

## Authorised Dealer Terms and Conditions

Maytronics Australia Pty Ltd ABN 87 148 058 495

### 1. DEFINITIONS

In the Contract:

**Account Application** means the authorised dealer account application submitted by You to receive the Goods, in such form as is designated by Us from time to time.

**Amounts Owing** means all amounts owed, but not paid, by You pursuant to the Contract, including, without limitation, any accrued interest, fees or expenses payable by You pursuant to the Contract and references to **Amount Owing** have a corresponding meaning.

**Authorised Dealer** means a party entitled to describe itself publicly as an authorised distributor of the Products.

**Brand Guidelines** means any guidelines provided to You regarding the use, display and publication of the Maytronics Material and Maytronics Marks, as amended from time to time.

**Business Day** means any day except a Saturday, Sunday or public holiday in Brisbane, Queensland.

**Cash Rate Target** means the current cash rate target as published by the Reserve Bank of Australia (or its successor or replacement from time to time).

**Change in Control** means, the person who Controls You at the date of this Contract subsequently stops having Control.

**Consequential Loss** means loss of bargain, loss of revenue, loss of reputation, indirect loss, loss of profit, loss of actual or anticipated savings, lost opportunities (including opportunities to enter into arrangements with third parties), loss or damage in connection with claims against a party by third parties or loss or corruption of data.

**Contract** has the meaning given to that term in clause 2.1.

**Customers** means customers who purchase Products from You who are reasonably expected to be the end-users of those Products.

**Control** means when a person directly or indirectly holds or controls a majority of the voting rights of, or the right to appoint or remove a majority of the board of directors of, or the right to exercise a dominant influence over or otherwise control (by virtue of an undertaking's constitution, contract or otherwise), another person, and references to Controls have a corresponding meaning.

**Defect** means the failure of a Product to meet the Product Specifications or the requirements of these Terms and Conditions, but excludes failures that are caused or contributed to by any modification to that Product made or authorised by You, Your Personnel or Your Customers that We have not authorised in writing, and references to **Defective** have a corresponding meaning.

**Extended Warranty Period** means an additional 12 month warranty to the Warranty Period for Products purchased by Customers through Authorised Dealers.

**EXW** has the meaning given to that term in the Incoterms® 2020.

**Good Industry Practice** means the servicing and repair of Products to a high quality, in a professional manner and to the standard ordinarily expected of distributors and retailers of pool equipment in Australia.

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

**Incoterms® 2020** means the international rules for the interpretation of trade terms as published by the International Chamber of Commerce, 2020.

**Insolvency Event** means an event where:

- (a) an order is made or a resolution is effectively passed for Your winding-up or dissolution (except for the purpose of solvent reconstruction or amalgamation for which We have given prior written approval);
- (b) You go into liquidation or make an assignment for the benefit of, or enter into an arrangement, composition or compromise with Your creditors, or any class of creditors;
- (c) a receiver and manager, controller, administrator, trustee or similar officer is appointed over all or any part of Your assets or an application or order for such appointment is made;
- (d) execution is levied against You and is not discharged within 30 Business Days;
- (e) You are unable to pay Your debts as and when they fall due, or You are deemed unable to pay Your debts according to applicable Law or Authorisation (other than because of a failure to pay a debt or claim the subject of a good faith dispute);
- (f) You (being an individual) become bankrupt, or commit an act of bankruptcy; or
- (g) anything analogous or having similar effect to anything referred to in paragraphs (a) to (f) of this definition occurs to You.

**Intellectual Property Rights** means all registered and unregistered intellectual property rights, including (without limitation) in any patents, trade marks, service marks, rights in designs, trade names, copyright, utility models, eligible circuit layout rights and topography rights, inventions, discoveries, trade secrets, know how, data, domain names, software, source code and improvements, goodwill, applications or rights to apply for any of the foregoing and all other intellectual property as defined in Article 2 of the *Convention Establishing the World Intellectual Property Organisation 1967*.

