Terms of Trade

1. Application

1.1. These Terms apply to the supply of all Goods and Services by any manufacturing business within the Sell & Parker Group, being Sell & Parker Pty Ltd ACN 000 101 315, its related entities and divisions including Loross manufacturing businesses, Plates & Shapes, Renewables Manufacturing, Rolled Threads, First Forge Australia, Metal Forming, and Metal Coating (**Supplier**), to the customer named in a quotation, credit application, order, invoice or other supply document (**Customer**).

1.2. These Terms apply to all quotations, orders, Accepted Orders, contracts, supplies of Goods and supplies of Services by the Supplier to the Customer, unless the Supplier expressly agrees otherwise in writing.

1.3. If the Customer has applied for, or been approved for, a credit account with the Supplier, these Terms apply in addition to the terms of the Customer's credit application and any guarantee or indemnity given in favour of the Supplier, and to the extent of any inconsistency, the guarantee or indemnity prevails.

2. Definitions and Interpretation

2.1. In these Terms:

Accepted Order means an Order accepted by the Supplier in accordance with clause 3.4.

Contract means the contract formed between the Supplier and the Customer under clause 3.

Customer means the person, company, partnership, trust or other entity that requests, orders or purchases Goods or Services from the Supplier, or is named as the customer in a quotation, credit application, order, invoice or other supply document.

Goods means all goods, materials, products, components, equipment or other items supplied, or to be supplied, by the Supplier to the Customer.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Order means an order, purchase order, acceptance of quotation, instruction or other request by or on behalf of the Customer for the Supplier to supply Goods or Services.

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

Price means the price, rates, fees, charges and other amounts payable for the Goods or Services, including any delivery, packaging, storage, taxes, duties or other charges.

Quotation means any quotation, estimate, proposal or pricing document issued by the Supplier for the proposed supply of Goods or Services.

Services means all services supplied, or to be supplied, by the Supplier to the Customer, including processing, manufacturing, fabrication, cutting, machining, delivery, storage or other related services.

Terms means these terms of trade, as varied from time to time.

2.2. In these Terms:

(a) the singular includes the plural and vice versa;
(b) a reference to a party includes its successors, permitted assigns, administrators and substitutes;
(c) headings are for convenience only and do not affect interpretation;
(d) a reference to legislation includes any amendment, replacement or re-enactment of that legislation; and

(e) if more than one person comprises the Customer, each person is jointly and severally liable.

3. Quotations, Orders and Formation of Contract

3.1. Any Quotation issued by the Supplier is an invitation to treat only and is not binding on the Supplier. The Supplier may, at any time before accepting an Order, withdraw, vary or replace a Quotation at its sole discretion, including without notice.

3.2. The Customer may place an Order by submitting a purchase order, accepting a Quotation, giving written or verbal instructions, or otherwise requesting the supply of Goods or Services.

3.3. The Customer warrants that all information provided in connection with an Order, including drawings, specifications, quantities, delivery details and site requirements, is complete, accurate and suitable for the Customer's intended purpose.

3.4. A Contract is formed only when the Supplier accepts an Order. The Supplier may accept an Order by issuing an order acknowledgement, commencing supply, delivering Goods, performing Services, issuing an invoice, or otherwise confirming acceptance.

3.5. The Supplier is not obliged to accept any Order and may accept or reject any Order, in whole or in part, at its sole discretion.

3.6. The Customer acknowledges that an Order may be accepted by the Supplier even if it is submitted by an employee, contractor, representative or agent of the Customer, and the Customer is bound by any Order placed by any person who appears to the Supplier to have authority to place that Order.

3.7. An Accepted Order does not need to be acknowledged or signed by the Customer to be binding.

3.8. Any cancellation, suspension or variation of an Accepted Order is only effective if agreed by the Supplier in writing. The Supplier may impose conditions on any cancellation, suspension or variation, including payment of costs, charges, work in progress, materials purchased, storage costs and loss suffered by the Supplier.

3.9. Upon formation of a Contract, the Accepted Order and these Terms constitute the entire agreement between the Supplier and the Customer for the relevant supply and supersede all prior discussions, representations, arrangements, understandings and documents, including any terms contained in the Customer's Order.

