

SANWA PTY LIMITED

ACN 000 904 987 - ABN 96 000 904 987

TERMS & CONDITIONS OF TRADE

1. Application of Terms & Conditions of Trade

- 1.1. These terms & conditions of trade replace in their entirety any previous terms & conditions of trade published, issued or used by or any division or subsidiary of Sanwa.
- 1.2. These terms & conditions of trade apply to and govern all Agreements.
- 1.3. The Purchaser acknowledges that its acceptance of these terms & conditions of trade was a condition of Sanwa entering into each Agreement with the Purchaser and agreeing to supply Goods to the Purchaser.
- 1.4. Any Agreement may be varied only with Sanwa's prior written consent.
- 1.5. Any order or offer made by any Purchaser:
 - 1.5.1. Shall not be binding on Sanwa until confirmed by Sanwa in writing or in such other manner as Sanwa in its sole discretion determines; and
 - 1.5.2. Is subject to the availability of the subject Goods.
- 1.6. A tender or quotation submitted by Sanwa may at any time prior to acceptance of an offer by Sanwa in respect of the supply of Goods and/or services be varied or withdrawn by Sanwa. Clerical, typing or other errors made in, or in respect of, any tender or quotation shall be subject to correction by Sanwa and the corrected tender or quotation shall apply.
- 1.7. Subject to clause 1.6 a quotation or tender submitted by Sanwa shall remain valid for 30 days from the date of such quotation or tender.
- 1.8. Terms & conditions submitted by a Purchaser with a purchase order or otherwise do not form part of an Agreement unless expressly agreed in writing by Sanwa. These terms & conditions of trade will prevail over the Purchaser's terms & conditions (if any).
- 1.9. The acceptance by a Purchaser of the supply by Sanwa of Goods and/or services shall constitute acceptance by the Purchaser of the supply by Sanwa of such Goods and/or services solely on these terms & conditions of trade.

- 1.10. Unless otherwise specified, all Agreements concerning the sale and/or delivery of Goods from, or to, outside of Australia shall incorporate Incoterms. In the event of any inconsistency between these terms & conditions of trade and Incoterms (if Incoterms apply) then these terms & conditions of trade shall prevail.

2. Price

- 2.1. The prices quoted by Sanwa for the supply of Goods and/or services exclude GST and any relevant duties unless expressly stated otherwise by Sanwa. All GST, other taxes and/or charges imposed and/or levied by or payable to any government or governmental authority upon or with respect to any Agreement, the Goods or other material described in any Agreement or the purchase price payable, shall be for the account of the Purchaser and shall be payable at the same time as the invoice from Sanwa to which they relate.
- 2.2. Any additions or increases in the cost of the supply of Goods and/or services as a result of any additions or increases in charges, duties, taxes (including the rate of GST) or costs associated with manufacture or supply of goods and/or services by Sanwa, including without limitation increases due to variations in exchange rates, the cost of transport or shipping, the cost of materials or labour and/or the cost of conforming with any relevant legislation, court orders, regulations or bylaws, between the date of Sanwa's acceptance of the Purchaser's order and the date of supply of the relevant Goods and/or services shall be borne by the Purchaser, even if the Goods are sold on terms such as delivered or duty paid terms.
- 2.3. Unless otherwise stipulated, all references to dollars are references to the lawful currency of Australia (**Australian dollars**)

- 2.4. If any amount payable to Sanwa by the Purchaser is stated in a currency other than Australian dollars and due to direction or action of any government or governmental agency the rate(s) of exchange changes such that there is a reduction in the Australian dollar equivalent to be received by Sanwa in the currency other than Australian dollars, then Sanwa may by notice in writing cancel the relevant Agreement or require the Purchaser to wholly compensate and indemnify Sanwa in respect of such reduction.

- 2.5. It is acknowledged by the Purchaser that all communications and correspondence by what ever means, whether orally or in writing, by Sanwa quoting prices of Goods is indicative only unless such communication or correspondence expressly states:

2.5.1. that it is a firm offer; and

2.5.2. that the offer has an expiry date; and

2.5.3. uses the words "This offer is subject to unilateral communicated acceptance within the validity period."

3. Trade Credit Insurance

- 3.1. All Agreements or other transactions conducted where physical delivery of Goods subject thereof is made or proposed to be made prior to Sanwa being paid in full and in cleared funds in respect of such Goods shall be subject to this clause 3.

- 3.2. Sanwa may require the existence of a current and subsisting policy of trade credit insurance issued by QBE Insurance (Australia) Ltd in favour of Sanwa covering the full amount and subject matter of any Agreement(s) or transaction(s) between Sanwa and the Purchaser.

- 3.3. Sanwa may suspend from time to time some or all its obligations under these terms & conditions of trade or any Agreement with the Purchaser, including delivery of ordered Goods or offering further credit, in circumstances where no policy of trade credit insurance as described in clause 3.2 subsists. The non-performance of obligations suspended by Sanwa is not a breach of these terms & conditions of trade or any Agreement and the Purchaser remains bound by its obligations to Sanwa.