**Internet Policy** has the meaning ascribed to that term in clause 11.2.

**Law or Authorisation** means any act of parliament, any subordinate legislation, rules, regulations, standards or by-laws made pursuant to the relevant act, any common law or principles of equity or any form of authorisation, approval, certification or consent from any government authority or professional or industry body.

**Loss** means any costs, damages, loss, demands, legal proceedings, claims, actions, fines, penalties, obligations, liabilities or expenses of any nature, including, without limitation, the costs of Our mercantile agents and the costs of any matter being referred out to a collection agent and/or solicitor for recovery.

**Maytronics Entities** means, together, MTI, MTAU and MTAU's wholly-owned subsidiaries.

**Maytronics Marks** means all trade marks, service marks, brand names, badges, statements, marks, names or other identifying features, whether registered or not, or capable of registration or not, that are used by Maytronics Entities in relation to the Products.

**Maytronics Material** means any documents or material (including physical or electronic), including, without limitation, all Product Specifications, Standards and Procedures, Brand Guidelines, photographs of the Maytronics Entities' products, marketing material and any other documents or materials provided or made available to You by Us from time to time, including on Our Website.

**MTAU** means Maytronics Australia Pty Ltd ACN 148 058 495.

**MTI** means Maytronics Limited, a company domiciled at Kibbutz Yizre'el 19350, Israel.

**Order** means a written request for the provision of Products to You, including via the Ordering System, on the terms and conditions contained in these Terms and Conditions and

references to the term **Ordering** have a corresponding meaning.

**Ordering System** means an ordering system which We may direct, or have directed, You to utilise for the purposes of Ordering.

**Personnel** means, of a party, that party's employees, officers, contractors, Related Entities (as that term is defined in the *Corporations Act 2001* (Cth)) and subcontractors, and employees, officers, contractors and Related Entities of those subcontractors.

**Product Specifications** means the specifications provided by Us, or at Our direction, pertaining to the Products.

**Products** means any goods supplied to You pursuant to these Terms and Conditions.

**Quotation** means a quotation that includes the price of requested Products, which may be provided (at our sole discretion) by way of email or may be accessed via the Ordering System.

**Sales and Advertising Policy** means specifications regarding the marketing, sales and promotion of the Products that are provided by, or at the direction of, Us (from time to time).

**Standards and Procedures** means all standards, procedures, guidelines and specifications regarding, or relating to, the Products or Your position as an Authorised Dealer (as amended from time to time), including, without limitation, the Sales and Advertising Policy.

**Tax** means a tax, GST rate, levy, impost or duty and any interest, penalty, fine or expense relating to any of the foregoing or other withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**Tax Invoice** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Term** has the meaning given to that term in clause 2.3.

**Terms and Conditions** means these terms and conditions.

**Warranty Period** means, in respect of any given Product, the applicable warranty period applying to that Product, as specified in the relevant warranty certificate issued by MTAU as at the date of purchase.

**Website** means the website found at the domain name <https://www.maytronics.com.au/>.

**We/ Us/ Our** means MTAU, for and on behalf of itself and, where applicable, as agent for MTI, Focus Products Pty Ltd ACN 657 962 546 and OFP Company Pty Ltd ACN 073 540 520.

**You/ Your** means the entity set out in the account application and/or the credit application accepted by Us.

## 2. CONTRACT

- 2.1 This Contract consists of Your Account Application and/or credit application executed by You and accepted by Us and these Terms and Conditions (**Contract**).
- 2.2 If there is any inconsistency between the documents forming part of this Contract, then the Account Application and/or credit application (including any "special conditions" therein) accepted by Us prevails to the extent of that inconsistency.
- 2.3 The Contract commences on the date that We give You written notice that We have accepted Your account application and/or credit application and continues for an initial period of 12 months (**Initial Term**); and
  - (a) automatically renews for successive periods of 12 months (each period being a **Subsequent Term**), unless either party provides the other party with written notice of their intention not to renew the Contract of not less than one month prior to the expiration of the Initial Term or the then-current Subsequent Term (as applicable),

(**Term**).