4. Price

4.1. The Customer must pay the Price for all Goods and Services supplied by the Supplier.

4.2. Unless the Accepted Order expressly states otherwise, all Prices are exclusive of GST, freight, delivery, packaging, storage, insurance, duties, taxes, levies and other charges, which are payable by the Customer in addition to the Price.

4.3. The Supplier may vary the Price if:

(a) the Customer requests any change to the Goods or Services;

(b) the scope, quantity, specification, drawings, delivery requirements or timing changes;

(c) the Customer provides incomplete, inaccurate or late information;

(d) the Goods or Services are required outside normal working hours;

(e) the cost to the Supplier of supplying the Goods or Services increases, including due to changes in labour, materials, freight, energy, exchange rates, subcontractor costs, taxes, duties or regulatory requirements;

(f) additional work, materials, handling, storage or services are required; or

(g) any other circumstances arise which increase the cost, risk or burden of supply to the Supplier.

4.4. If Goods are custom-made, specially ordered, processed to the Customer's requirements, or scheduled for delivery more than 90 days after the Order, the Supplier may require a deposit, progress payment or payment in full before supply.

4.5. If the Supplier agrees to supply Goods or Services by instalments, each instalment may be invoiced separately and will be treated as a separate supply under these Terms.

5. Payment

5.1. Unless the Supplier agrees otherwise in writing, payment is due:

(a) in full before delivery or supply, if required by the Supplier; or

(b) if the Customer has an approved credit account, no later than 30 days from the end of the month in which the relevant invoice is issued.

5.2. The Supplier may, at any time and in its sole discretion, require payment in full in cleared funds before delivery, further delivery or continued supply.

5.3. The Customer must pay all amounts in full, without deduction, retention, withholding, counterclaim or set-off.

5.4. If any amount is not paid by the due date:

(a) all outstanding amounts owing by the Customer to the Supplier become immediately due and payable;

(b) the Supplier may charge interest on the overdue amount calculated daily from the due date until payment at a rate equal to 5% per annum above the rate charged by National Australia Bank from time to time on overdraft accounts for amounts up to $500,000, or any equivalent successor rate;

(c) the Supplier may suspend or withhold any further supply of Goods or Services;

(d) the Supplier may require payment in advance for any further supply; and

(e) the Customer must pay, and each guarantor indemnifies the Supplier against, all costs incurred by the Supplier in recovering or enforcing payment, including debt collection costs, dishonoured payment fees, legal costs on an indemnity basis, court costs and enforcement costs.

5.5. A certificate signed by a manager, credit manager, financial controller or other authorised officer of the Supplier stating the amount due and owing by the Customer is prima facie evidence of that amount.

5.6. If the Customer is a trustee, the Customer is liable both personally and in its capacity as trustee, and the assets of the relevant trust are available to meet all amounts owing to the Supplier.

6. GST

6.1. If GST is payable on any taxable supply made under or in connection with these Terms, the Customer must pay to the Supplier an additional amount equal to the GST payable on that supply.

6.2. The additional amount is payable at the same time as the consideration for the relevant supply, subject to the Supplier issuing a valid tax invoice.

6.3. If an adjustment event occurs, the Supplier may issue an adjustment note and the parties must make any required adjustment payment.

7. Delivery, Collection and Storage

7.1. Delivery occurs when:

(a) the Goods are made available for collection at the Supplier’s premises;

(b) the Goods are delivered to the location nominated by the Customer; or

(c) the Goods are collected by, or released to, the Customer, its carrier, agent or representative,

whichever occurs first.

7.2. If the Customer requests delivery to a nominated location and the Supplier agrees, the Supplier may arrange delivery as agent for the Customer and at the Customer’s cost.

7.3. The Customer authorises the Supplier to deliver the Goods to the nominated delivery location and to leave the Goods at that location, whether or not any person is present to accept delivery.

7.4. The Supplier is not required to obtain a signed receipt or delivery acknowledgement. However, if a receipt or acknowledgement is obtained from a person who appears to be authorised to receive the Goods, that receipt or acknowledgement is conclusive evidence of delivery, quantity delivered and apparent good condition of the Goods at delivery.