- 3.4. In order to accommodate increases in the value of trade between Sanwa and the Purchaser, the parties will use their best endeavours to obtain an increase in the maximum sum insured under any policy of trade credit insurance referred to in clause 3.2 (the **credit limit**) as may be required from time to time.

- 3.5. In the event that any Agreement or transaction is entered into (**subsequent order(s)**) which would cause the total amount owing by the Purchaser to Sanwa to be in excess of the credit limit and an increase of the credit limit can not be obtained prior to the credit limit being exceeded, the Purchaser must make payment to Sanwa of such earlier invoiced amounts as to ensure that any and all subsequent orders would not cause the total amount owing by the Purchaser to Sanwa to be in excess of the credit limit.

- 3.6. If early payment is made by the Purchaser in accordance with clause 3.5, an early payment discount applies to the amount paid early at a rate of 5 percent per annum (unless otherwise agreed in writing) pro-rata, for the period between when early payment was received by Sanwa and when the payment would have otherwise been due and payable.

4. Orders and Payment.

- 4.1. Once an order made by the Purchaser has been confirmed by Sanwa, it cannot be cancelled or modified without Sanwa's prior written consent.

- 4.2. In the event of a cancellation in accordance with clause 4.1, the Purchaser shall reimburse Sanwa for all costs, loss of profits and expenses incurred by Sanwa as a result of the cancellation whether such expenses were incurred before or after the date of cancellation. A certificate signed by or on behalf of Sanwa will be

conclusive evidence of all such costs, loss of profits and expenses incurred by Sanwa.

- 4.3. In case of an F.O.B (free on board) Contract, the Purchaser is required to give shipping instructions to Sanwa in a reasonable time so as to allow for the provision of necessary shipping space; failing which Sanwa is entitled to dispose of the subject Goods for the Purchasers account and risk.

- 4.4. The Purchaser shall be invoiced when the Purchaser is notified that the Goods are available for despatch or as Sanwa in its sole discretion otherwise considers acceptable.

- 4.5. All invoices shall be due and payable within the timeframe specified in the sales contract or other Agreement with the Purchaser. If no timeframe for payment is specified in the sales contract or Agreement, then the timeframe shall be 30 days from the date of invoice, or as Sanwa in its sole discretion considers acceptable.

- 4.6. The Purchaser shall not (nor shall it be entitled to) set off or deduct from any amount payable to Sanwa under any Agreement any amount(s) disputed by the Purchaser or any amount(s) owing or alleged to be owing by Sanwa to the Purchaser on any account whatsoever.

- 4.7. Interest is payable to Sanwa by the Purchaser on any amount outstanding from time to time after the due date for payment at the rate of 4 percent per annum above the National Australia Bank Limited, Business Lending Base Rate, as current from time to time.

- 4.8. Until all monies due to Sanwa by the Purchaser on any account whatsoever are paid in full and title to the Goods passes to the Purchaser in accordance with these terms & conditions of trade, the Purchaser agrees that:

4.8.1. the Goods shall be held by the Purchaser in a fiduciary capacity as bailee for and on behalf of Sanwa;

4.8.2. the Purchaser irrevocably gives Sanwa and its agent(s) the right, without notice, to enter the premises of the Purchaser at any time for the purpose of inspecting, removing or taking possession of the Goods or any part of the Goods;

4.8.3. if Sanwa enters the Purchaser's premises pursuant to clause 4.8.2 Sanwa and its agent(s) shall be entitled to use all reasonable force to gain access to the premises and shall not be liable for any damage or loss occasioned to the Purchaser or its premises and the Purchaser shall indemnify Sanwa and its agent(s) against any loss or damage suffered by any person, Sanwa or its agent(s) arising from such repossession;

4.8.4. the Purchaser shall store the Goods separately from goods owned by the Purchaser and shall identify them as Goods of Sanwa;

4.8.5. if the Goods or any part of them have been on-sold by the Purchaser prior to all monies due to Sanwa having been paid then the proceeds or debtors of the Purchaser arising from such on-sales shall be the property of Sanwa and shall be held on a fiduciary basis and retained in a separate account payable to Sanwa on demand.

- 4.9. Where any payment is to be made by letter of credit, the Purchaser shall establish an irrevocable authority and confirmed letter of credit with a bank satisfactory to Sanwa. The letter of credit shall be in a form and upon terms satisfactory to Sanwa, shall be in favour of Sanwa, and shall provide that all payments be made only to the order of the negotiating bank.

