

## KNOTWOOD TERMS & CONDITIONS OF SALE

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In these Terms unless the context or subject matter or circumstances indicate otherwise:

**ACL** means the Australian Consumer Law.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the State of Queensland, Australia.

**Claim** means any claim by any third person for loss or damage to any property, injury to, or death of any person or economic loss arising out of or relating to the Goods or any delay or failure in supplying the Goods.

**Customer** means the successful applicant to whom Knotwood supplies credit and Goods under these Terms or the person identified on a Quote or an Order as the customer (as the case requires).

**Force Majeure Event** means an event or circumstance beyond the reasonable control of a party to these Terms, including but not limited to war, riots, civil unrest, fire, flood, cyclone, typhoon, earthquake, lightning, explosion, strikes, lockouts, slowdowns, prolonged shortage of energy supplies, epidemics, pandemics and acts of state or governmental action prohibiting or impeding any party from performing its obligations under these Terms.

**Form** means the application for commercial credit form attached to these Terms.

**Goods** mean any goods supplied by Knotwood to the Customer.

**Guarantee and Indemnity** means the guarantee and indemnity attached to these Terms.

**Guarantor** means the person or persons named in the Guarantee and Indemnity.

**Insolvency Event** means, in respect of the Customer, any of the following events or any similar event: (a) it disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business; (b) it ceases, or threatens to cease, carrying on business; (c) it is unable to pay its debts as the debts fall due; (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of its assets, operations or business; (e) any step is taken for a party to enter into any arrangement or compromise with, or assignment for the benefit of, its creditors or any class of its creditors; (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of its assets, operations or business; or (g) the Customer being a natural person commits an act of bankruptcy.

**Knotwood** means Knotwood Pty Ltd ABN 26 137 836 858 of Unit 7, 63 Burnside Road, Stapylton QLD 4207.

**Liability** means any expense, cost, liability, loss, damage, Claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to these Terms or otherwise.

**Order** means a purchase order for the Goods placed by the Customer in accordance with these Terms.

**Perfected Security Interest** has the meaning given to that term in the PPSA.

**Quote** means a written description of the Goods or Services to be provided, an estimate of the cost of the Goods or Services and the cost of delivery, an estimate of the time frame for the delivery of the Goods or Services and such other information included by Knotwood from time to time.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) as amended from time to time.

**Real Property** means all real property interests held by the Customer now or in the future.

**Related Bodies Corporate** has the meaning given in the *Corporations Act 2001* (Cth).

**Services** means the services (if any) to be provided by Knotwood to the Customer in accordance with a Quote and these Terms.

**Terms** means these terms and conditions of sale being Knotwood's terms and conditions for the supply and purchase of Goods.

**Territory** means Australia.

**Warranties** means the warranties in respect of the Goods as contained on the 'warranties' subpage of the Website as amended from time to time (which as at the date of these Terms is located at <<https://www.knotwood.com.au/warranty/>>).

**Website** means the website located at <<https://www.knotwood.com.au/>> and controlled by Knotwood or any of its Related Bodies Corporate from time to time.

## 1.2 Interpretation

In these Terms unless the context or subject matter or circumstances indicate otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms;
- (c) a reference to '\$', 'AUD', 'A\$' or 'dollars' means Australian dollars and a reference to payment means in Australian dollars unless expressly stated otherwise;
- (d) headings are for convenience only and do not affect interpretation;
- (e) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (f) another grammatical form of a defined word or expression has a corresponding meaning;
- (g) a reference to a party includes that party's executors, administrators, successors and permitted assigns; and
- (h) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing: (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and (ii) in all other cases, must be done on the next Business Day.

## 2. SUPPLY ON CREDIT

- (a) The Customer acknowledges and agrees that: (i) it has no entitlement to credit unless in Knotwood's absolute discretion, Knotwood elects to extend credit to the Customer; and (ii) any credit granted by Knotwood to the Customer does not represent an ongoing right of the Customer to receive credit from Knotwood. Specifically, Knotwood reserves the right, at any time and at its absolute discretion, to refuse to supply further Goods or Services to the Customer and to refuse to supply Goods or Services to the Customer on credit terms.
- (b) The Customer must:
  - (i) no later than 30 days from the date of each Knotwood statement, make payment of its credit account with Knotwood in clear funds without any set off or deduction. Payment must be made by direct debit, credit card or Stripe into Knotwood's nominated bank account;
  - (ii) pay any stamp duty assessed on this document or fee to register or maintain any security interest held by Knotwood in respect of Goods or Services supplied by Knotwood to the Customer; and
  - (iii) advise Knotwood in writing upon the happening of any Insolvency Event, any change in name, ownership or control as soon as reasonably practicable and in any event, no later than three (3) Business Days after the happening of such event. The Customer acknowledges that despite the happening of any such event, the Customer remains liable to pay the price for all Goods sold or Services provided by Knotwood to the Customer.