7.5. Any delivery date or time stated by the Supplier is an estimate only and is not guaranteed.

7.6. The Supplier is not liable for any failure or delay in delivery or performance, or for any loss or damage arising from any such failure or delay, except to the extent the failure or delay is solely caused by the Supplier's breach of these Terms.

7.7. The Customer must accept and pay for the Goods and Services if and when they are supplied, notwithstanding any delay.

7.8. If the Customer does not collect or accept delivery of Goods when they are ready, or asks the Supplier to defer delivery, the Supplier may:

(a) store the Goods at the Customer's risk and cost;

(b) charge the Customer for storage, handling, insurance and related costs;

(c) invoice the Customer for the Goods and Services; and

(d) after giving reasonable notice, resell, dispose of or otherwise deal with the Goods without prejudice to the Supplier's right to recover the Price and all associated costs.

7.9. Unless otherwise agreed in writing, Goods will be packed using the Supplier's usual packaging for goods of that type. The Supplier is not liable for damage to, or deterioration of, Goods during transit.

8. Risk and Insurance

8.1. Risk in the Goods passes to the Customer on delivery.

8.2. From the time risk passes, the Customer is responsible for all loss, theft, damage or deterioration of the Goods.

8.3. The Customer must insure the Goods from the time risk passes until title passes to the Customer, and must hold the proceeds of any insurance claim relating to unpaid Goods on trust for the Supplier to the extent of the amount owing to the Supplier.

9. Title

9.1. Legal and equitable title to the Goods remains with the Supplier and does not pass to the Customer until the Supplier has received payment in full in cleared funds for:

(a) the Goods;

(b) all other Goods and Services supplied by the Supplier to the Customer; and

(c) all other amounts owing by the Customer to the Supplier on any account.

9.2. Until title passes, the Customer:

(a) holds the Goods as bailee for the Supplier;

(b) must store the Goods separately and in a manner that clearly identifies them as the property of the Supplier;

(c) must not remove, deface or alter any identifying mark or packaging;

(d) must not sell, dispose of, part with possession of, encumber or grant any security interest in the Goods without the Supplier's prior written consent;

(e) must not mix, attach, incorporate, process or transform the Goods in a way that cannot be readily reversed without damaging the Goods, unless authorised by the Supplier; and

(f) must allow the Supplier to inspect the Goods on request.

9.3. If the Supplier gives prior written consent for the Customer to sell Goods before title passes:

(a) the Customer does so as fiduciary agent of the Supplier;

(b) the Customer must keep separate records of the sale;

(c) the Customer must hold the proceeds of sale on trust for the Supplier in a separate account; and

(d) the Customer must immediately pay the proceeds to the Supplier up to the amount owing to the Supplier.

9.4. If the Goods are used in a manufacturing process, mixed with other goods, or incorporated into other products before title passes, the Customer must record the value of the Goods used and hold the corresponding portion of any proceeds of sale on trust for the Supplier.

9.5. The Customer's authority to sell, use or deal with unpaid Goods immediately ends if:

(a) the Customer fails to pay any amount when due;

(b) the Customer becomes insolvent;

(c) the Customer breaches these Terms;
(d) the Customer disposes of Goods other than as permitted by these Terms; or
(e) the Supplier notifies the Customer that the authority is withdrawn.

9.6. If the Customer fails to pay any amount when due, the Customer irrevocably authorises the Supplier, and any person authorised by the Supplier, to enter any premises where the Goods are or may be located, without liability for trespass, negligence or compensation, to inspect, seize and recover the Goods.

9.7. The Customer must do all things reasonably required by the Supplier to assist the Supplier to recover possession of unpaid Goods.

10. Personal Property Securities Act

10.1. This clause is to be interpreted and applied in accordance with the PPSA.

10.2. The Customer acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and create in favour of the Supplier a security interest, including a purchase money security interest, in:
(a) all Goods supplied, or to be supplied, by the Supplier to the Customer;
(b) all proceeds of those Goods; and
(c) any other personal property of the Customer in which the Supplier has a security interest under these Terms,
(d) to secure payment of all amounts owing by the Customer to the Supplier.

10.3. The Supplier may register, perfect, maintain and enforce any security interest created by these Terms.

10.4. The Customer must promptly sign any document, provide any information and do anything reasonably required by the Supplier to register, perfect, maintain, protect, preserve or enforce the Supplier's security interest.