- 2.4 Except as otherwise agreed in writing, the terms and conditions applicable to each Subsequent Term shall be the same as the prior Term.

## 3. APPOINTMENT OF AUTHORISED DEALER

- 3.1 We hereby appoint You as an Authorised Dealer of the Products on a non-exclusive basis for the Term in Australia.
- 3.2 Your appointment under this Contract is strictly as an Authorised Dealer of the Products only and you may only promote or hold Yourself out as being an Authorised Dealer of the Products.
- 3.3 You must not promote or hold Yourself as being otherwise associated with or authorised by any Maytronics Entity, including without limitation, an Authorised Dealer of Maytronics Entities or "Maytronics" or Maytronics Entities' products generally.

## 4. PROVISION OF THE PRODUCTS

- 4.1 You must only make available the Products to Your Customers for access and use in accordance with the Product Specifications, unless otherwise permitted by this Contract.
- 4.2 We accept no responsibility for a delay in the provision of access of the Products to Your Customers and, in particular, accept no responsibility for any sale lost or jeopardised as a result of delayed access.
- 4.3 You must only offer the Products under the Maytronics Marks and otherwise ensure any use of the Maytronics Marks, is in accordance with the Brand Guidelines and the Standards and Procedures.
- 4.4 You must not promote, market or label the Products under any name or logo other than the Maytronics Marks.

## 5. ORDERING

- 5.1 You may Order Products from Us:
  - (a) via the Ordering System;
  - (b) in writing, delivered to MTAU's email address for Orders as specified on the Website at the time the Order is placed; or
  - (c) verbally, by calling our business numbers as published on [www.maytronics.com.au](http://www.maytronics.com.au).
- 5.2 If You are provided with a Quotation:
  - (a) the Quotation shall remain valid for acceptance by You for 14 days after the date of the Quotation; and
  - (b) if a deposit for the Products referred to in that Quotation is required, details of the required deposit will appear in the Quotation, which must be paid in full as a condition to Our acceptance of the Order.
- 5.3 You acknowledge and agree that:
  - (a) in entering into the Contract, MTAU does so on its own behalf and as agent for, and on behalf of, MTI, Focus Products Pty Ltd ACN 657 962 546 and OFP Company Pty Ltd ACN 073 540 520;
  - (b) by submitting an Order, you are irrevocably and unconditionally offering to acquire the relevant Product(s) the subject of Your Order, which cannot be varied, cancelled or revoked without Our consent (which We may, in Our sole discretion, withhold or provide subject to such conditions as We see fit);
  - (c) if We do agree to the variation or cancellation of any Order, We may, at Our option, charge You a fee equal to any costs incurred by Us in doing so and:
    - (1) if You request that an Order for Product(s) be cancelled more than 24 hours after submitting the Order to Us, we may charge You a cancellation fee of an amount that shall not exceed 10% of the

purchase price(s) for those Product(s) cancelled; and

- (2) if You wish to vary the date of delivery of any Product(s) that have been Ordered by You, We may charge You a holding fee of an amount that shall not exceed 10% of the purchase price(s) for those Product(s) for which you have requested a variation to the scheduled delivery date;

- (d) all monies payable by You to Us for the purchase of Products are payable in the currency specified in the relevant Quotation for those Products.

## 6. TITLE AND DELIVERY

6.1 You acknowledge that where we use Metro Australia for Your delivery, the targeted minimum lead time for Products is as follows:

- (a) one week lead time for less than a pallet order of Products;
- (b) two week lead time for any pallet order of Products; and
- (c) 10 week lead time for a container order of Products (based on 11 pallets per container),

from the date of Your Order.