## 3. PRIVACY, DISCLOSURE AND CONSENT

- (a) The Customer authorises Knotwood to:
  - (i) disclose information contained in the Form to any credit reporting agency or third party; and
  - (ii) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in the Form (or similar document) and from any other credit provider or credit reporting agency, for the purpose of assessing the Form, or in connection with any guarantee given by the Customer.

The Customer agrees that this authority remains in place until these Terms are terminated under clause 23. The Customer acknowledges that certain information about the Customer's credit facility may be exchanged with other credit providers to assist with the management of the credit arrangements contemplated by these Terms.

- (b) Knotwood complies with its privacy obligations at law in relation to the collection and disclosure of personal information. Further information about the way in which Knotwood manages personal information can be obtained from the Website.

## 4. QUOTES

Knotwood may provide the Customer with a Quote. Any Quote issued by Knotwood is valid until the end of the month in which the invoice is issued. Unless otherwise agreed in writing, a Quote does not include the cost of installation of the Goods. Quotes

are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of all necessary information and documents to Knotwood. Following provision of a Quote, Knotwood is not obliged to supply the Goods until the Quote has been accepted by the Customer by the Customer completing an Order and returning the Order to Knotwood. Knotwood reserves the right to amend any Quote before the Order has been completed to take into account any rise in the cost of completing the Order and any amendment supersedes any prior Quote or dealings between the parties (unless otherwise agreed). Knotwood will notify the Customer of any amendment to the Quote as soon as practicable. An indication in a Quote of the time frame for the provision of the Goods is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the ACL, this estimate is not binding upon Knotwood.

## 5. ORDERS

- (a) Each Order must be submitted in writing in a form approved by Knotwood (acting reasonably) and is subject to acceptance by Knotwood. These Terms apply to all Orders for Goods that are accepted by Knotwood whether for cash or on credit. For the avoidance of doubt:
- (i) Knotwood's acceptance of an Order represents Knotwood's acceptance to provide the Goods and Services on these Terms and for the price set out in the Order; and
  - (ii) the inclusion of the Customer's standard terms on an Order are of no effect and do not replace these Terms.
- (b) The Customer acknowledges and agrees that:
- (i) a minimum amount of \$2,000 applies to each Order for Goods in non-standard colours, being colours which do not form part of Knotwood's 'Woodgrain' or 'Textura' colour range;
  - (ii) each Order must meet Knotwood's minimum Quote requirements, including length requirements for the Goods as follows: (i) minimum length of 4.0 metres; and (ii) maximum length of 6.5 metres;
  - (iii) the lead time for powder coating and imaging will be confirmed by Knotwood as soon as practicable after Knotwood has received and processed an Order;
  - (iv) to the extent permitted by law, Knotwood will not be liable or responsible in any way to the Customer or any other person for:
    - (A) any coatings when a die drawing has not been provided by the Customer; or
    - (B) any costs incurred by the Customer in connection with any image or coating faults;
  - (v) it may place an Order for the coating or sublimation of the Customer's own metal (**Customer's Metal**). Knotwood will not accept an Order for the coating or sublimation of the Customer's Metal unless the Customer has provided Knotwood with all required paperwork and other documents reasonably requested by Knotwood. The Customer must use its' reasonable commercial endeavours to ensure that the Customer's Metal is appropriately packaged to allow for forklift unloading. If in Knotwood's reasonable opinion the Customer's Metal is not packaged appropriately, Knotwood may return the Customer's Metal to the Customer at the Customer's sole expense; and
  - (vi) it is the Customer's responsibility to ensure that the quantity and site measurements included in an Order are accurate. To the extent permitted by law, any costs incurred by Knotwood in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the Customer incurring additional costs. Knotwood will not be liable or responsible in any way to the Customer or any other person for any Liabilities (including consequential damages and loss of profits or loss of revenues) for an incorrect Order or for any shortfall in the Goods supplied, or to be supplied, by Knotwood (**Shortfall**). The Customer agrees that where there is a Shortfall and the Customer places an Order for additional Goods to correct the Shortfall, the price of the Goods will be the price of those goods on the date that the Order is submitted by the Customer. The Customer must pay for the Goods in accordance with any Quote or invoice issued by Knotwood to the Customer for the Shortfall.
- (c) Knotwood may in its absolute discretion refuse to provide Goods or Services where:
- (i) the Goods are unavailable for any reason whatsoever;
  - (ii) credit limits cannot be agreed upon or have been exceeded; or
  - (iii) payment for Goods or Services previously provided to the Customer or any Related Bodies Corporate of the Customer has not been received by Knotwood.
- (d) To the maximum extent permitted by the ACL or other applicable law:
- (i) an Order cannot be cancelled without the prior written consent of Knotwood; and
  - (ii) where an Order is cancelled, the Customer indemnifies Knotwood against any Losses incurred by Knotwood as a result of the cancellation (including, but not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled).

