



STANDARD TERMS AND CONDITIONS OF SALE OF PRODUCTS ON CONSIGNMENT

1. DEFINITIONS

- 1.1 "Additional Charges" includes all delivery, handling and storage charges, GST, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to the Seller arising out of the sale of the Consignment Stock.
- 1.2 "Seller" means, in respect of each Contract, the relevant entity set out below:
- a) Rema Tip Top Australia Pty Ltd ACN 003 380 827
 - b) Rema Tip Top Industrie Pty Ltd ACN 121 411 229
 - c) Rema Tip Top Industrial Australia Pty Ltd ACN 110 697 624
 - d) Rema Tip Top Surface Protection Australia Pty Ltd ACN 601 313 562
 - e) Rema Tip Top Material Processing Australia Pty Ltd (formerly ConvaTech Pty Ltd) ACN 002 924 307
 - f) Rema Tip Top Material Processing Pty Ltd (formerly ConvaTech Services Pty Ltd) ACN 137 976 606
 - g) Rema Tip Top Material Processing QLD Pty Ltd (formerly ConvaTech Queensland Pty Ltd) ACN 119 833 831
 - h) Rema Tip Top Material Processing WA Pty Ltd (formerly ConvaTech WA Pty Ltd) ACN 124 473 918
 - i) Enduroclean Pty Ltd ACN 601 391 440
 - j) Rema Tip Top Material Processing SA Pty Ltd (formerly Adelaide Conveyor Services Pty Ltd) ACN 610 802 581
 - k) Industrial Tyre Supplies Pty Ltd ACN 104 695 892
 - l) Work Integrated Learning Pty Ltd ACN 163 584 076; and
 - m) Cobra South Pacific Pty Ltd ACN 092 167 238.
- 1.3 "Consignment Stock" means the goods of the Seller delivered and kept at the premises of the Customer.
- 1.4 "Customer" means the Customer purchasing or offering to purchase Consignment Stock from the Seller (including any successors, nominees and any Insolvency Administrator appointed to take control of the Customer's business), and where there is more than one Customer, the Customer's covenants and obligations are joint and several.
- 1.5 "Delivery" or "Delivered" means the point in time when the Seller delivers the Consignment Stock (including initial stock and any further deliveries) at the premises of the Customer as advised by the Customer and accepted by the Seller as the place for delivery.
- 1.6 "GST" means the tax imposed or to be imposed by the GST Act.
- 1.7 "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition Acts of the Commonwealth.
- 1.8 "Invoice" includes tax invoice.
- 1.9 "Intellectual Property Rights" means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.
- 1.10 "Products" means the items taken from Consignment Stock by the Customer under these Terms of Sale.
- 1.11 "Purchase Price" means the amount invoiced by the Seller for the Consignment Stock ordered by the Customer.
- 1.12 "Removal Note" the notification that the Customer is to send to Seller advising of Products it has taken from Consignment Stock.
- 1.13 "Specifications" means the specifications, qualities, nature, type, properties, amounts, assortments, and other descriptions of and requirements for the Products as specified or as advised by the Seller.
- 1.14 "Supply" includes sale and Delivery of Product and vice versa.
- 1.15 "Terms of Sale" means the provisions hereto which constitute the provisions of the terms and conditions of Sale of Products on Consignment between the Seller and the Customer.

2. SALE

- 2.1 The Seller has agreed to sell and the Customer has agreed to buy the Consignment Stock for the Purchase Price and the Additional Charges on the terms and conditions set out herein.
- 2.2 These Standard Terms and Conditions of Sale of Products on Consignment apply to orders with Customers where the seller is one or more of the entities referred to in the definition of "Seller".

3. DELIVERY OF GOODS

- 3.1 The Seller shall make all reasonable efforts to deliver the Goods on the date agreed between the parties, but shall not be responsible for any consequential, indirect or other loss arising as a result of any failure by the Seller to deliver the Goods at any agreed time or within a reasonable period. Where no date for delivery has been agreed upon, the Seller shall deliver the Goods within a reasonable time. Where delivery is to be made during a certain period, the Seller may at its option deliver the Goods in instalments during that period.
- 3.2 Where delay in delivery or non-delivery is due to the Customer failing to obtain any necessary approvals, clearances or other prerequisites to delivery or arises as a result of any occurrence reasonably beyond the Seller's control, the Seller shall within 30 days of becoming aware of any such occurrence notify the Customer in writing of the Seller's inability to deliver and may terminate the contract if the Seller shall so determine.
- 3.3 Unless otherwise agreed, Goods supplied shall be of ordinary commercial quality and all standards including but not limited to tolerances of dimension, strength and weight, shall be of such standard as the Seller generally applied to such type of Goods. The Seller shall not be liable for over or under delivery of bulk Goods provided that such delivery does not exceed 10% of the ordered quantity.
- 3.4 Any measures requested by the Customer to protect the Goods in storage or transit shall be at the Customer's expense.

