



TERMS AND CONDITIONS

1. General Terms

These are the Terms and Conditions upon which Accelerate Group Pty Ltd ("Accelerate") is willing and prepared to deal with persons or corporations ("the Customer") in the provision of services, the supply of Product and the granting of credit.

By accepting product, utilizing credit facilities or receiving services from Accelerate the Customer accepts and is bound by these terms and conditions.

If appropriate, any contracts between a person or corporation (the Customer) and Accelerate (the Supplier) in relation to services, sale of product or the provision of credit facilities may constitute a security interest within the meaning of the PPSA and will in the absence of any agreement to the contrary, be bound by and include the following.

2. Account Limits

- (a) The Supplier agrees to allow the Customer to purchase and continue to purchase its products or to provide to the Supplier the services provided that the total of any account does not exceed the pre-approved account limit (if any) and subject to if requested by the Supplier, the Customer providing at least three (3) satisfactory trade references and/or satisfactory trade or status reports from a credit rating agency acceptable to the Supplier.
- (b) The Supplier may require fresh references/reports from time to time as additional information and it must be supplied in a timely manner but not later than twenty one (21) days from the date of request by the Customer.
- (c) The Supplier is not obliged to increase the limit of the Customer's account or give reasons for refusing to increase the limit of the Customer's account.
- (d) If any account is not settled within the standard trading terms, the Customer agrees that the Supplier may suspend all further sales and/or delivery of services or withhold delivery of further Product and close any account between the Supplier and the Customer.

3. Delivery

Delivery takes place on the date of delivery being the earlier of the time the Product passes into the Customer's or the Customer's agents exclusive physical control such as, but not limited to:-

- (a) when the Customer collects the Products, or arranges for the collection of the Product from the Supplier; or
- (b) the Supplier arranges for the Product to be delivered to the Customer in which case the time of delivery is the date upon which the Product leaves the control of the Supplier, or any third party who has been contracted by the Supplier as part of the terms of this agreement to provide part or all of the Product for the benefit of the Customer.

Unless otherwise stated herein, delivery costs are payable in addition to the price of the Product and must be paid by the Customer at the same time payment is made for the Product.

Unless otherwise agreed by the Supplier, the Product will be delivered direct to the business address given by the Customer in a purchase order. If the Customer requests the Product to be delivered to another address, the Supplier may charge an additional fee.

Any estimate as to the date of delivery is an estimate only. The Supplier is under no liability for loss or any damage, however arising if the Product is not delivered by the estimated date.

The Supplier reserves the right to deliver product as ordered by the Customer by instalment and each instalment is sold under a separate contract between the Supplier and the Customer. Failure by the Supplier to deliver any instalment will not entitle the Customer to cancel the balance of its order. If the Customer is in default of the terms of this agreement in respect to any instalment, then the Supplier may elect to treat the default as a breach in respect of each other instalment.

4. Risk

At all times from the Date of Delivery, the Product is at the risk of the Customer and the Customer is responsible for safe custody. The Customer must keep the product insured and promptly provide the Supplier with evidence of such insurance and provide such Certificates of Currency as requested by the Supplier on demand.

5. Ownership

Until all Product purchased by the Customer has been paid in full and any delivery charges or other fees have been reimbursed to the Supplier, title to the Product does not pass and the following terms are essential terms to the Supplier entering into an agreement to supply product or goods to the Supplier:-

