be taken against the Supplier for any anomalies therein.
- 7.12 Any liability of the Supplier for non-delivery of Goods will be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate for such Goods.
- 7.13 If less than the full quantity of Goods is delivered the Customer may not reject those Goods. If extra or different Goods are delivered the Customer may reject only the extra or different Goods.

## 8 LIMITATION OF LIABILITY

- 8.1 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 conditions;
  - (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 Contract.
- 8.2 Subject to clause 9, and to the extent permitted by law:-
- (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 and Conditions are expressly excluded;
  - (b) all terms which would otherwise be implied are excluded except as stated in these Terms and Conditions; and
  - (c) the Customer does not rely on any representation, warranty or other term which is not set out in these Terms and Conditions.
- 8.3 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 and Services 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.
- 8.4 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.
- 8.5 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.
- 8.6 If a party by reason of Force Majeure is unable to perform or carry out any obligation under the Contract, then that obligation is suspended for so long and to the extent that it is affected by the Force Majeure. This condition does not apply to any obligation to make a payment. 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 these terms and conditions 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.



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8.7 Force Majeure Event 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).

#### 9 MANUFACTURER'S WARRANTY, ENHANCED WARRANTY AND EXTENDED WARRANTY

9.1 Where third party manufacturers' warranties ("**Warranties**") are capable of assignment, the Supplier agrees to assign such warranties to the Customer.

9.2 If the Customer elects to purchase an Enhanced Warranty in relation to Goods, then during the warranty period as specified by the Supplier, the Supplier will conduct regular equipment inspections and maintenance services.

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

#### 10 WARRANTY CLAIMS

10.1 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.

10.2 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, provide a description of the Goods and Services and the price paid for the Goods and Services.

10.3 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 9.1 or otherwise arising in respect of such Goods or Services.

10.4 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.

10.5 All implied warranties including the warranties of merchantability and fitness for use are limited to the Warranty Period.

10.6 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.

10.7 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.

10.8 Liability for breach of warranties:

(a) The Supplier will not be liable for a breach of a Warranty in relation to Goods unless:

- (i) 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
- (ii) 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.

(b) The Supplier will not be liable for a breach of a warranty in relation to Goods if:

- (i) the Customer makes any further use of the Goods after giving notice under condition 10.8(a)(i); or
- (ii) 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
- (iii) the Customer alters the Goods without the written consent of the Supplier.

#### 11 PRESCRIBED NOTICE

11.1 The following text has been included in compliance with the Australian Consumer Law (ACL) and applies where the supply of Goods is subject to the ACL: *"Our Goods come with guarantees that can not be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonable foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure."* The inclusion of this text:

- (a) Is not to be taken as indicating that a particular supply of Goods is subject to the consumer guarantees in the ACL.
- (b) Does not operate to qualify clause 8.3 to the extent that it applies.



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12 PRIVACY ACT 1998 (CTH)

- (a) The Customer agrees for the Supplier to obtain personal credit information about the Customer from any credit reporting agency, credit provider, or trade reference.
- (b) The Customer agrees that the personal information contained the Credit Account Application Form, or obtained from any credit reporting agency, credit provider or Trade Reference may be used, and given to third parties, for the following purposes:
  - (i) to assess the credit worthiness of the Customer;
  - (ii) to notify other credit providers or trade references of a default by the Customer, or the status of the Customer's credit account with the Supplier;
  - (iii) to assist with the recovery of any amounts owed by the Customer to the Supplier.
- (c) The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988* (Cth)).

**END OF TERMS AND CONDITIONS OF SALE**



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