4. PROPERTY IN THE GOODS

- 4.1 "Insolvency Event" shall occur when
- (a) the Customer is late or fails to make any of the payments to the Seller in accordance with the Seller's payment terms;
 - (b) an application or order is made, a resolution is made or proposed or other steps are taken for the winding up, dissolution, official management or voluntary administration of the Customer (other than a voluntary liquidation for amalgamation or reconstruction purposes);
 - (c) the Customer enters into an arrangement, compromise or composition or assignment for the benefit of its creditors or any class of them;
 - (d) the Customer ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets other than in the ordinary course of business;
 - (e) the Customer is deemed unable to pay its debts as and when they fall due, or stops or suspends payments of its debts;
 - (f) a receiver, a receiver and manager, administrator, liquidator, or other officer is appointed to the Customer or any part of its property, or a third party attempts to levy execution against the Customer's property or the Goods, or the Customer (being a natural person) commits an act of bankruptcy.
- 4.2 If an Insolvency event occurs, the Customer shall bear the onus of proving that Goods supplied by the Seller in the Customer's possession (whether mixed with other Goods or not) have been paid in full by the Customer. If the Customer is unable to prove to the satisfaction of the Seller, that the Goods identified as the Seller Goods have been paid in full by the Customer, then those Goods shall be deemed to relate to unpaid invoices outstanding from time to time and such Goods are deemed to be the property of the Seller and may be repossessed by the Seller.
- 4.3 The Customer grants an irrevocable licence to the Seller or its agent to enter the Customer's premises or any site owned, possessed or controlled by the Customer in order to recover possession of Goods pursuant to this clause. The Customer indemnifies the Seller in respect of any damage to property or personal injury which occurs as a result of the Seller entering any premises or site pursuant to this clause.
- 4.4 If the Goods cannot be distinguished from similar Goods which the Customer claims to have paid for in full, the Seller may in its absolute discretion, seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of the Seller and the Customer can be ascertained. The Seller must promptly return to the Customer any goods the property of the Customer and the Seller is in no way liable or responsible for any loss or damage to Goods or for any loss or destruction to the Customer's business howsoever arising from the seizure of the Goods.
- 4.5 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for the Seller in a separate account until the liability to the Seller has been fully discharged. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to the Seller at the time of the receipt of such proceeds.
- ### 5. STORAGE OF CONSIGNMENT STOCK
- 5.1 The Customer will hold the stock on behalf of the Seller in a designated storage area separate from the Customer's own inventory and other property and will store such stock in accordance with the conditions and practices as specified or advised by the Seller and / or original manufacturer.
- ### 6. RISK AND INSURANCE OF CONSIGNMENT STOCK
- 6.1 Any loss or damage occurring to Consignment Stock shall be at the Customer's risk and the Seller shall invoice the Customer for items so lost or damaged at the full purchase price. The Customer will insure the stock with a reputable Insurance Company against all customary perils for the benefit of the Seller at the Customer's own expense (and must if the Seller so requires, produce a copy of the Certificate of Insurance) and shall hold the proceeds of any insurance claim in respect of the Products (to the extent of the Customer's indebtedness to the Seller) in trust for the Seller. If settlement of any insurance claim arising from these perils is refused, the Seller shall invoice the Customer for the value of the Stock so lost, damaged or destroyed. Upon any default by the Customer to pay any amount due to the Seller, the Customer irrevocably authorizes the Seller by its employees or agents to enter any premises owned, leased or otherwise occupied by the Customer, any agent or associated of the Customer for the purpose of taking possession.
- ### 7. CONSIGNMENT STOCK LEVELS
- 7.1 The Seller and the Customer will agree, in writing, to a minimum and maximum level of each Consignment Stock item.
- ### 8. INVENTORY OF CONSIGNMENT STOCK
- 8.1 The Consignment Stock will be counted on a regular basis by a representative of the Customer, normally and where practical in conjunction with a representative of the Seller. In any event, a joint inspection and stock count will be performed every six months. The Seller reserves the right, at any reasonable time and upon giving notice of 7 working days, to inspect and count the Consignment Stock.
- ### 9. STOCK DRAW OFF
- 9.1 The Customer, at the time of drawing off or using the stock, shall internally record the draw off and forward to the Seller a purchase order on a monthly basis. The Seller shall issue an Invoice to the Customer for products used as detailed in such schedule and not already covered by pre-existing customer order.
- ### 10. REPLENISHMENT OF CONSIGNMENT STOCK
- 10.1 Consignment Stock replenishment shall proceed by the Seller upon receipt of a replenishment request from the Customer. The Seller shall endeavour to replenish stock subject to prevailing lead times, delivery dates and minimum quantities.