- 4.10. Any letter of credit shall refer to the relevant Agreement or Sanwa's invoice by number and authorise reimbursement to Sanwa for the amount thereof together with any amounts (if any) as may be advanced by Sanwa in respect of consular invoices, inspection fees and other expenditures. A letter of credit shall also provide for partial avancements against partial deliveries and shall be

- maintained for a period of not less than thirty days after the latest delivery under the relevant Agreement.
- 4.11. If any part of an amount owing to Sanwa is at any one time overdue, then the whole amount owing to Sanwa at that time is deemed immediately due and payable.
- 4.12. If Goods are delivered by Sanwa in accordance with clause 6 and because of an event or circumstance outside the control of Sanwa and the Purchaser such Goods, or part thereof, do not reach the port of destination within 30 days after the date that such Goods would have arrived at the port of destination in the ordinary course, then payment for such Goods or the affected part thereof shall be made by the Purchaser by the date stipulated in clause 4.5 or within 60 days after the date that such Goods would have arrived at the port of destination in the ordinary course.
- 5. Default and Termination**
- 5.1. An event of default will have occurred under these terms & conditions of trade and under any Agreement if:
- 5.1.1. Any amount is outstanding and due and payable by the Purchaser to Sanwa but is unpaid;
- 5.1.2. The Purchaser fails to take delivery of any Goods in accordance with an Agreement;
- 5.1.3. The Purchaser fails to obtain any necessary import license or quota allocation in reasonable time so as to allow Sanwa to perform its obligations under these terms & conditions of trade and any Agreement;
- 5.1.4. The Purchaser fails to provide any letter of credit, Bill of Exchange or any other security required by Sanwa from time to time;
- 5.1.5. Sanwa obtains unfavourable reports on the financial standing of the Purchaser;
- 5.1.6. The Purchaser dies or becomes incapacitated, or ceases, or indicates that it is about to cease, to carry on business;
- 5.1.7. The Purchaser fails to perform any of its obligations under these terms & conditions of trade or any Agreement including failure to pay any amount by its due date;
- 5.1.8. An application is made or proceedings are initiated or a meeting (whether of shareholders, creditors or directors) is called with a view to winding the Purchaser up or placing the Purchaser in any kind of insolvency or other external administration;
- 5.1.9. The Purchaser becomes bankrupt or insolvent, goes into voluntary or compulsory liquidation or a step is taken to have a receiver, receiver and manager, provisional liquidator, liquidator or administrator appointed to the Purchaser or any of its assets; or
- 5.1.10. Anything happens that reasonably indicates that there is a significant risk that the Purchaser is or will become unable to pay debts as they fall due. This includes execution or distress being levied against any income or assets of the Purchaser; a meeting of the Purchaser's creditors being called or held; a step being taken to make the Purchaser bankrupt; and the Purchaser entering into any type of arrangement with, or assignment for the benefit of, all or any class of its creditors, or being subject to a deed of company arrangement.
- 5.2. Upon the happening of an event of default, and without notice to the Purchaser:
- 5.2.1. Sanwa may terminate any Agreement with the Purchaser.
- 5.2.2. Sanwa may take steps to recover all outstanding monies, including engaging a mercantile agency or instituting legal proceedings. The Purchaser is liable for any costs of taking steps to recover the amount the costs of a mercantile agency, court costs and legal costs on a full indemnity basis.
- 5.2.3. Interest will apply to recovery costs owing by the Purchaser to Sanwa at the rate of 4 percent per annum above the National Australia Bank Limited, Business Lending Base Rate, as current from time to time, from the date the costs are incurred.
- 5.2.4. Sanwa may elect to suspend from time to time some or all its obligations under these terms & conditions of trade or any Agreement with the Purchaser, including offering further credit, until full payment is received by Sanwa. The non-performance of obligations suspended by Sanwa is not a breach of these terms & conditions of trade or any Agreement and the Purchaser remains bound by its obligations to Sanwa.
- 5.2.5. Sanwa shall be entitled as a condition of resuming delivery under any Agreement suspended in accordance with clause 5.2.4 to require prepayment of such security as it may in its sole discretion require for any further Agreements or outstanding Agreements, orders or deliveries.
- 5.2.6. Sanwa shall be entitled, without prejudice to any of its rights and remedies, to terminate in whole or in part any Agreement to which the Purchaser is a party.
- 5.2.7. Sanwa may exercise all rights resulting from the failure to pay money at any later time despite the supply of Goods by Sanwa after it becomes aware of a failure by the Purchaser to pay money.
- 5.2.8. The right to terminate an Agreement may be exercised concurrently with the suspension of obligations by Sanwa.
- 5.3. If an Agreement is ended because of the Purchaser's default and the Purchaser owes Sanwa money, the money becomes immediately payable immediately to Sanwa.
- 5.4. The acceptance by Sanwa of any payment from or on behalf of the Purchaser after the specified due date thereof shall not constitute a waiver of the Purchaser's obligations to make further payments.
- 5.5. In the event of such of such termination Sanwa shall, after taking into account payments made by the Purchaser, be entitled to be paid by the Purchaser for work done and expenditure made under the Agreement up to and including the date of termination and any direct and indirect loss suffered by Sanwa including without limitation Sanwa's loss of profit on the Agreement and the legal costs of Sanwa (on a full indemnity basis) incurred in relation to the termination and any prior breach and in exercising any rights and remedies as a consequence of the termination and any prior breach.