- (a) The Customer will store and deal with the Product in a way that is clearly identifiable as belonging to the Supplier.
- (b) Grant an irrevocable licence to enter the premises on any business day to inspect the Product, and the Customer's books or records of account or other paperwork regarding the Product.
- (c) If the Product is on sold in the ordinary course of the Customer's business and if payment has not been made for the Product, all proceeds of sale will be held by the Customer in trust and not by way of security, for and as agent for the Supplier in a separate account. The Customer will pay the proceeds to the Supplier as soon as payment is received by the Customer and the Customer will provide such information and permit the Supplier to do all things either at the premises of the Customer or otherwise, to trace and claim such proceeds.
- (d) The onselling of the Product or any part thereof or of any product of which the Supplier's product forms part, does not give to the Customer the right to bind the Supplier to any liability to any third party by contract or otherwise. If the Product is used in some manufacturing or construction process, or is part of goods supplied by the Customer or sold in the ordinary course of the Customer's business, the Customer agrees it will hold such part of the proceeds as relates to the value of the Product on trust for the Supplier. To the extent required, that part shall be deemed equal in dollar terms to the amount payable or owing by the Customer to the Supplier at any time of the receipt.



- (e) The Customer will keep separate records and clearly identify in the Customer's books the use of the Product in the course of the manufacturing or construction of other product of which the Product forms part, and provide details of where and what premises those products have been delivered to.

6. Recovery

If there is a default in excess of the trading terms, the Supplier may enter the premises owned, possessed or controlled by the Customer or premises where the Supplier reasonably believes the Product is stored, and remove the Product and re-sell all or any of them without liability to the Customer and to that extent, the Customer will obtain a landlord's waiver as to the right of entry in a form acceptable to the Supplier.

7. Travel

The Customer agrees, where, as a requirement of any quotation, Customer requirement or the delivery of any services, employees of Accelerate are required to travel from or away from the office of Accelerate, the Customer will pay for, but not limited to, airfares, accommodation, ground transport (to and from airports in both directions at departure and destination), all reasonable meal allowances approved by Accelerate together with transport to and from accommodation to work sites as well as incidental ground travel. In addition, the Customer will pay or reimburse Accelerate for travel insurance. The Customer acknowledges flights will be reserved on the best available on the day of travel and the preferred partner of Accelerate is Qantas.

8. Claims

The Customer agrees on delivery it will inspect the Product immediately and report in writing any damage or incorrect supply which must be received within seven (7) days of the Delivery Date otherwise the Supplier may refuse any claim made by the Customer. If the Product is damaged when delivered, the Supplier may accept its return and replace it with an equivalent product or credit the Customer with the price paid at the sole election of the Supplier, but in such case, the Supplier will not be responsible for any consequential or other losses arising out of the delay of the provision of the Product as may be claimed by the Customer.

9. Fitness for Use

The Supplier does not warrant the suitability of any Product for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability whatsoever and the Customer agrees it has not relied on the skill or judgement of the Supplier in relation to the suitability of any Product.

10. Price and Variation

- (a) Any description of the Supplier's services or product including any specifications, illustrations, drawings, data, dimensions and weights is approximate and is given by way of identification only. The use of the description does not constitute a sale by description and does not form part of the contract between the parties, unless specifically stated herein. The Customer is responsible for ensuring the product ordered is suitable for its intended use and the services required are suitable (to the extent the same have been explained by the Supplier) for the Customer's use and benefit.

- (b) The Supplier is not liable to the Customer for any product ordered by the Customer which at the Date of Delivery is deemed by the Customer or the Supplier unsuitable for the intended use. All pricing of product will be in accordance with the Supplier's price list and the Supplier reserves the right to invoice the Customer in accordance with that price list despite any such unintended errors on the price list whether in paper format or on the Supplier's website.

11. Quotations

Any quotation provided by the Supplier is valid only for the period of time specified in the quotation or thirty (30) days from the date specified in the quotation, whichever is the lesser, and only in respect of the matters set out in the quotation. Quotations are confidential and must not be disclosed to any third party without the prior consent of the Supplier.