11. PRICE & PAYMENT
- 11.1 Except as provided in writing within a formal agreement between both parties, the Seller reserves the right to vary prices from time to time at its discretion and without notice.
- 11.2 Unless otherwise agreed in writing between the Seller and the Customer, prices for the Products shall be the list price for the Products as at the date of each order. All prices quoted by the Seller shall, unless stated otherwise, be exclusive of any GST and the Customer shall pay the Purchase Price plus any GST when payment for the Consignment Stock is due. Any quotation by the Seller is valid for a period of 30 days unless otherwise specified, and is not to be construed as an obligation to sell any Consignment Stock but an invitation to the Customer to make an offer to purchase the Consignment Stock subject to this agreement.
- 11.3 All prices quoted are, unless expressly stated in the purchase order to the contrary, exclusive of freight, which will be added to the price of any order.
- 11.4 Each Invoice for Products shall be for those Products purchased in the preceding month as advised by the Customer under clause 9 (subject to a joint inspection and stock count in accordance with clause 8). Payment will be due 30 days following the date of invoice.
- 11.5 Time for payment shall be of the essence of the Contract.
- 11.6 If payment is not made on the due date then the Seller shall without prejudice to any other remedy be entitled to charge interest on monies outstanding at the rate of 18% per annum calculated on a daily basis until the date payment is received by the Seller. The Customer will also be liable for any legal or other costs incurred by the Seller in attempting to recover the outstanding amounts owed by the Customer. All amounts payable by the Customer under this agreement must be paid without set-off or counterclaim of any kind.
- 11.7 If the Customer delays making payment under the terms of the Contract, the Seller may, without prejudice to any other remedy, suspend supply or delivery of any Goods to the Customer until such payment is made and the Seller shall be entitled to increase the Contract price to cover any extra expense incurred as a result of the Customer's default.
- 11.8 Purchase orders and replenishment requests will only be accepted by email or written orders sent by post. Verbal orders will not be actioned until written authorisation is received.
12. DEFAULT PAYMENTS
- 12.1 Without prejudice to any other rights available to the Seller, the Customer shall be liable for any legal or other collection costs on overdue accounts.
13. BANK GUARANTEE
- 13.1 The Seller may require, and if so the Customer shall provide, a Bank Guarantee in an amount equivalent to the price of the full number of products which the Customer requires as Consignment Stock from time to time.
14. CONSIGNMENT STOCK NOT TURNING OVER
- 14.1 All stock not turned over in a twelve month period will be invoiced at the current price unless otherwise agreed in writing between the Seller and the Contractor.
15. PURCHASE OF EXPIRED OR NO LONGER REQUIRED STOCK
- 15.1 The Customer agrees to Purchase any items of Consignment Stock that have passed their expiry date and / or are no longer required due to any change in specification or circumstance (for example: quality, type, size, termination of Agreement, etc.). This includes items in Consignment Stock held by the Customer and items for which a replenishment request has been received by the Seller for items that have commenced manufacture or procurement.
16. WARRANTIES AND INDEMNITIES
- 16.1 Subject to these conditions of sale, the Seller warrants that the Consignment Stock are free of defects both in material and workmanship and are of merchantable quality. The liability of the Seller pursuant to this warranty or any other warranty implied by operation of any statute including the Competition and Consumer Act 2010 (Cth) (as amended) shall be limited to the cost of replacing defective Consignment Stock, the cost of obtaining equivalent Consignment Stock, or the cost of repairing the Consignment Stock at the Seller's discretion provided that in all such cases any costs of dismantling and reassembly shall be borne by the Customer.
- 16.2 The warranty set out at clause 16.1, is subject to the following:
- (a) the warranty applies for a period of 18 months from delivery or 12 months from installation, whichever comes first,
- (b) the warranty does not apply to consumable components that are subject to normal wear and tear;
- (c) the Customer must provide the Seller with either an invoice number or purchase order number referencing the defective Product;
- (d) the defects to the Product must have arisen solely from faulty materials or workmanship; and
- (e) the damage to the Product must not arise from:
- i. incorrect installation of the Product contrary to the instructions contained within the Seller's Installation and Operation Manuals;
- ii. improper adjustment, calibration or operation by the Customer;
- iii. the use of accessories including consumables, hardware, or software which were not manufactured by or approved in writing by the Seller;
- iv. any contamination or leakages caused or induced by the Customer.
- v. any modifications of the Product which was not authorised in writing by the Seller;
- vi. any misuse of the Product by the Customer;
- vii. any use or operation of the Product outside of the physical, electrical or environmental specifications of the Goods;