- 5.6. Termination of the Agreement pursuant to this clause 5 shall be without prejudice to the rights of Sanwa accruing up to the date of termination.
- 6. Delivery**
- 6.1. Unless agreed otherwise in writing by the parties, where an Agreement incorporates Incoterms, delivery will be deemed to have occurred immediately when Sanwa has fulfilled its obligations as to delivery pursuant to Incoterms.
- 6.2. Unless agreed otherwise in writing by the parties, where an Agreement does not incorporate Incoterms:
- 6.2.1. Unless otherwise agreed, where the Purchaser has nominated an address for delivery, Sanwa shall deliver the Goods to that nominated address.
- 6.2.2. Delivery of Goods will be deemed to have occurred immediately when the Goods are collected by a carrier on behalf of the Purchaser or are delivered by Sanwa or a carrier acting on behalf of Sanwa to the Purchaser's business premises or site whether attended or not.
- 6.3. The following shall be conclusive evidence of delivery:
- 6.3.1. A certificate purporting to be signed by an officer, employee or agent of Sanwa confirming delivery of the Goods; or
- 6.3.2. A receipt or signed delivery docket for the Goods.
- 6.4. If a nominated address is unattended or if delivery cannot otherwise be effected or the Goods cannot be despatched due to any act, matter or thing beyond the control of Sanwa, Sanwa in its sole discretion may store the goods at the Purchaser's risk and expense or take such other steps as it considers appropriate.
- 6.5. Sanwa reserves the right to refuse to supply Goods and/or services under an Agreement if a Purchaser is in default of any of its payment obligations under any one or more Agreements.
- 6.6. Sanwa reserves the right to choose or vary the means, route and procedure of delivery, transport and handling of Goods. If the Purchaser requires a different means, route or procedure, the cost of delivery shall be borne by the Purchaser notwithstanding any other provision of these terms & conditions of trade or an Agreement.
- 6.7. Sanwa may supply Goods and/or services in instalments and these terms & conditions of trade shall apply to each and every supply of Goods and/or services. Each instalment shall be deemed to be sold under a separate Agreement and shall be paid for separately by the Purchaser. Any default by Sanwa in respect of any part delivery or instalment shall not entitle the Purchaser to treat the Agreement as repudiated in regard to the balance of the Goods delivered under the Agreement or instalments remaining to be delivered.
- 6.8. Any delivery or completion dates stated are estimates only and are not essential terms of any Agreement. Sanwa shall make all reasonable efforts to meet any date for supply of Goods and/or services agreed between Sanwa and the Purchaser. Where a delay to supply Goods and/or services occurs, in no event shall Sanwa incur any liability or penalty for failure to supply Goods and/or services by an agreed time.
- 6.9. If the Purchaser fails to take delivery of the Goods and this continues for 60 days or more, Sanwa may resell those Goods. The Purchaser must pay to Sanwa any difference between the original sale price of the Goods and the resale price of the Goods after deduction of a restocking fee of 15 percent of the original sale price of the Goods.
- 6.10. The prices include the cost of packing the Goods in accordance with Sanwa's standard practice. If the Purchaser requires the Goods to be provided in any other manner the cost of the packing shall be the responsibility of the Purchaser. Sanwa shall not be liable for any damage or loss occurring as a result of goods being packed in accordance with the Purchaser's instructions.
- 7. Title and Risk**
- 7.1. Unless agreed otherwise in writing by the parties:
- 7.1.1. Where an Agreement incorporates Incoterms, the risk of loss or damage to Goods shall pass to the Purchaser in accordance with Incoterms.
- 7.1.2. Where an Agreement does not incorporate Incoterms, the risk of loss or damage to Goods shall pass to the Purchaser upon delivery in accordance with clause 6.
- 7.2. Notwithstanding that the Purchaser has possession of the Goods, title to the Goods remains with Sanwa, and no legal or equitable interest or property in the Goods whatsoever will pass to the Purchaser, until the full amount for the Goods has been paid in cleared funds and there is no money owing by the Purchaser to Sanwa for any other Goods delivered by Sanwa or on any amount whatsoever.
- 7.3. Where the title and property in any particular Goods has not passed, the Purchaser may nevertheless dispose of these Goods to a bona fide sub-purchaser provided that such disposals are in the ordinary course of the Purchaser's business.
- 7.4. It is agreed that by the disposal of such Goods, the Purchaser assigns to Sanwa (the assignment being absolute and not by way of security) all monetary proceeds received by or on behalf of the Purchaser in respect to the Goods and holds such proceeds on trust for the absolute benefit of Sanwa.
- 7.5. The Purchaser must observe the following fiduciary obligations with respect to any disposal of Goods to a sub-purchaser authorised by this clause 7:
- 7.5.1. the Purchaser must maintain records of all disposals of the Goods and must permit inspection of these records by Sanwa promptly upon request; and
- 7.5.2. the Purchaser must hold the assigned proceeds on trust for Sanwa. The total debts owing by the Purchaser to Sanwa will be reduced by the proceeds once such monies are received by Sanwa in cleared funds.
- 7.6. The Purchaser must comply with all of the following conditions:
- 7.6.1. Keep the Goods in its possession and control.