10.5. The Customer must not register, or permit to be registered, any security interest in the Goods or their proceeds without the Supplier's prior written consent.

10.6. The Customer must give the Supplier at least 15 days' prior written notice of any proposed change to the Customer's name, address, contact details, trading name, business structure or any other details relevant to a PPSA registration.

10.7. The Customer must pay all costs incurred by the Supplier in connection with the PPSA, including registration, amendment, discharge, enforcement, legal advice and any application under section 182 of the PPSA.

10.8. To the extent permitted by law:
(a) sections 96 and 125 of the PPSA do not apply;
(b) the Customer waives its rights to receive any notice, statement or document under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA;
(c) for the purposes of section 157(7) of the PPSA, the Supplier need not comply with sections 132 and 137(3); and
(d) neither party will disclose information of the kind referred to in section 275(1) of the PPSA, except where required by law.

11. Drawings, Specifications and Customer Information

11.1. The Customer is responsible for all drawings, designs, specifications, measurements, quantities, tolerances, performance requirements, site conditions and other information supplied to the Supplier.

11.2. The Supplier is not liable for any error, defect or issue arising from any information provided by or on behalf of the Customer.

11.3. The Supplier may rely on all information provided by or on behalf of the Customer and is not required to verify its accuracy, adequacy or suitability.

11.4. If delivery, production or performance depends on the Customer providing drawings, specifications, approvals, information or materials, any relevant delivery or performance period does not commence until the Supplier receives those items in a form satisfactory to the Supplier.

11.5. The Customer warrants that any drawings, designs, specifications, materials or information provided to the Supplier:

(a) are accurate and complete;
(b) are suitable for the Customer's intended purpose;
(c) do not infringe any intellectual property rights or other rights of any third party; and
(d) may be used by the Supplier for the purpose of supplying the Goods or Services.

11.6. The Customer indemnifies the Supplier against all claims, losses, liabilities, costs and expenses arising from or in connection with any drawings, designs, specifications, materials or information provided by or on behalf of the Customer, including any claim that their use infringes third-party rights.

12. Inspection and Acceptance

12.1. The Customer may inspect Goods before delivery only if agreed by the Supplier in writing.

12.2. If the Supplier agrees to an inspection, the Customer must give at least 2 Business Days' notice of its inspection requirements and comply with all site, safety and access requirements of the Supplier.

12.3. The Customer is deemed to have accepted the Goods and Services unless it gives written notice of any defect, shortage, incorrect supply or non-compliance within:
(a) 5 Business Days after delivery, for wrong supply, oversupply, shortage or obvious defect; or
(b) 7 days after the Customer becomes aware of the relevant facts, for any latent defect,
and in any event no later than 14 days after delivery.

12.4. Any notice under clause 13.3 must identify the relevant Goods or Services, invoice number, delivery date, alleged defect or issue, and include reasonable supporting evidence.

12.5. If the Customer does not notify the Supplier within the required time, the Goods and Services are deemed to have been supplied in accordance with the Accepted Order and these Terms, to the maximum extent permitted by law.

13. Returns

13.1. Goods may not be returned for credit or refund without the Supplier's prior written approval. Any request for return must be submitted in writing and include the relevant invoice number, invoice date and reason for the return.

13.2. The Supplier may impose conditions on any approved return, including that the Goods are unused, undamaged, in original condition and packaging, returned within a specified period, and subject to restocking, handling, freight or other charges (including a restocking fee of up to 15% of the invoice value where the return is not due to any fault of the Supplier).

13.3. The Supplier is not required to accept the return of any Goods that are custom-made, specially ordered, processed, cut, fabricated, modified, damaged, altered or used, or supplied in accordance with the Customer's drawings, specifications or requirements, except to the extent required by law.

13.4. The Customer may not reject Goods or Services where they have been supplied in accordance with the Customer's requirements or information provided by or on behalf of the Customer.

14. Liability

14.1. Nothing in these Terms excludes, restricts or modifies any guarantee, warranty or right that cannot lawfully be excluded, restricted or modified, including any applicable rights under the *Competition and Consumer Act 2010* (Cth) or equivalent State or Territory legislation.