- (e) The Customer may request that its Order be varied by providing a request in writing to Knotwood. Any request for a variation must be agreed to in writing by Knotwood in order to have effect. Knotwood has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

## 6. ACCEPTANCE AND RETURN OF GOODS

- (a) If the Customer fails to advise Knotwood in writing of any fault in the Goods or failure of the Goods to accord with the Order within five (5) Business Days of delivery or collection, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Order. For the avoidance of doubt, the Customer shall not have grounds to not accept the Goods for any reason described in clause 12(b). Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the ACL.
- (b) A return of Goods will not be accepted without the prior written approval of Knotwood. Where the Customer has obtained Knotwood's prior written approval, the Customer agrees that the Goods must be in their original packaging, in good order and condition and be accompanied by documentation showing the Customer's name, address and account number, Knotwood invoice number, reason(s) for return and authorisation reference number. The return of unpackaged Goods will not be accepted. Any return request that is accepted by Knotwood will be credited to the Customer's account at the current list price.

## 7. PRICE AND PAYMENT

- (a) The Customer agrees to pay Knotwood the price of the Goods plus all delivery or other costs (if any) set out in the Quote or as otherwise communicated by Knotwood to the Customer in writing from time to time:
  - (i) in accordance with clause 2, where Knotwood agrees to supply credit to the Customer; or
  - (ii) in accordance with clause 7(b), where the Customer agrees to pay the price upfront.
- (b) Knotwood shall provide an invoice to the Customer for the upfront price. The Customer must pay the price to Knotwood's nominated bank account or other payment method set out in Knotwood's invoice as follows:
  - (i) 50% of the total upfront price must be paid on the date that the Customer places an Order with Knotwood for the Goods; and
  - (ii) the balance of the upfront price must be paid immediately prior to the delivery or collection of the Goods.
- (c) If any invoice is due and payable but unpaid, Knotwood may withhold the provision of any further Goods or Services until all overdue amounts are paid in full.
- (d) Knotwood may (but is under no obligation to) offer the Customer a discount. Knotwood may in its absolute discretion apply any payment received from the Customer to any amount owing by the Customer to Knotwood. The Customer is not entitled to retain any money owing to Knotwood regardless of any default or alleged default by Knotwood of these Terms, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this clause 7(d) affects the Customer's rights for any alleged failure of a guarantee under the ACL.

## 8. OVERDUE AMOUNTS

- (a) If the Customer:
  - (i) is in breach of these Terms, including because of a failure to pay any amounts due and payable;
  - (ii) suffers an Insolvency Event; or
  - (iii) makes any misrepresentation to Knotwood on the Form or otherwise in respect of Customer's creditworthiness,then without limitation to Knotwood's rights at law or under these Terms (including the right to terminate), the balance of the Customer's account will be immediately due and payable. Without affecting any of Knotwood's other rights, any money due to Knotwood and outstanding beyond the due date will attract interest at the rate of 2% per month (or any part thereof), calculated daily and compounding monthly. The Customer agrees the rate of 2% per month (or any part thereof) is a genuine pre-estimate of loss and is not a penalty.
- (b) Any outstanding amount allows Knotwood to immediately discontinue or suspend the Customer's credit facility, and to initiate collection procedures, including legal action, in Knotwood's absolute discretion. Knotwood further reserves the right to report bad debts to independent credit data agencies.
- (c) The Customer agrees to promptly notify Knotwood in writing of any ownership, legal entity, management control or other changes of the Customer. Any account established with Knotwood by the Customer is not assignable and the Customer shall be liable for all charges incurred for Goods ordered under such account until the Customer provides written notice of the termination of its account to Knotwood.

- (d) Knotwood may establish other payment terms and suspend or restrict shipments if payments are delinquent, if the established credit limit is exceeded, or if the financial condition of the Customer at any time does not justify the terms granted, or for any other reason, as determined by Knotwood in its sole discretion.