- 7.6.2. Keep the Goods in good repair and condition, excluding fair wear and tear.
- 7.6.3. Keep the Goods stored separately and marked so that the Goods are clearly and easily identifiable as Sanwa's property and inform Sanwa of the location of the Goods, if requested.
- 7.6.4. Not sell (except in accordance with clauses 7.3, 7.4 and 7.5), assign or let the Goods or any interest in them, or permit any charge, pledge, lien or other encumbrance to be created in relation to them.
- 7.6.5. Maintain and allow Sanwa to inspect records which do any of the following:
- Identify any unpaid Goods owned by Sanwa.
 - Detail third parties to whom the Customer sells or otherwise disposes of the unpaid Goods.
 - Detail payments made by such parties for the unpaid Goods.
- 7.7. The Purchaser indemnifies Sanwa against any claim, action, damage, loss, liability, cost, expense that Sanwa suffers, incurs or is liable for in respect of Sanwa's exercise of its rights under this clause 7.
- 8. Insurance**
- 8.1. Where an Agreement is a C.I.F (costs, insurance and freight) contract, the insurance shall be effected for the amount of Sanwa's invoice plus ten percent. Unless otherwise expressly agreed by Sanwa, such insurance shall be marine insurance only, free from particular average. Any additional or other insurance required by the Purchaser is to be at its own expense.
- 8.2. Subject to clause 8.1, unless required to do so pursuant to Incoterms or otherwise as expressly agreed in writing by Sanwa, Sanwa will not and will not be responsible for obtaining any insurance in respect of the Agreement and any Goods subject of such Agreement.
- 8.3. The Purchaser must keep the Goods insured for their full insurable value with a reputable insurer against loss and damage and all other risks for Goods of that kind from time the risk in the Goods passes to the Purchaser until the time title in the Goods passes to the Purchaser. The insurance is to be in the name of the Purchaser with the interest of Sanwa noted thereon.
- 8.4. The Purchaser holds the proceeds of that insurance on trust for Sanwa up to the amount it owes Sanwa in respect of those Goods, and must keep such proceeds in a separate account until the liability to Sanwa is discharged and must immediately pay that amount to Sanwa.
- 8.5. The Purchaser shall if requested provide proof of such insurance to Sanwa upon request.
- 9. PPSA**
- 9.1. The Purchaser acknowledges that any Agreement and these terms & conditions of trade constitute a security agreement in favour of Sanwa for the purposes of section 20 of the PPSA and that a security interest exists in:
- 9.1.1. Goods (and their proceeds) previously supplied by Sanwa to the Purchaser (if any)
 - 9.1.2. All Goods (and their proceeds) to be supplied by Sanwa to the Purchaser in the future
 - 9.1.3. All of the Purchaser's present and after-acquired property in which Goods or materials supplied or financed by Sanwa have been attached or incorporated.
- 9.2. The Purchaser acknowledges that the security interest granted by the Purchaser to Sanwa pursuant to clauses 4.8 and 7 of these terms & conditions of trade shall constitute a purchase money security interest as defined in section 14 of the PPSA.
- 9.3. Until ownership of the Goods passes to the Purchaser in accordance with these terms & conditions of trade, the Purchaser waives its rights under the following provisions of Chapter 3 of the PPSA:
- 9.3.1. to receive a notice of intention of removal of an accession (section 95).
- 9.4. Until ownership of the Goods passes to the Purchaser in accordance with these terms & conditions of trade, the Purchaser waives its rights under the following provisions of Chapter 4 of the PPSA:
- 9.4.1. to receive a notice that Sanwa decides to enforce its security interest in accordance with land law (section 118);
 - 9.4.2. to receive a notice on enforcement action against liquid assets (section 121(4));
 - 9.4.3. to receive a notice of disposal of Goods by Sanwa purchasing the Goods (section 129);
 - 9.4.4. to receive a notice to dispose of Goods (section 130);
 - 9.4.5. to receive a statement of account following disposal of Goods including details of payment to other creditors (section 132(3)(d));
 - 9.4.6. to receive a statement of account if no disposal of Goods for each 6 month period (section 132(4));
 - 9.4.7. to receive notice of any proposal of Sanwa to retain Products (section 135);
 - 9.4.8. to object to any proposal of Sanwa to either retain or dispose of Goods (section 137(2));
 - 9.4.9. to redeem the Goods (section 142);
 - 9.4.10. to reinstate the security agreement (section 143).
- 9.5. The Purchaser further agrees that where Sanwa has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.
- 9.6. Until ownership and title of the Goods passes to the Purchaser in accordance with these terms & conditions of trade, the Purchaser must not give to Sanwa a written demand or allow any other person to give Sanwa a written demand requiring Sanwa to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA.
- 9.7. The Purchaser acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to Sanwa under these terms & conditions of trade.
- 9.8. In addition to any other rights under these terms & conditions of trade or otherwise arising, the Purchaser irrevocably grants to Sanwa the right, without notice to the Purchaser, to exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Purchaser, to search for and seize, dispose of or retain those goods in respect to which the Purchaser has granted a Security Interest to Sanwa. The Purchaser shall indemnify Sanwa from any Claims made by any third party as a result of such exercise.