14.2. To the maximum extent permitted by law, all warranties, conditions, guarantees and representations not expressly set out in these Terms are excluded.

14.3. To the maximum extent permitted by law, the Supplier's total aggregate liability arising out of or in connection with the Goods, Services, any Contract or these Terms, whether in contract, tort, negligence, statute or otherwise, is limited to the amount paid by the Customer for the Goods or Services giving rise to the liability.

14.4. Where the Supplier is permitted by law to limit the Customer's remedy for breach of a consumer guarantee or other non-excludable obligation, the Supplier's liability is limited, at the Supplier's option:

(a) for Goods, to replacement of the Goods, supply of equivalent Goods, repair of the Goods, payment of the cost of replacing the Goods, or payment of the cost of repairing the Goods; and
(b) for Services, to supplying the Services again or payment of the cost of having the Services supplied again.

14.5. The Supplier is not liable for any:
(a) indirect, special, consequential, exemplary or punitive loss or damage;
(b) loss of profit, revenue, production, use, business opportunity, goodwill, anticipated saving, contract or reputation;
(c) business interruption;
(d) loss arising from delay;
(e) loss arising from the Customer's drawings, specifications, instructions, materials or information;
(f) loss arising from use of the Goods or Services for a purpose not made known to and accepted by the Supplier in writing; or
(g) loss arising from advice, recommendations or information provided by the Supplier's employees, contractors or agents, unless expressly incorporated into an Accepted Order.

14.6. The Supplier's liability is reduced to the extent that the Customer or any third party caused or contributed to the relevant loss or damage.

14.7. The Customer must rely on its own skill, judgement, expertise and experience in determining whether the Goods or Services are suitable for its intended purpose.

15. Customer Obligations

15.1. The Customer must:
(a) comply with all applicable laws, regulations, standards and codes in connection with the purchase, handling, storage, use, transport and disposal of the Goods and Services;
(b) obtain and maintain all licences, approvals, permits and authorisations required for the Goods or Services;
(c) ensure that the Goods and Services are suitable for the Customer's intended purpose;
(d) ensure that all persons using or dealing with the Goods are properly trained and competent;
(e) comply with all site safety, access and operational requirements notified by the Supplier;
(f) not use the Goods or Services in any unlawful, unsafe or improper manner; and
(g) ensure that no unauthorised person uses any credit account provided by the Supplier.

15.2. If the Customer sells or transfers its business, changes ownership or no longer requires a credit account, the Customer must immediately notify the Supplier in writing and close the account. The Customer remains liable for all use of the account until the Supplier receives written notice and confirms closure.

15.3. The Customer is responsible for all Orders placed on its account, including those placed by any person who appears to have authority, and must ensure that its account is not misused by unauthorised persons.

15.4. The Customer must immediately notify the Supplier in writing if:
(a) the Customer becomes aware of any actual or suspected unauthorised use of the Account; or
(b) the Customer sells, transfers, or changes ownership of its business or no longer requires the Account.

15.5. The Customer remains liable for all use of the Account, and all transactions conducted using the Account, until the Supplier receives written notice and confirms closure of the Account.

15.6. The Customer warrants that, at the time of each Order:
(a) it is solvent and able to pay its debts as and when they fall due; and
(b) no step has been taken, and no resolution has been passed, in connection with the Customer entering administration, liquidation, receivership or any arrangement with creditors.

16. Privacy and Credit Information

16.1. The Customer authorises the Supplier to obtain credit reports and other credit information about the Customer, its directors, proprietors, partners and guarantors for the purposes of assessing creditworthiness, supplying Goods or Services, managing the Customer's account and recovering overdue amounts.

16.2. The Customer authorises the Supplier to exchange information about the Customer, its directors, proprietors, partners and guarantors with credit reporting bodies, trade insurers, debt collection agencies, solicitors, bankers, referees and other credit providers.

16.3. The information exchanged may include information about creditworthiness, credit standing, credit history, credit capacity, defaults, payment history and account conduct.

16.4. The Customer warrants that it has obtained all consents required from its directors, officers, partners, proprietors and guarantors for the Supplier to collect, use and disclose their information in accordance with this clause.