12. Overdue Accounts

- (a) The Customer must pay for the services or a Product by the Due Date. Any account which is not settled by the Due Date, will attract a late payment fee equal to 1.5% of the unpaid account, charged monthly, until the account is paid in full. The Customer agrees this late payment fee is a genuine pre-estimate of the loss the Supplier would suffer if the Customer did not pay for the Product or the services by the Due Date.
- (b) If the arrangements provided under this clause would otherwise constitute a credit contract as defined in the Consumer Credit Code, the time for payment for any due account is limited to a total period of not more than sixty two (62) days from the date of invoice. Nothing in this clause imposes an obligation on the Supplier to extend payment terms to the Customer for any period at all and the Supplier is not obliged to dispatch any further Product or provide any further services or accept any further orders placed by the Customer with the Supplier, if the Customer's account is outstanding beyond sixty (6) days from the date of invoice.
- (c) The Customer agrees any discounts, rebates or other concessions are lost if payment is not made in time.

13. Costs

If the Customer is in breach of any of the Supplier's terms and conditions, the Customer agrees it is also responsible for all of the Supplier's expenses incurred and of any kind, including but not limited to the Supplier's legal costs on a solicitor/customer basis, any commission or other expense incurred by any debt commission agency retained to recover moneys from the Customer.

14. Proceedings

The Supplier may commence legal proceedings against the Customer for recovery of any account which is overdue by sixty (60) days or more from the date of invoice without further notice to the Customer.

15. GST

The parties agree that:-

- (a) unless expressly stated otherwise, the consideration specified in any quotes does not include any amount of GST;
- (b) if a supply is subject to GST, and the consideration payable or to be provided for the supply is not expressed to include GST, the party receiving the supply must pay to the party making



the supply an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate;

- (c) the additional amount is payable at the same time as the consideration for the supply is payable or is to be provided, however the additional amount need not be paid until the party making the supply gives the party receiving the supply a Tax Invoice;
- (d) if the additional amount differs from the amount of GST payable by the party making the supply, the parties must adjust the additional amount; and
- (e) if a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

16. Orders

- (a) All communications between the parties, including but not limited to, purchase orders must be in writing (which includes by email). Any verbal order must be confirmed in writing within twenty four (24) hours and will be considered as accepted by the Customer on delivery of the product or service as the case may be.
- (b) Unless the Supplier agrees special arrangements or requires an authorisation code, the Supplier assumes any order received from any employee of the Customer has been placed with the express authority of the Customer and is binding on the Customer.
- (c) No quote is binding on the Supplier unless and until the Supplier has prepared and accepted a written confirmation of order.
- (d) If the Customer makes a change to an order or delivery details which causes a delivery delay or cancels an order less than fourteen (14) days prior to a scheduled delivery, the Customer will pay a fee equal to five percent (5%) of the list price of any product affected or five percent (5%) of the annual cost of the services to be undertaken. If the Customer cancels an order or refuses to accept all or any of the Product in an order, then in circumstances permitted by these terms and conditions, the Customer will be liable for any resulting damage or loss suffered by the Supplier. If the Product has been or is in the process of being manufactured or produced specifically for the Customer, it will, notwithstanding anything contained elsewhere in this agreement, pay the full price of the Products and any costs incurred by the Supplier (including without limitation any GST) less the current scrap value of the Product as determined by the Supplier.

17. Discretion in Exercising Rights

The Supplier may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless otherwise expressly stated herein.

18. Partial Exercise of Rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

19. Approvals and Consents

By giving its approval or consent, a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

20. Remedies Cumulative

The rights and remedies provided in this agreement are in addition to other rights and remedies given by law independently of this agreement.

21. No Merger

The warranties in this agreement do not merge under any circumstances (including Acceptance).

22. Guarantee and Indemnity

- (a) Notwithstanding anything herein contained, any guarantee or indemnity contained in this agreement, or in any guarantee agreement executed by the Customer and the Guarantors named therein in favour of the Supplier, are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends and in the case of the Customer, until all moneys due and payable by the Customer to the Supplier have been paid in full, including but not limited to all of the Supplier's costs and recovery costs and any other costs associated with the supply of Product or services. In the case of the Customer, the indemnity will continue until such time as the Product has been paid for by the Customer or by agreement, the provision of services by the Supplier has come to an end. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity.
- (b) The Supplier may require the giving of a guarantee in respect to any contractual obligation between the Customer and it. Any alteration or modification of the parties giving the guarantee or the failure to provide the guarantee as required, will entitle the Supplier to immediately discontinue the supply of product, the provision of credit facilities or the provision of ongoing services (as the case may be) at the Supplier's sole election.