- 9.9. The Purchaser agrees and undertakes to:
- 9.9.1. sign any further documents, provide any further information (which information the Purchaser warrants to be complete, accurate and up-to-date in all respects) and do such further acts which Sanwa may reasonably require to enable registration of the security interest granted to Sanwa under these terms & conditions of trade and/or any Agreement on the Personal Property Securities Register ("PPSR");
 - 9.9.2. give Sanwa not less than 14 days written notice of any proposed change in the Purchaser's name and/or any other changes in the Purchaser's details (including but not limited to changes in the Purchaser's address, facsimile number, email address, trading name or business practice);
 - 9.9.3. pay all costs incurred by Sanwa in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these terms & conditions of trade including executing subordination agreements.
 - 9.9.4. be responsible for the full costs incurred by Sanwa (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA; and
- 9.10. The Purchaser waives any rights it may have under any section of the PPSA listed in section 115(1) of the PPSA upon enforcement of any security interest by Sanwa.
- 9.11. Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by Sanwa, the Purchaser waives the right to receive a verification statement.
- 9.12. The Purchaser agrees that immediately on request by Sanwa the Purchaser will procure from any persons considered by Sanwa to be relevant to its security position such agreement and waivers as Sanwa may at any time require.
- 9.13. Pursuant to section 275(6) of the PPSA, the Purchaser agrees it will not disclose to an interested person information pertaining to Sanwa's purchase money security interest without prior approval of Sanwa.
- 9.14. This clause 9 will survive the termination of any Agreement to the extent permitted by law.
- 10. Intellectual Property**
- 10.1. The supply of goods or services to the Purchaser does not constitute a transfer of any intellectual property rights (including but not limited to any patent, utility model, trade mark, design or copyright) in the Goods or services or any part thereof and all such rights are to be expressly reserved to the true and lawful owners. The Purchaser shall not do anything inconsistent with or in infringement of such intellectual property rights including but not limited to the decompilation, disassembly and/or re-engineering thereof.
- 10.2. Sanwa does not warrant that the supply by it and the use by the Purchaser of the goods and services does not and will not infringe the intellectual property rights of any third party whether such rights take the form of letters patent, registered designs, copyright, trade mark, or any other similar right.
- 10.3. Where Sanwa or its contract manufacturer of the goods or any part thereof provides the goods or services to the Purchaser's design and specifications the Purchaser agrees to indemnify and keep indemnified Sanwa and its related corporations against all actions, claims, loss, damages, costs and fines that Sanwa and/or its related corporations may incur or suffer as a result of a claim by a third party that the manufacture and sale by Sanwa of the goods or any part thereof or the provision of the services infringes any intellectual property right of such third party.
- 10.4. The Purchaser shall indemnify Sanwa in respect of any infringement or alleged infringement of any intellectual property rights and shall be responsible for all losses, damages and expenses suffered or incurred by Sanwa as a result of any infringement relating to the subject of any Agreement between the Purchaser and Sanwa. In case of any dispute and/or claim arising in connection with any such infringement, Sanwa reserves the right at its discretion to terminate, and make null and void any Agreement and to hold the Purchaser responsible for any loss caused thereafter to Sanwa.
- 11. Sanwa's Obligations**
- 11.1. Notwithstanding any other provision of these terms & conditions of trade if the Purchaser breaches a term of any Agreement Sanwa shall not be bound to perform its obligations under that Agreement until the breach is remedied by the Purchaser.
- 12. Force Majeure**
- 12.1. Should Sanwa be delayed, hindered, or otherwise prevented from complying with the terms of these terms & conditions of trade or any Agreement by reason of events or circumstances beyond the reasonable control of Sanwa including but not limited to Acts of God, wars, riots, strikes, lockouts, trade disputes or labour disturbances, breakdown of plant or machinery, accident, storm, fire, flood, difficulties or shortages in obtaining material, fuel, transport or labour, the late receipt of the Purchaser's specifications, requirements or other necessary information or any other circumstances affecting the supply of goods or services, then Sanwa shall not be liable to the Purchaser for any loss or damage which may be suffered by the Purchaser whether as a direct or indirect result of any such occurrences.
- 12.2. In the event of any delay resulting from the happening of any event, occurrence or circumstance referred to in clause 12.1 hereof, the Purchaser shall accept a delayed delivery of the Goods and shall not be entitled to cancel or modify the Agreement.