17. Modern Slavery and Compliance

17.1. The Customer represents and warrants that it complies with all applicable laws relating to modern slavery, anti-bribery, corruption, sanctions, workplace health and safety, environment, employment and supply chain compliance.

17.2. The Customer must not do, or omit to do, anything that causes or may cause the Supplier to breach any applicable law or reporting obligation, including under the *Modern Slavery Act 2018* (Cth).

17.3. The Customer must provide reasonable information requested by the Supplier to assess or verify compliance with this clause.

18. Subcontracting

18.1. The Supplier may subcontract, outsource or delegate the production, manufacture, processing, delivery or supply of the whole or any part of the Goods or Services.

18.2. The Supplier remains responsible for the supply of Goods and Services under the relevant Contract, subject to these Terms.

19. Advertising and Promotional Use

The Supplier may photograph or record images of Goods manufactured, processed or supplied by the Supplier and may use those images for advertising, marketing, tendering, internal training or promotional purposes, provided the Supplier does not disclose the Customer’s confidential information without consent.

20. Force Majeure

20.1. The Supplier is not liable for any failure or delay in performing its obligations where the failure or delay is caused by any event or circumstance beyond the Supplier’s reasonable control.

20.2. Such events include strikes, industrial action, shortage of labour, shortage of materials, supply chain disruption, transport delays, breakdown of plant, machinery or vehicles, fire, flood, storm, pandemic, epidemic, quarantine restriction, war, terrorism, civil unrest, government action, power failure, cyber incident, act of God or any other event beyond the Supplier’s reasonable control.

20.3. The Supplier must use reasonable efforts to mitigate the effect of the event and resume performance as soon as reasonably practicable.

20.4. If a force majeure event continues for a period that, in the Supplier’s reasonable opinion, materially affects its ability to supply the Goods or Services, the Supplier may cancel or suspend the affected Contract without liability.

21. Suspension and Termination

21.1. Without limiting any other right or remedy, the Supplier may suspend performance of, or terminate, any Contract immediately by written notice if:

(a) any amount owing by the Customer to the Supplier remains unpaid for 14 days or more;

(b) the Customer fails to provide a guarantee, indemnity, security, deposit or payment in advance when requested by the Supplier;

(c) the Customer fails to accept or take delivery of Goods or Services;

(d) the Customer breaches these Terms and fails to remedy the breach within 30 days after written notice requiring it to do so;
(e) the Customer breaches an essential term of these Terms;
(f) the Customer becomes insolvent, enters administration, liquidation, receivership, restructuring, bankruptcy or any arrangement with creditors;
(g) a receiver, receiver and manager, administrator, liquidator, controller or similar officer is appointed to the Customer or any of its assets;
(h) an application, order or resolution is made for the winding up or deregistration of the Customer;
(i) the Customer ceases, threatens to cease, or materially changes its business;
(j) the Supplier reasonably considers that the Customer may be unable to pay its debts as and when they fall due; or
(k) the Customer's credit risk becomes unacceptable to the Supplier.

21.2. If the Supplier suspends a Contract, the Supplier may require, as a condition of resuming supply:
(a) payment of all outstanding invoices;
(b) payment in advance;
(c) provision of a guarantee, indemnity or other security; and/or
(d) revised commercial terms acceptable to the Supplier.

21.3. Termination or suspension does not affect any rights or liabilities that accrued before termination or suspension.

21.4. The Supplier may require additional or replacement guarantees, indemnities or other security at any time, and failure to provide such security within a reasonable time constitutes a breach of these Terms.

21.5. On termination, all amounts owing by the Customer to the Supplier become immediately due and payable.

22. Guarantee and Indemnity

22.1. In consideration of the Supplier agreeing to supply, or continue to supply, Goods or Services on credit to the Customer, each person who executes a credit application or otherwise provides a guarantee in favour of the Supplier (**Guarantor**) unconditionally and irrevocably jointly and severally guarantees to the Supplier the due and punctual payment of all amounts (including any interest, fees, charges and costs) which are or may become payable by the Customer to the Supplier.

22.2. Each Guarantor jointly and severally indemnifies and agrees to keep the Supplier indemnified against all loss, damage, cost and expense suffered or incurred by the Supplier arising out of or in connection with any failure by the Customer to pay any amount or comply with these Terms.