6.2 While We will use reasonable endeavours to procure delivery of the Products that have been Ordered by You within any timeframe provided to You in the Quotation, which is indicative only, We are not liable in any way for any Loss arising from any delay in delivery.

6.3 Title to each Product will not pass from Us to You until We have received (in cleared funds) the full purchase price for that Product.

6.4 Unless otherwise specified, We will deliver the Products Ordered EXW and risk shall pass from Us to You when that Product is made available for collection from Our premises and You are wholly responsible for:

- (a) the loading, collection and transportation of those Products from our premises;
- (b) procuring all necessary insurance in respect of those Products; and
- (c) all export procedures, for onward transport and for all costs arising after collection of those Products,

and all risk in those Products will pass to You when those Products are made available for collection from our premises, and the carrier of those Products will be taken as being Your agent.

6.5 By entering into this Contract, You agree to, and are deemed to, have appointed Us as Your agent to arrange transport on Your behalf where we agree to do so, from time to time, and where we do so, it does not affect or vary each parties' respective rights or obligations as provided for in clause 6.4.

## 7. RETURN OF PRODUCTS

7.1 You must thoroughly inspect all Products, including to identify any Defects, promptly upon delivery, and in any event within 10 Business Days of delivery, and notify Us in writing if there is any error in the Products received or You wish to return any Product for any reason.

7.2 We may, at Our sole and absolute discretion, agree in writing to accept the return of Products requested by You, in which case, the Products must be:

- (a) returned with the original packaging, in unsoiled, undamaged and resalable condition; and
- (b) returned to Our nominated premises, at Your expense.

7.3 You acknowledge and agree that if We agree to the return of any Product, other than a Defective Product, We may, at Our sole discretion, charge a handling/ restocking fee of an amount

up to 10% of the price of the Product charged to You, payable by You prior to Us accepting delivery of the returned Product.

## 8. WARRANTY

8.1 You must notify Us in writing as soon as reasonably practicable upon becoming aware of, and must not sell, any Products which You consider to be Defective (**Defect Notice**).

8.2 If You provide a Defect Notice to Us, We may inspect the relevant Product to determine whether it is Defective (acting reasonably).

8.3 If any Product, or part of a Product, purchased by You is determined to be Defective, We will, at Our option, replace or procure the replacement of the relevant Product, or relevant part of the Product, refund to You the purchase price for that Product, provide You with a suitable alternative Product or provide You with a credit against future Product purchases, provided that:

- (a) You have complied with all of Your obligations in these Terms and Conditions and have provided to Us a Defect Notice in respect of the relevant Product, or part thereof, within the Warranty Period;
- (b) You have provided Us with a reasonable opportunity to inspect the relevant Product;
- (c) You have returned the relevant Product to Our nominated premises, at Your expense;
- (d) the Defect is not caused by any assembly, construction, alteration, modification, adjustment, operation, servicing, repair, maintenance or storage of the Products which is in a manner contrary to the terms of these Terms and Conditions, the Standards and Procedures, including the Sales and Advertising Policy or Good Industry Practice; and
- (e) You have complied with all reasonable directions We provide to You regarding the return or destruction of the relevant Products (or parts thereof) which are, or are alleged to be, Defective.

8.4 If You choose to offer an Extended Warranty Period for Products to Customers, You acknowledge and agree that You do so at Your own risk and cost and that We do not accept additional liability for such, unless otherwise agreed by Us in writing.