- 13. Delay**
- 13.1. Notwithstanding clause 12 hereof, should any delay exceed 4 months from the proposed original, or any subsequent agreed, delivery date, either party shall have the right to cancel the subject Agreement by written notice to the other party unless the parties have otherwise agreed in writing to acknowledge and affirm the delay. This clause does not apply in respect of any Goods delivered in accordance with clause 6.
- 14. Limitation of Liability**
- 14.1. Any Purchaser of Goods or services from Sanwa agrees to assume all risks, release, hold harmless and indemnify Sanwa from and against all liabilities, claims, damages, losses, costs and expenses of whatsoever nature and howsoever occurring including without limitation loss of market, loss of profit, loss of use, loss of production or for any financial or economic loss including indirect or consequential loss or damage which may be suffered by the Purchaser or by any third party arising out of or in any way connected with:
- 14.1.1. the supply of Goods or the performance of services by Sanwa;
- 14.1.2. the sale, possession, maintenance, storage or use of the Goods, whether singly or in combination with any other thing or process;
- 14.1.3. any breach of any warranty or condition of an Agreement be it express, implied or otherwise;
- 14.1.4. by reason of breach of these terms & conditions of trade, or of statutory duty or by reason of tort (including but not limited by negligence).
- 14.2. Except as otherwise expressly provided in these terms & conditions of trade, all statements, warranties, representations, provisions, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law or otherwise) relating to any quotations or tenders submitted by Sanwa, orders accepted by Sanwa, goods (whether as to their quality or merchantability, fitness for any purpose, correspondence with any description or sample or otherwise) and/or services or their supply, being provisions which might otherwise form part of these terms & conditions of trade or any Agreement to be collateral to form part of any Agreement that is collateral to these terms & conditions of trade or any Agreement, are hereby excluded in their entirety and are of no effect whatsoever.
- 14.3. The Purchaser warrants to Sanwa that it has not relied on any representation or statement made by or on behalf of Sanwa other than as expressly set out in an Agreement and has notified Sanwa of any specific requirements that it has in relation to the Goods.
- 14.4. To the fullest extent permitted by law:
- 14.4.1. the Purchaser acknowledges that it relies on its own skill and judgement in relation to Goods and/or services supplied to it by Sanwa; and
- 14.4.2. Sanwa shall be under no liability as to fitness and suitability for purpose of the Goods unless that purpose has been specifically notified to Sanwa in writing prior to the formation of the relevant Agreement.
- 14.5. Notwithstanding any other provision of these terms & conditions of trade or any Agreement or otherwise, if any liability on the part of Sanwa arises to or in favour of the Purchaser (whether in contract, tort or otherwise) for any loss, damage, harm or injury arising out of or in any way connected with the supply of or failure in the provision of or the purported supply of Goods and/or services by Sanwa, Sanwa's liability for all such loss, damage, harm and injury in all and any circumstances shall be limited in aggregate to the payment by Sanwa of the sum not exceeding 5 percent of the monies payable to Sanwa pursuant to the relevant Agreement.
- 15. Test & Performance**
- 15.1. Sanwa does not guarantee the performance limits stated in any quotation, tender or Agreement unless such limits are expressly guaranteed by Sanwa in writing.
- 15.2. Sanwa will use all reasonable efforts to supply Goods having a material grade consistent with any material grade specified in any relevant quotation, tender or Agreement.
- 15.3. Where Sanwa supplies goods not manufactured by it, the Goods are subject to the chemical, mechanical and physical properties of the original manufacturer. Sanwa does not offer any warranty over such goods, except to the extent that they are subject to the warranty of the original manufacturer and Sanwa is able to pass on the benefit of such warranty to the Purchaser.
- 16. Measures, Drawings, Documentation and Information**
- 16.1. The parties agree that any descriptive and/or shipping specifications, statements, illustrations, drawings, data, dimensions or measurement in relation to the weight, dimensions, size, strength, density, quality, quantity or other characteristic in relation to any Goods or other subject matter of any quotation, tender or Agreement either submitted by Sanwa or otherwise provided by Sanwa to the Purchaser:
- 16.1.1. Do not form part of any Agreement entered into between Sanwa and the Purchaser unless expressly agreed in writing by Sanwa; and
- 16.1.2. Are illustrative and approximate only are subject to a tolerance of plus or minus 10 percent in respect of the measurement or other quantification of all characteristics of all Goods unless expressly agreed in writing by Sanwa.
- 16.2. If the Purchaser disputes Sanwa's assessment of the measurement or other quantification of any characteristic of the Goods or a part thereof, Sanwa is will not be liable in respect of such a discrepancy unless the Purchaser complies with clause 17 hereof.
- 16.3. Any drawings or other documents submitted and any information supplied by Sanwa to the Purchaser remains the property of Sanwa and constitutes confidential information of Sanwa (to the extent that it is not in the public domain) and the Purchaser shall keep all such confidential information confidential and shall not use such drawings, documents and information for any purpose other than that stipulated by Sanwa nor provide the same to third parties.
- 16.4. Where any drawings or other documents submitted by Sanwa with or as a part of a quotation or tender are not incorporated into an Agreement between Sanwa and the party to which such quotation or tender was submitted they shall be returned to Sanwa within 7 days of expiry of the quotation or tender or otherwise as reasonably required by Sanwa.
- 17. Claims and Returns**