- viii. inadequate or incorrect site preparation;
- ix. inadequate or improper maintenance of the Product;
- x. incorrect handling of the Product; or
- xi. incorrect storage of the Product.
- 16.3 Any claims to be made against the Seller for short delivery of Goods must be made within fourteen days of the delivery date, unless otherwise agreed by the parties.
- 16.4 If the Goods are not manufactured by the Seller the guarantee of the manufacturer of those Goods is accepted by the Customer and is the only guarantee given to the Customer in respect of the Goods. The Seller agrees to assign to the Customer on request made by the Customer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- 16.5 Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded.
- 16.6 The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the Seller's breach of this agreement, the supply, layout, assembly, installation or operation of the Goods or arising out of the Seller's negligence or in any way.
- 16.7 The liability of the Seller in respect of the Services provided by the Seller implied by operation of any statute including the Competition and Consumer Act 2010 (Cth) (as amended) shall be limited to the supply of Services again or cost of re-supplying the Services again.
- 16.8 Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.
- 16.9 The Customer hereby indemnifies and keeps indemnified the Seller, its servants and agents in respect of any claim or demand made or action commenced by any person (including but not limited to, the Customer) against the Seller or, for which the Seller is liable, in connection with any loss arising from or incidental to the provision of Goods, any order or the subject matter of this agreement, including but not limited to any legal costs incurred by the Seller in relation to meeting any claim or demand or any party/party legal costs for which the Seller is liable in connection with any such claim or demand. This provision remains in force after the termination of this agreement.
- 16.10 The Customer hereby indemnifies and agrees to hold the Seller harmless against all costs, claims, expenses or other liability arising out of or in connection with the delivery to the Customer of the Goods prepared, manufactured or dispatched in accordance with drawings, models, descriptions, analyses, prescriptions or other specifications submitted to the Seller by the Customer.
- 16.11 The Seller shall take all reasonable steps to care for and maintain any tools or models supplied to it by the Customer, provided that all such tools and models shall be insured by, and, where necessary repaired at the expense of, the Customer.
- 16.12 All information, specifications and samples provided by the Seller in relation to the Goods are approximations only and, subject to any guarantees under the Competition and Consumer Act 2010 (Cth) (as amended), small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- 16.13 The Seller gives no warranty in relation to the Goods provided or supplied. Under no circumstances is the Seller or any of its supplier's liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
- (a) any Goods supplied to the Customer;
- (b) any delay in supply of the Goods; or
- (c) any failure to supply the Goods.
- 16.14 To the fullest extent permissible at law, the Seller is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods, or otherwise arising out of the provision of Goods, whether based on terms of trade, negligence, strict liability or otherwise, even if the Seller has been advised of the possibility of damages.
- 16.15 The Customer acknowledges that the Goods are not for personal, domestic or household purposes.
17. TERMINATION
- 17.1 Either party may terminate the Agreement by giving to the other one month's notice in writing.
- 17.2 The Seller may terminate this Agreement by giving notice to Customer, effective immediately upon such notice, on the happening of any one or more of the following events:
- (a) the Customer fails to pay any amount on time or is in default under or in breach of any other term or condition of the Agreement;
- (b) any applicable law prevents full compliance with the Terms of Sale by the Seller; or
- (c) commencement of voluntary or involuntary proceedings under any bankruptcy, reorganization or similar laws of any jurisdiction by or against customer, or if any order shall be made or any resolution passed for the winding up, liquidation or dissolution of Customer, or if a receiver by appointed for it or its property, or if any of its products or properties shall be taken in execution.
- 17.3 Unless otherwise agreed in writing, upon termination of the Agreement the entire price of the Consignment Stock supplied to the Customer shall become due and payable at the prices then prevailing.
18. WAIVER
- 18.1 The Seller's purported waiver of any breach, or failure to enforce, any of the Terms of Sale at any time, shall not in any way affect, limit, or waive the Seller's rights thereafter to enforce and compel strict compliance with every term and condition hereof. No waiver of any provision of these Terms of Sale shall be valid unless such waiver is in writing and signed by the Seller.
19. PRIVACY
- 19.1 The Customer acknowledges that:
- (a) all information provided by it or obtained by the Seller will be held by the Seller subject to the Customer's right (if any) of access to and correction of such information provided by any law;