## 9. GENERAL RIGHTS AND OBLIGATIONS

9.1 By submitting an Account Application to Us to be an Authorised Dealer, You acknowledge and agree that:

- (a) Your appointment as an Authorised Dealer:
  - (1) is on a non-exclusive basis and that nothing in these Terms and Conditions limits the rights of the Maytronics Entities to market, distribute, offer to sell, service or repair the Products or appoint other dealers or licensees for that purpose, or entitle You to compensation on account of any of the foregoing; and
  - (2) does not in any way restrict or limit the operation of the Maytronics Entities' businesses or future operations and that Maytronics Entities may cease manufacturing or offering for sale any Product, or change any Product in any way whatsoever (including, without limitation, a Product's design, appearance, functionality, components and branding) without notice to You;
- (b) You are solely responsible, and We shall not assume any liability for obtaining, and the assessment of, all relevant data and information about Your Customer's requirements or the suitability or adequacy of the Products for their needs and any and all advice that You provide to Customers;

- (c) You are solely responsible for the assembly, construction, service and repair of all Products You sell and that You will do so in accordance with Good Industry Practice;
- (d) We may, from time to time, provide You with Maytronics Material or advice relating to the Products, however:
  - (1) We are under no obligation to provide such Maytronics Material or advice and, to the maximum extent permitted by law, We assume no liability for its accuracy, completeness or suitability;
  - (2) any Maytronics Material will be provided to You at Your expense, unless agreed otherwise by Us in writing; and
  - (3) all Maytronics Material remains Our property (or, if applicable, that of Our licensors) and must be returned to Us or destroyed upon expiry or termination of these Terms and Conditions or Our earlier written request.

9.2 You must, and must ensure that each of Your Personnel:

- (a) create and maintain accurate records of all sales and servicing of all Products by You, or on Your behalf, and promptly provide Us with such copies as We may reasonably request from time to time;
- (b) subject to clauses 9.3(b) and 9.3(c), sell the Products in the same condition as they are delivered, without alteration or modification in any way, unless otherwise agreed in writing by Us; and
- (c) promptly inform Us in writing of the existence and nature of any customer complaint or dispute regarding the Products including, without limitation, any purported Defect or error in any servicing or repair, comply with Our reasonable directions regarding that complaint or dispute and not make any admission or statement in regards to that complaint or dispute without Our prior written consent.

9.3 Without limiting any other clause, You undertake not to, directly or indirectly, whether alone or jointly in any capacity with any other person or entity, without Our prior written consent:

- (a) make any representation or warranty regarding the use, suitability, performance or fitness for purpose of the Products which are inconsistent with the Product Specifications;
- (b) sell any Product which is, or is reasonably likely to be, Defective;
- (c) sell the Products to any third party who is not reasonably expected to be a Customer of the Products; or
- (d) repackage any of the Products or otherwise remove or conceal any Maytronics Marks affixed to the Products or any Maytronics Material.

## 10. HEALTH AND SAFETY

- 10.1 It is Your responsibility to ensure that all applicable occupational health and safety regulations are observed and other appropriate steps are taken in relation to the fitness for purpose, storage, handling and use of the Products.
- 10.2 Where We supply information to You on potential hazards relating to the Products, it is Your responsibility to bring such information to the attention of Your employees, agents, subcontractors, visitors and Customers.
- 10.3 It is Your responsibility to provide safe facilities for the reception of the Products into storage.
- 10.4 On delivery of the Products which are chemicals, You must ensure safe storage and handling as specified in Australian Standards is complied with for AS4326 (2008) Oxidizing Agents and AS3780 (1994) Corrosive Substances and You agree that You will not make any claim against any of the Maytronics Entities and further indemnify each of the Maytronics Entities against all loss or damage (to person or property) that may be

occasioned due to Your failure to carry out safe storage and handling activities as identified in industry guideline documentation or as may otherwise be communicated to You from time to time by Us. For the avoidance of doubt this includes any and all loss or damage due to negligence on the part of You, Your officers, employees or agents.

10.5 You shall not alter, remove or in any way tamper with any of the trade or other marks, or numbers that are attached to or placed upon the Products.

10.6 Where You provide or sell Products to one or more third parties, You represent and warrant that You have disclosed to those persons the matters outlined above in clause 10.

## 11. INTERNET SALES

11.1 You must not, and You must take all reasonable steps to ensure that the Products are not sold online, including without limitation by website or social media page.