23. Personal Property Securities Legislation

- (a) The Customer agrees the following terms and conditions create a PMSI pursuant to the Personal Property Securities Act ("PPSA") in relation to the Product (and their proceeds) sold or disposed of to the Customer, where applicable and in compliance with the PPSA, the provision of any services including supplied presently and in the future by the Supplier to the Customer.
- (b) The Customer will do all things necessary and execute all documents reasonably required by the Supplier to register the PMSI and/or a security interest (at the election of the Supplier granted by the Customer) (if the same is applicable) granted by the Customer under these terms and conditions and to ensure the Supplier acquires effective security interest in the Product under the PPSA.
- (c) The Customer will on demand pay all expenses and legal costs (on a solicitor/customer basis) in relation to or in connection with the registration of the PMSI or other security interest and all other costs associated with the protection and enforcement of the PMSI or any other security interest created by these terms and conditions by undertaking an audit under the provisions of the PPSA or the repossession of the Product the subject of these terms and conditions or the



- exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract the Supplier has with the Customer .
- (d) The PMSI does not lose its priority as a result of renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations.
- (e) Until ownership of the Product passes to the Customer, it waives all rights under the following provisions of the PPSA to the maximum extent permitted by law:-
- (i) receive a notice of intention to remove an accession (Section 95);
 - (ii) receive a notice the Supplier has determined to enforce a security interest in accordance with land law (Section 118) (where applicable);
 - (iii) receive a notice of enforcement action against liquid assets;
 - (iv) receive a notice of disposal of product (Section 129);
 - (v) receive a notice of disposal of product (Section 130);
 - (vi) receive a statement of account following disposal of product (Section 132(2));
 - (vii) receive a statement of account every six months where there has been no disposal of the product (Section 152(4));
 - (viii) notice of retention of the Product by the Supplier (Section 135(2));
 - (ix) object to any proposal by the Supplier to either retain and dispose of the Product (Section 137(3));
 - (x) redeem the Product before the Supplier disposes of it (Section 142);
 - (xi) reinstate the security agreement (Section 143); and
 - (xii) receive any verification statement in relation to any registration event to which the Customer is a party (Section 157(1) and (3)).
- (f) To the extent permitted by the PPSA, these terms and conditions exclude any provisions of the PPSA which may be excluded in the Supplier's discretion and which would otherwise confer a right or rights on the Customer.
- (g) The Customer further agrees where under the PPSA in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
- (h) The Customer agrees to the possession of the goods still owned by the Supplier under these terms and conditions cease if the:-
- (i) the Supplier being an individual, commits an act of bankruptcy; or
 - (ii) the Customer being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the assets of the Customer howsoever arising and any proceedings are instituted for the winding up of the Customer or the Customer enters into a deed of company arrangement; or
 - (iii) the Customer ceases or threatens to cease conducting business in a normal manner or applies for the deregistration or receive a deregistration notice; or
 - (iv) any cheque provided by the Customer is dishonoured for payment; or
 - (v) the Customer fails to comply with any demand for payment issued by the Supplier; or
 - (vi) the Customer breaches any of the terms and conditions contained herein and/or are in default of any other agreement between the Supplier and the Customer.
- (i) In addition to any other right or remedy contained in this Deed, the Customer agrees the Supplier is entitled to enter any premises where the Product supplied and to which payment is still outstanding, is located and to repossess, remove and sell such Product. The Customer agrees to indemnify and keep indemnified the Supplier in respect to all claims, actions and costs that may arise against the Supplier in relation to the removal, repossession and sale of the Product pursuant to these terms and conditions, including any claims brought by any landlord or other third party.
- (j) The Customer agrees repossession and retention of the Product pursuant to the PPSA will only satisfy so much of the moneys which become payable by the Customer to the Supplier, as is equivalent to the Supplier's estimation of the market value of the Product as it is at the date of repossession, and the repossession and retention will immediately extinguish any rights for interest the Customer has for product value or product recovered.
- (k) Until ownership of the Product passes to the Customer, the Customer cannot and must not give to the Supplier a written demand or allow any other person to give to the Supplier a written demand requiring it to register a financing change statement under the PPSA, or enter into or allow any other person to enter on the Personal Property Securities Register a financing change statement under the PPSA.
- (l) If the Customer is an individual, you undertake not to change your name or change any of the material particulars of any of the documents comprising the PMSI or any other security interest, or if the Customer is a corporation, it undertakes not to make any change to its name or of any other details which are capable of being registered without the Supplier's prior written consent.
- (m) Notwithstanding anything contained herein or in this agreement, where the Supplier chooses to register a security interest as distinct from a PMSI in relation to services, the provisions of the PPSA apply to the fullest extent, and the preceding provisions of clause 21.1(a) to (l) will apply with such modification as is necessary to give effect to the content contained by this clause 22.1(m).