- (b) information relating to the Terms of Sale may be disclosed to a credit reporting agency. Such information may include the fact that the Customer has applied for credit with the Seller, any overdue payments which are in collection and cheques or other negotiable instruments that have been dishonoured; and
- (c) the Seller may request from a credit reporting agency, or any financial institutions or credit providers whose names are given to it, or whose names are included in a credit report about the Customer, credit information about the Customer's commercial finances. Customer permits such institutions to provide such information to the Seller. In particular, the Customer consents to the Seller obtaining and receiving such information for the purposes of approving any application of Customer for credit from the Seller. The Customer also acknowledges and agrees that information about its financial and commercial affairs may be transferred confidentially within the Seller and any of its associated or related corporations worldwide, and that the Seller may be legally obliged to disclose such information to others. If the Seller is so obliged, pursuant to an appropriate authority, the Seller will use its best efforts to notify the Customer at the last known address known to the Seller prior to disclosure.
20. SEVERABILITY AND REFORMATION
- 20.1 If any of the provisions of these Terms of Sale shall be held to be invalid or unenforceable in whole or in part, those provisions to the extent enforceable and all other provisions shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included in this contract.
21. COMPLETE TERMS OF SALE
- 21.1 The Terms of Sale referred to herein supersede all prior understandings, transactions, and communications, whether oral or written, with respect to the matters referred to herein and form the complete contract between the Seller and the Customer. No modification, alteration, or amendment of the Terms of Sale contained in any communication by the Customer in any medium shall be binding upon the Seller unless accepted in writing and signed by the Seller's authorized representative. The headings above are provided for convenience only and will not affect the construction or interpretation of these Terms of Sale.
22. MODIFICATION OF TERMS OF SALE
- 22.1 The Seller reserves the right to change, modify, add or remove any part of the Terms of Sale and to add to, change or discontinue any material or information contained in, or any other aspect of, the Website at any time and without notice or liability. By agreeing to these Terms of Sale the Customer is expressly agreeing to check the Website regularly for changes in the Terms of Consignment.
23. ADVICE
- 23.1 Subject to clause 16, any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods supplied is given in good faith. It is provided without any warranty or accuracy, appropriateness or reliability and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods.
24. HAZARDOUS MATERIALS
- 24.1 Where the Seller sells potentially hazardous materials to the Customer, the Seller shall endeavour to provide a Material Safety Data Sheet ("MSDS") applicable to those hazardous materials. If not provided, the onus is on the Customer to request the MSDS from the Seller.
- 24.2 The Customer agrees to follow the instructions for use and handling of the hazardous materials, and accepts it is the Customer's responsibility to ensure that its employees, contractors, agents or customers comply with the instructions for use and handling as stipulated in the MSDS and/or Warning Labels supplied by the Seller.
- 24.3 The Customer hereby indemnifies and agrees to hold the Seller harmless against losses, damages, claims or other liability arising out of or in connection with the supply of the hazardous materials by the Seller, to the Customer and the use and handling of the hazardous materials by the Customer, its employees, contractors, agents or Customers.
- 24.4 The information supplied by the Seller in the MSDS or Warning Labels is often obtained from the Seller's own suppliers or other sources, and the Seller will not be held liable in contract and/or in tort for any reliance placed on such information.
- 24.5 The Seller reserves the right to withdraw further supply of any hazardous materials if the Customer, its employees, contractors, agents or Customers fail to comply with the conditions of use and handling as stipulated in the MSDS and/or Warning Labels.
25. CANCELLATION
- 25.1 No purchase order may be cancelled except with the consent in writing of the Seller and on terms, which will indemnify the Seller against all losses.
26. NOTICES
- 26.1 Any notice to be given to the Customer shall be deemed to be given upon its being posted or sent by facsimile to the address or facsimile number of the Customer set out in the Contract or to the Customer's registered office or to the Customer's last known address.
27. ASSIGNMENT
- 27.1 Neither party may assign any right under this document without the other party's written consent.
28. APPLICABLE LAW
- 28.1 This Contract shall be deemed to have been made in New South Wales and is governed by the law of New South Wales. The parties agree to submit to the exclusive jurisdiction of the courts of New South Wales.
29. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)