11.2 Without limitation, You acknowledge and undertake to Us to not:

- (a) sell Products via any website or social media page controlled or operated by You, or via any third party website; or
- (b) supply Products to any person or organisation who You know or reasonably suspect to re-sell the Products online,

(Internet Policy).

11.3 For the avoidance of doubt, You are permitted to advertise and promote Products online, provided You comply with the Brand Guidelines, Internet Policy and all other aspects of the Sales & Advertising Policy.

## 12. PAYMENT AND TAXES

12.1 You must pay to Us, in full and without deduction:

- (a) the purchase price payable for all Products that are Ordered by You, together with any applicable delivery fees (if any); and
- (b) any and all Taxes imposed or assessed in relation to the sale of any Products to You.

12.2 At the end of each calendar month (**Billing Period**), We will provide a statement of all transactions pertaining to this Contract which occur during that Billing Period and, unless We agree to such other date, You agree to pay all funds owing to Us, in full and without deduction, within the time period stipulated in the invoice issued for that Billing Period (**Debit Date**). Payment may be made by electronic funds transfer to Our nominated bank account, credit card or agreed direct debit authority. All billing statements will be Tax Invoices for GST purposes.

12.3 You acknowledge and agree that, notwithstanding any other clause, We may at any time cease to provide Products to You and/or require that You submit a new credit application and/or Account Application, including in, but not limited to, circumstances where:

- (a) Your nominated payment method is invalid, has expired or where there are insufficient funds to satisfy an Amount Owing as at the Debit Date;
- (b) You do not place a request for Products with Us for a period of three consecutive months or more; or
- (c) You have undergone a Change in Control.

12.4 We may charge default interest on all Amounts Owing at the Cash Rate Target plus 5% per annum on and from the date when such Amounts Owing became due for payment up to, and including, the date that such Amounts Owing have been paid (in full).

12.5 We may set off against any amounts payable by Us to You against any Amounts Owing to Us.

## 13. TERMINATION

13.1 The Contract may be terminated:

- (a) by either party, at any time, for convenience, by providing the other party with at least one month's written notice;
- (b) by either party, on 10 days' written notice to the other party, if the other party breaches an essential term of the Contract, including, in Your case, a breach of clause 9.3, which:
  - (1) is incapable of remedy; or
  - (2) if capable of remedy, is not remedied within 14 days of the other party receiving written notice requiring the breach to be remedied; and
- (c) by either party, immediately upon notice to the other party, if the other party suffers an Insolvency Event.

13.2 The termination or expiration of the Contract, however caused:

- (a) is without prejudice to any rights or obligations of the parties which have accrued prior to that termination or expiration (as applicable); and
- (b) shall not affect clauses 13, 14.1, 15, 16 and 17 which shall survive such termination or expiry

13.3 Upon the termination or expiration of the Contract for any reason, We may, at Our election, choose not to fulfil the delivery of any Orders for Products that have already been accepted by Us prior to the date of termination and, instead, provide a refund for any deposit paid (if any) by You in respect of those Products.

#### 14. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

14.1 You acknowledge MTAU's Intellectual Property Rights, including, without limitation, in the Maytronics Marks and Maytronics Material.

14.2 We grant to You a non-exclusive, revocable, non-sublicensable, non-assignable, licence to exercise the Intellectual Property Rights existing in:

- (a) the Maytronics Marks; and
- (b) the Maytronics Material,

for the duration of the Term, to the extent necessary to market, offer for sale, distribute, sell, assemble, construct, service and repair the Products.

14.3 You acknowledge and agree that Your marketing of the Products must be in accordance, and Your use of the Maytronics Marks and Maytronics Material must not be inconsistent, with the Brand Guidelines, Sales & Advertising Policy and the Internet Policy.