24. Privacy

- (a) The Customer agrees the Supplier may use or disclose information to third parties for the purpose of providing the Product, providing information about the Product, sending information on or about its services, performing its administrative and marketing operations, complying with legislative and regulatory requirements, or as otherwise permitted or authorised by law without the consent of the Customer.



- (b) Additionally, the Customer agrees the Supplier may, in the course of managing its rights and obligations in relation to external payment systems (eg credit cards systems and debit payment schemes), conducting market research or customer satisfaction research, developing, establishing and administering arrangements (including rewards programs) (if any) undertaken or proposed by the Supplier now or hereafter in relation to a promotion, administration and use of the products of the Supplier and developing and identifying products and services which may interest the Customer charge, the Customer hereby charges all property, both equitable and legal, present or future, belonging to it in respect to any moneys which may be hereafter owing to the Supplier under these terms and conditions, either for the provision of Product or the provision of services or the provision of any other arrangement between the Supplier and the Customer whereby moneys become payable to the Supplier or are owing by the Customer.
- (c) The Customer hereby authorises its solicitors to execute any consent form as the Customer's attorney for the purpose of registering a mortgage or caveat over any real property owned by the Customer who consents to the same securing all obligations under any agreement with the Supplier and also to register this charge over the Customer's assets either as an individual or as a company/trustee or partnership (as applicable) pursuant to the PPSA.

25. Trust

Where the Customer is a trustee of a trust, the following applies, but not otherwise:-

- (a) the Customer agrees to produce a copy of the trust deed (and where applicable, such copy must be stamped) and all amendments thereof if and when requested by the Supplier;
- (b) the Customer warrants it has full power and authority on behalf of the trust and the trust shall be bound by these terms and conditions both personally and as trustee, irrespective of whether or not the Customer or the trust discloses to the Supplier it is a trustee at the time of entering into any credit agreement with the Supplier;
- (c) the right of indemnity of the trustee who has entered into this agreement with the Supplier, arising out of the terms of the trust deed is in full force and effect and there is not, to the reasonable knowledge of the Customer, any ground upon which that right of indemnity can be withdrawn or suspended or cancelled; and
- (d) to the fullest extent permitted by law, all of the assets of the trust are available to secure the obligations of the Customer for the benefit of the Supplier.