- 29.1 Expressions defined in the Personal Property Securities Act 2009 (Cth) ("PPSA") have the same meaning when used in this clause.
- 29.2 This Agreement is a Security Agreement and creates a Purchase Money Security Interest (PMSI) in the Goods and all proceeds from the sale of the Goods by the Customer to a third party.
- 29.3 The Customer consents to the Seller registering its Security Interest in the Goods on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Seller to facilitate registration of its Security Interest, or registration of any other document on the PPS Register which is necessary to perfect the Seller's Security Interest. The Customer agrees to indemnify, and upon demand reimburse the Seller:
- (a) for all expenses incurred in relation to the registration of its Security Interest in the Goods; and
- (b) For any enforcement or attempted enforcement of any Security Interest granted by the Customer to the Seller.
- 29.4 Until such time as title in the Goods has passed to the Customer, the Customer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create, a Security Interest over the Goods in favour of the Customer or any third party. The parties agree that this clause will not prohibit the Customer from selling the Goods in the ordinary course of business.
- 29.5 Without limiting any other right that the Seller may have, the Customer must immediately return all Goods if requested to do so by the Seller following non-repayment of any amount owing by the Customer to the Seller or following the breach of any other obligation of the Customer.
- 29.6 The Customer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.
- 29.7 The Seller and the Customer agree that this Agreement and all related information and document(s) are confidential (Confidential Information) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. The Seller and the Customer agree that the Seller will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.
- 29.8 The Seller and the Customer agree that sections 96 and 125 of the PPSA do not apply to this Agreement.
- 29.9 The Seller and the Customer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of the Seller's Security Interest in the Goods or of this Agreement:
- (a) any requirement for the Seller to give the Customer a notice of removal of accession;
- (b) any requirement for the Seller to give the Customer a notice of an intention to seize Collateral;
- (c) any requirement for the Seller to give the Customer a notice of the Seller's proposed disposal of the Goods;
- (d) any requirement for the Seller to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
- (e) any requirement for the Seller to give the Customer a statement of account if the Seller does not dispose of the Goods;
- (f) any right the Customer has to receive a notice of retention of Collateral;
- (g) any right the Customer has to redeem the Goods before the Seller exercises a right of disposal; and
- (h) any right the Customer has to reinstate this agreement before the Seller exercises a right of disposal of the Goods.
- (i) Any right of the Customer has to object to the purchase of the Collateral by the Seller.
30. INTELLECTUAL PROPERTY RIGHTS
- 30.1 The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or has a licence to authorise the Seller to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the Seller for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified the Seller against all Losses incurred by the Seller in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.
- 30.2 Unless specifically agreed in writing between the Seller and the Customer, all Intellectual Property Rights in any works created by the Seller on behalf of the Customer vest in and remain the property of the Seller.
- 30.3 Subject to payment of all invoices due in respect of the Goods, the Seller grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Seller in connection with the provision of Goods under this Agreement for the purposes contemplated by the Order.
31. FORCE MAJEURE
- 31.1 If circumstances beyond the Seller's control prevent or hinder its provision of the Goods, the Seller is free from any obligation to provide the Goods while those circumstances continue. The Seller may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- 31.2 Circumstances beyond the Seller's control include, but are not limited to strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, manufacturing or transport difficulties and failures or malfunctions of computers or other information technology systems.
- 31.3 The Seller shall not be liable for delay in Delivery of the initial or any replenishment to Consignment Stock, or for any other interruption, delay, loss, or damage which is incurred or suffered as a result of a Force Majeure, and the Seller's obligations hereunder shall be excused and suspended during the period such Force Majeure remains in effect.
32. EXISTING CONTRACTS
- 32.1 This agreement applies to all transactions between the Seller and the Customer relating to the provision of Goods, including all quotations, contracts and variations. Subject to clause 32.2, this agreement shall apply to the exclusion of any agreement or conditions of sale contained in any document of the Customer or elsewhere.
- 32.2 The variation or waiver of the terms of this agreement or a party's consent to a departure to a provision by another party is ineffective unless in writing and signed by both parties.