14.4 You acknowledge and warrant that You will not do anything which may infringe or challenge MTAU'S Intellectual Property Rights, including without limitation anything which may dispute, challenge or oppose the validity, registration or use of the Maytronics Marks.

14.5 You agree that, upon expiry of the Term or termination of this Contract, You will immediately cease to use or display, and, within 7 days of written demand by Maytronics, deliver up to MTAU any physical copies, and destroy any digital copies, of any Maytronics Material that is in Your possession, custody or control.

#### 15. WARRANTIES AND LIABILITIES

15.1 You represent and warrant, for the benefit of the Maytronics Entities, that:

- (a) all information provided to Us by You, or at Your direction, is accurate in all respects and not misleading, whether by omission or otherwise;
- (b) You will comply with all applicable Laws or Authorisations in relation to the sale, assembly, construction, servicing and maintenance of the Products; and
- (c) where You enter into the Contract as the trustee of any trust, You warrant that you have full power and authority to do so and that You shall be bound by the Contract in

Your own capacity and in Your capacity as the trustee of that trust.

15.2 Subject to clause 15.3, You indemnify and hold Us and each of Our Personnel (each, an **Indemnified Person**) harmless from and against, any Loss caused or incurred by any breach of the Contract or any assembly, modification, construction, maintenance, installation, servicing or repair of any Products performed by You or Your Personnel.

15.3 You are not liable pursuant to clause 15.2 to the extent that the Loss was caused by an Indemnified Person or constitutes Consequential Loss.

15.4 Notwithstanding any other clause, We will not be liable to You or Your Personnel for any Consequential Loss (save for fraud, dishonesty or wilful misconduct), howsoever caused, suffered or incurred in connection with this Contract.

#### 16. PRIVACY

16.1 For the purposes of the *Privacy Act 1988* (Cth), You acknowledge and agree to:

(a) any personal information contained in, or accompanying, the Contract or obtained from other credit providers or their agents being used by Us and any of Our associated entities, employees, directors, officers or agents, for the purposes of

- (1) assessing the Your credit worthiness;
- (2) notifying other credit providers of Your default (should such a default occur);
- (3) assessing Your capacity to meet Your credit obligations; and
- (4) assessing Your position if You fail to make payments; and

(b) Us disclosing to any credit-reporting agency information concerning You, including, but not limited to, details identifying You, the amount of credit applied for, the fact that We are a current credit provider to You, payments which are or have been more than 60 days overdue, advice that payments are no longer overdue, notice of any infringement that You have committed and/ or notice of the discharge of Your trading account; and

(c) Us seeking from any credit-reporting agency a credit report containing personal credit information about You, including in the event that You subsequently request an increased credit limit, and providing or obtaining information from any credit providers named in any such credit reports about Your personal or commercial credit arrangements including, but not limited to, Your credit worthiness, credit standing, credit history or credit capacity.

16.2 Where You provide personal information concerning one or more third parties, You represent and warrant that You have disclosed to those persons the fact that You have provided that information to Us and the matters outlined above in clause 16.1.

#### 17. PPSA

17.1 In this clause 17, words and phrases that have defined meanings in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the same meaning as in the PPSA unless the context indicates otherwise and a reference to a section shall be a reference to a section in the PPSA.

17.2 As security for the performance of Your obligations under the Contract, including the payment of the amount of its indebtedness to Us from time to time, You:

- (a) grant to Us a security interest in all of Your present and after-acquired personal property (as defined in the PPSA), including anything in respect of which You have at any time a sufficient right, interest or power to grant a security interest;

- (b) acknowledge that, pursuant to clause 17.2(a), You have granted to Us a purchase money security interest in the Products and any proceeds to secure the purchase price of those Products.