26. Guarantee

The Supplier may before the provisions of product or services require the Customer to execute a guarantee on such terms and conditions as the Supplier requires. The non-compliance by the Customer of the provision of a guarantee or the procurement of a guarantee by the Guarantors entitles the Supplier, regardless of any condition, obligation, undertaking or stipulation to immediately terminate any contact or agreement for the supply of products and/or the supply of services or both and, where a

product is unpaid for, to enter upon the property of the Customer and recover the same.

27. Right of Entry

Notwithstanding anything contained in any invoice or contract between the Supplier and a customer, where product has been delivered to the Customer and regardless of whether a security interest has been created, the non-payment by the Customer of any invoice constitutes a breach of that agreement and entitles the Supplier to enter upon the premises of the Customer or such premises in the Supplier's reasonable opinion contain the product and to remove the same or any part or parts thereof until payment in full has been made.

28. Credit Application

- (a) These Terms and Conditions apply in any event if the Customer has executed a Credit Application at any time prior to the date hereof and credit has been provided by the Supplier, then these Terms and Conditions are in addition to any of the obligations or Terms and Conditions that applied at the time of the Credit Application and, where there is a difference, the Terms and Conditions contained herein shall apply.
- (b) Where a Credit Application has not been made by the Customer, then these Terms and Conditions shall apply and the Customer and the Guarantor specified herein must sign and have their signatures properly witnessed to this Agreement before credit will be supplied or continued to be supplied to enable Product and services to be acquired.

29. Interpretation

29.1. Definitions

These meanings apply unless the contrary intention appears:-
Accelerate shall mean Accelerate Group Pty Ltd (ACN 109 011 912) whose ABN is 86 109 011 912.

Amount of the Consideration means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST Exclusive Market Value of that consideration as reasonably determined by the party making the supply.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Controller has the meaning it has in the Corporations Act.

Controller or Administrator appointed pursuant to the provisions of the Corporations Act in relation to a corporation a party to this deed.

Corporations Act means the Corporations Act 2001 (Cwlth).

Discloser means the party disclosing Confidential Information.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.



GST means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999, as amended from time to time.

Law means any Commonwealth or Australian State legislation, regulations and general law and includes in particular the Commonwealth Competition and Consumer Act 2010 and regulations as amended from time to time.

PPSA means the Personal Property Securities Act 2009 and as subsequently modified from time to time.

PMSI means a Purchase Money Security Interest has the same meaning as given in Section 14 of the PPSA.

Product means all goods of whatever nature supplied to the Customer pursuant to any invoice, quotation or contract.

Receiver includes a receiver or receiver and manager.

Recipient means the party receiving Confidential Information.

Related Entity has the meaning it has in the Corporations Act.

Security Interest means security interest created by the PPSA not being a PMSI granted and/or taken by the Supplier over the assets and/or services of the Customer.

Set Off means set off against any or all of the amounts that the Customer owes to the Supplier under this or any other agreement.

Tax Invoice has the meaning given to it in the GST Act.

Taxes means taxes, levies, imposts, charges and duties (including, stamp and transaction duties) imposed by any Government Agency, together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the overall net income of the Supplier, but excluding GST.

30. Entire Agreement

This agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior understandings, arrangements and agreements between the parties.

31. Notices

Any notice or communication to be given by one party to the other must be in writing signed by the party giving it or by that party's solicitor or agent and must be served in accordance with this Deed. A notice is deemed served in the following manner:-

- (a) if sent by prepaid post on the SECOND (2nd) day (not including the date of postage);
- (b) if sent by facsimile, on the day of the facsimile transmission if the same was transmitted to the facsimile address of the other party before 3pm WST but, if transmitted after 3pm, then the notice is deemed served on the next business day;
- (c) if left personally at the address of the party to be served, the notice is deemed served at that time.

32. Terms and Conditions

These terms and conditions may be modified from time to time by the Supplier or give notice pursuant to any contract existing between the Customer and the Supplier of the modification, and who will also notify all persons dealing with it as to the change of

the terms and conditions by reference to the Supplier's website www.accgroup.com.au.