- 17.1. No claim in relation to damaged Goods, discrepancy in relation to any measurement or other quantification of any characteristic of the Goods or a part thereof or shortage or non-delivery whatsoever may be made unless such claim is made by the Purchaser in writing to Sanwa within 14 days of delivery, or advised delivery, of the Goods to the Purchaser.
- 17.2. Sanwa's maximum liability for any such claim shall be, in its sole discretion, to re-deliver, replace or repair such Goods or pay for such Goods to be replaced or repaired.
- 17.3. Sanwa is not obliged to accept the return by the Purchaser of any Goods for credit and any acceptance of such a return shall only be by written agreement of Sanwa and always at the sole discretion of Sanwa. In all cases of return the original invoice must be quoted and return freight must be prepaid by the Purchaser.
- 17.4. Sanwa reserves the right to charge a 15 percent restocking fee on Goods accepted for credit.
- 17.5. The Purchaser must obtain Sanwa's prior consent before returning Goods for credit or otherwise.
- 17.6. Delivery for return of salable Goods to Sanwa for credit shall be at the cost of the Purchaser.
- 17.7. All Goods returned for credit must be in their original condition and packaging and in re-saleable condition.
- 17.8. Goods specifically manufactured, cut to size, produced, ordered or modified for the Purchaser and not defective will not be accepted for credit.
- 17.9. Sanwa reserves the right to impose special conditions on any return of Goods for credit.
- 17.10. Where the Agreement is for the supply of goods Sanwa may at its option repair or replace defective goods at its own expense but Sanwa shall have no liability for the cost of delivery to Sanwa and/or removal of the defective Goods nor for the cost of reinstallation of the goods.
- 18. Arbitration**
- 18.1. The parties agree that any dispute or difference whatsoever arising out of or in connection with, or otherwise related to these terms & conditions of trade or any Agreement, or the breach, termination, validity or subject matter thereof, or as to any related claim at law, in equity or pursuant to any statute, shall be submitted to arbitration administered by the Australian Commercial Disputes Centre (ACDC) or its successor.
- 18.2. The arbitration shall be conducted in Sydney in accordance with the ACDC Rules for Arbitration which are operating at the time the dispute is referred to ACDC and which terms are hereby deemed incorporated into any Agreement.
- 18.3. Judgment upon any award rendered in an arbitration hereunder may be entered in the Supreme Court of New South Wales or in any other Court of appropriate jurisdiction.
- 18.4. This clause shall survive termination of any Agreement.
- 19. Waiver**
- 19.1. The fact that Sanwa fails to do, or delays in doing, something that it is entitled to do under these terms & conditions of trade or any Agreement, does not amount to a waiver of its right to do it. Any waiver must be agreed or communicated in writing by Sanwa.
- 19.2. Any waiver of these terms & conditions of trade (or a part thereof) by Sanwa, shall not prejudice or affect Sanwa's rights and remedies in respect of any subsequent breach, non-performance or non-observance by the Purchaser of these terms & conditions of trade or any Agreement.
- 20. General**
- 20.1. Neither party may assign any right under this document without the other party's written consent.
- 20.2. These terms & conditions of trade and any Agreement to which they apply are governed by and must be interpreted in accordance with the laws of New South Wales.
- 20.3. If a clause or a part of a clause can be read in a way that makes it illegal, unenforceable, void, voidable or invalid, but can also be read in a way that makes it legal, enforceable, not void, not voidable and valid, it must be read in the latter way.
- 20.4. If any clause or part of a clause is illegal, unenforceable, void, voidable or invalid, that clause or part is to be treated as removed from these terms & conditions of trade, but the rest of this document is not affected.
- 20.5. The Purchaser unconditionally and irrevocably submits to the exclusive jurisdiction of the Courts of New South Wales.
- 20.6. In any Agreement:
- 20.6.1. If an Agreement is subject to Incoterms but no rule (eg. DDP, FOB, CIF, etc.) is specified in the Agreement, the rule is deemed to be FIS.
- 20.6.2. "FIS" and "Free into Store" have the same meaning as the term "DDP" as defined or referred to in Incoterms.
- 20.6.3. "C+F" and "Cost and Freight" have the same meaning as the term "CFR" as defined or referred to in Incoterms.
- 20.7. In these terms & conditions of trade, unless contrary to or inconsistent with the context:
- "Agreement(s)" means all tenders and quotations submitted by, all applications for commercial credit account submitted to, all orders placed with and/or confirmed by, all invoices issued by, and all contracts entered into by Sanwa whereby goods and/or services are supplied, provided and/or delivered by Sanwa to the Purchaser.
- "Claims" means all actual or threatened complaints, claims, demands, suits, proceedings, summonses, actions, costs, charges, expenses, liabilities, compensation, losses and damages (including consequential loss and damage) and interest whatsoever.
- "Goods" means all goods supplied or agreed or contracted to be supplied by Sanwa to the Purchaser pursuant to any

Contract or pursuant to any agreement or contract between Sanwa and the Purchaser.

“GST” means tax payable on taxable supplies under *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

“Incoterms” means the Incoterms® - International Commercial Terms published by the International Chamber of Commerce, as current from time to time.

“Order” means an order placed by the Purchaser to Sanwa for Goods to be sold and delivered by Sanwa to the Purchaser.

“PPSA” means the *Personal Property Securities Act 2009*.

“Purchaser” means the person or entity with whom Sanwa enters into an agreement or contract for the sale of Goods and includes its successors or assigns.

“Sanwa” means Sanwa Pty Limited ACN 000 904 987.

20.8. In these terms & conditions of trade, unless contrary to or inconsistent with the context:

20.8.1. headings are for guidance only and do not affect interpretation;

20.8.2. the singular includes the plural and vice versa;

20.8.3. a reference to these terms & conditions of trade, an Agreement or any other document includes a variation, novation or replacement of or supplement to any of them from time to time.

-END OF DOCUMENT-