17.3 Until all Amounts Owing have been received by Us:

- (a) You covenant not to grant or permit any form of security interest over the Products or any accounts in relation to the Products;
- (b) You acknowledge and agree that, where You are in breach of this Contract, we may enter into the premises where the Products are located (or the premises of an associated company or agent where the Products are reasonably likely to be located) and to seize or take repossession of the Products located at that place, and You represent and warrant that You have obtained all necessary third party consents to such access and that, in doing so, We will not incur any liability for trespass to the property of any person; and
- (c) we may keep, resell or otherwise dispose of any Products which We have seized or repossessed in accordance with clause 17.3(b).

17.4 You must notify us at least 14 days before You change Your name, place of registration or incorporation or apply for an ACN or ABN pursuant to which an interest in any of the collateral specified in this Contract is, or will be, held.

17.5 You consent to Us making registrations on the Personal Property Securities Register (in any manner that We deem appropriate) in relation to any security interest arising under or in connection with or contemplated by the Contract and that any costs incurred in registering, amending or releasing will be charged to You and added to the Amount Owing.

17.6 We may apply to register a security interest in any Products at any time if You have not paid for those Products in full, including before or after delivery. You waive Your right under section 157 of the PPSA to receive notice of any notice of the registration. You agree that You will, if requested by Us, sign any documents, provide any information or do anything else that We request, to ensure that any security interest granted to Us pursuant to the Contract is, to the fullest extent possible under the PPSA, perfected in accordance with the PPSA.

17.7 You agree to reimburse, upon demand, Us for all costs and/or expenses incurred or payable by Us in relation to registering or releasing the registration of any security interest granted to Us pursuant to the Contract. Unless You have obtained Our prior written consent, You undertake not to create or purport to create any security interest in the Products, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Products in favour of a third party.

17.8 The parties agree that, to the extent permitted by section 115(1) of the PPSA, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA are excluded. Each party agrees that it will not disclose information of the kind referred to section 275(1) of the PPSA and that this clause constitutes a confidentiality agreement for the purposes of section 275(6)(a) of the PPSA and other provisions of the PPSA.

## 18. MISCELLANEOUS

### 18.1 Assignment

- (a) Subject to clause 18.1(b), a party may not assign this Contract, or any benefit arising thereunder, without the other party's prior written consent (which may not be unreasonably withheld).
- (b) Notwithstanding clause 18.1(a), We may assign this Contract, without Your consent, by written notice to You, to either:
  - (1) a related body corporate (as that term is defined in the *Corporations Act 2001* (Cth)); or
  - (2) another entity who has no less technical capability as Us to satisfy its obligations under this Contract

### 18.2 Relationship

The relationship between the parties established pursuant to the Contract does not constitute a franchise, partnership, joint venture, employment relationship or give rise to any form of fiduciary relationship.

### 18.3 Variation

- (a) We may vary the Contract at any time by providing You with not less than 30 days' prior written notice of such variation.
- (b) You acknowledge and agree that You will be deemed to have received and to have seen, read and understood, any variation of the Contract on the earlier of:
  - (1) the date that We provide a copy of the varied Contract to You by email; and
  - (2) where You have not provided an email address or any changes to Your email address, the date that a copy of the varied Contract is uploaded to Our Website.
- (c) Upon the giving of a notice in accordance with clause 18.3(a), You may terminate the Contract, without penalty, by notice in writing to Us within 30 days of the date that We give the notice in accordance with clause 18.3(a).

### 18.4 No Waiver

A provision of this Contract or a right created under this Contract may not be waived except in writing, signed by the party giving the waiver.

### 18.5 Severability

Any provision of the Contract which is prohibited or unenforceable will be read down to the extent necessary to be valid and, if it cannot be read down, severed from the Contract.

### 18.6 Entire Agreement

The Contract records the entire agreement between the parties, and supersedes all previous agreements, in respect of its subject matter.

### 18.7 Governing Law

The Contract shall be governed by the laws of the State of Queensland, Australia, and You irrevocably submit to the exclusive jurisdiction of the courts of Queensland, including the Registry of the Federal Court of that jurisdiction, and of all courts competent to hear appeals from them.