22.3. This guarantee and indemnity is a continuing security and is not affected by any act, omission or circumstance which might otherwise operate to discharge or reduce the liability of a guarantor, including:
(a) any variation to these Terms or any Contract;
(b) any arrangement, compromise, release or dealing with the Customer or any other person;
(c) the granting of time, credit or other indulgence to the Customer;
(d) any failure by the Supplier to enforce its rights;
(e) any other security or guarantee held by the Supplier; or
(f) the insolvency, liquidation, administration or death of the Customer or any Guarantor.

22.4. Each Guarantor's liability is as principal debtor and not merely as surety.

22.5. Until the Supplier has received payment in full of all amounts owing by the Customer, each Guarantor:
(a) must not prove in any insolvency or administration of the Customer except as directed by the Supplier; and
(b) holds on trust for the Supplier any payment, distribution or benefit received in respect of any such claim.

22.6. The Supplier may enforce this guarantee and indemnity against any Guarantor without first taking action against the Customer or any other person.

22.7. A statement in writing signed by an authorised officer of the Supplier as to the amount owing by the Customer is prima facie evidence of that amount.

22.8. The Supplier may obtain and exchange credit information about each Guarantor for the purposes of assessing creditworthiness, administering the account and recovering any amounts owing.

23. Notices

23.1. Any notice under these Terms must be in writing and may be delivered personally, sent by prepaid post, or sent by email to the party's last notified address or email address.

23.2. A notice is deemed to be received:

(a) if delivered personally, at the time of delivery;

(b) if sent by prepaid post, 4 Business Days after posting; and

(c) if sent by email, when sent, unless the sender receives an automated delivery failure notice, provided that if the email is sent after 5.00 pm or on a day that is not a Business Day, it is deemed received at 9.00 am on the next Business Day.

24. Confidentiality

24.1. Each party must keep confidential all confidential information of the other party and must not disclose it except:

(a) with the other party's written consent;

(b) to its employees, officers, contractors, advisers or insurers who need to know the information;

(c) as required by law; or

(d) to enforce its rights under these Terms.

24.2. The Customer must not use the Supplier's confidential information for any purpose other than receiving the Goods or Services.

25. Intellectual Property

25.1. All intellectual property owned by the Supplier before the supply of Goods or Services remains owned by the Supplier.

25.2. Unless expressly agreed in writing, the Supplier does not assign or transfer any intellectual property rights to the Customer.

25.3. The Supplier retains ownership of all intellectual property created, developed or used by the Supplier in connection with the Goods or Services, including drawings, designs, methods, processes, manufacturing know-how, templates, tooling concepts, software, calculations and technical information.

25.4. The Customer grants the Supplier a royalty-free licence to use any drawings, specifications, designs or information provided by or on behalf of the Customer for the purpose of supplying the Goods or Services.

26. Variation of Terms

26.1. The Supplier may vary these Terms from time to time by giving written notice to the Customer.

26.2. Any variation applies from the effective date stated in the notice, or if no date is stated, from the date the notice is given.

26.3. The varied Terms apply to all Orders accepted after the effective date of the variation.

27. Assignment

27.1. The Customer must not assign, novate, transfer or otherwise deal with any of its rights or obligations under these Terms or any Contract without the Supplier's prior written consent.

27.2. The Supplier may assign, novate or transfer any of its rights or obligations under these Terms or any Contract to a related body corporate or purchaser of its business or assets.

28. Severance

If any provision of these Terms is void, voidable, illegal, invalid or unenforceable, that provision is severed to the extent necessary and the remaining provisions continue in full force and effect.

29. Waiver

29.1. A failure or delay by the Supplier to exercise any right, power or remedy does not operate as a waiver.

29.2. A waiver is only effective if given in writing and only applies to the specific instance for which it is given.

30. Governing Law and Jurisdiction

30.1. These Terms and each Contract are governed by the laws of New South Wales, Australia.

30.2. The parties submit to the exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

31. Survival

Any clause which by its nature is intended to survive termination or expiry continues to apply, including clauses relating to payment, recovery costs, title, security, PPSA, liability, indemnities, confidentiality, intellectual property, governing law and accrued rights.