## 9. DELIVERY AND FORCE MAJEURE

- (a) Any delivery date or collection date made known by Knotwood to the Customer in the Quote or otherwise is an estimate only and Knotwood will not be liable for a late delivery. The Customer acknowledges and agrees that delivery of the Goods may be affected by circumstances beyond Knotwood's control, including a Force Majeure Event, delays experienced by third parties, delays where the Customer has made a mistake in their Order, and delays associated with shipping components of the Goods. Under no circumstances shall Knotwood be liable for any Liability, loss, damage or delay to the Customer or the Customer's customers or clients arising from any of the events or circumstances in this clause 9(a).
- (b) The Customer agrees that delivery may be made in instalments. Where the Goods for a particular order are delivered by instalments, this does not constitute grounds for cancellation of the remainder of the instalments and the Customer shall be bound to accept delivery of such remaining instalments.
- (c) Knotwood engages third party freight providers. The Customer acknowledges and agrees that to the extent permitted by law Knotwood will not be liable or responsible in any way to the Customer or any other person for any damage incurred to Goods in transit. The Customer may, at its own cost, arrange alternative transport for the Goods and must provide notice in writing to Knotwood once any alternative transport has been arranged.

## 10. TITLE AND RISK

- (a) Risk in the Goods passes to the Customer immediately upon delivery or collection.
- (b) Title in all Goods supplied to the Customer remains with Knotwood until Knotwood receives payment in full of all amounts due to Knotwood. Until such time as title in the Goods passes to the Customer, the Customer:
  - (i) is a bailee of the Goods until property in them passes to the Customer;
  - (ii) irrevocably appoints Knotwood to be its attorney to do all acts and things necessary to ensure the retention of title to the Goods including the registration of any security interest in favour of Knotwood with respect to the Goods under applicable law;
  - (iii) must be able upon demand by Knotwood to separate and identify as belonging to Knotwood the Goods supplied by Knotwood from other goods which are held by the Customer;
  - (iv) must not allow any person to have or acquire any security interest in the Goods;
  - (v) agrees that Knotwood may repossess the Goods if payment is not made within 30 days (or such longer period as Knotwood may, in its absolute discretion, approve in writing) of the supply of the Goods; and
  - (vi) the Customer grants an irrevocable licence to Knotwood or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this clause 10(b). The Customer indemnifies Knotwood for any damage to property or personal injury which occurs as a result of Knotwood entering the Customer's premises.
- (c) Despite clause 10(b), the Customer may sell the Goods to a third party in the ordinary course of business and deliver them to that third party provided that it is agreed that as between the Customer and the third party purchaser of the Goods, that the Customer sells as principal and not as agent of Knotwood, and provided further that:
  - (i) where the Customer is paid by the third party, and Knotwood has not been paid by the Customer for the Goods pursuant to these Terms or any other terms of payment in force between the parties the Customer holds the whole of the proceeds of sale on trust for Knotwood; and
  - (ii) where the Customer is not paid by the third party, and Knotwood has not been paid by the Customer for the Goods pursuant to these Terms or any other terms of payment in force between the parties, the Customer agrees, at the option of Knotwood, to assign its claim against the third party to Knotwood upon Knotwood giving the Customer notice in writing to that effect. For the purpose of giving effect to this assignment the Customer irrevocably appoints Knotwood as its attorney.
- (d) The parties agree that this clause 10 applies notwithstanding any agreement, whether subject to these Terms or not, between the parties under which Knotwood gives the Customer credit.
- (e) Until title in the Goods passes to the Customer, the Customer shall keep the Goods insured in the name of Knotwood and the Customer for their respective rights and interests and will produce to Knotwood, upon demand, evidence of such insurance. The Customer must notify Knotwood of all insurance claims made by the Customer in respect of the Goods and must keep the proceeds of sale or insurance in a separate bank account on trust for Knotwood.

## 11. SECURITY INTEREST

- (a) Where Goods are supplied by Knotwood to the Customer without payment in full of all moneys payable in respect of the Goods provided by Knotwood, the Customer acknowledges that Knotwood has a right to register and perfect a personal property security interest. The Customer must immediately, upon request from Knotwood, sign any documents, provide any information and do all things reasonably requested to ensure Knotwood's security interest is a Perfected Security Interest.
- (b) The Customer must not enter into any security or other arrangement that permits other persons to have or to register any security interest in respect of the Goods or proceeds of the sale of the Goods that would have priority over Knotwood's security interest in respect of the Goods or any proceeds from the sale of the Goods, until Knotwood has perfected its security interest.
- (c) The Customer waives any rights it may otherwise have to:
  - (i) receive any notices the Customer might otherwise be entitled to receive under sections 95, 118, 121, 130, 132 or 135 of the PPSA;
  - (ii) apply to a court for an order concerning the removal of an accession under section 97 of the PPSA;
  - (iii) object to a proposal to purchase or retain any collateral under sections 130 and 135 of the PPSA; and
  - (iv) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest Knotwood may have in the Goods supplied to the Customer from time to time.

## 12. VARIATIONS

- (a) Knotwood may from time to time make any minor or insignificant change to the Goods and/or its specifications.
- (b) The Customer acknowledges and agrees that the Goods and/or its specifications, supplied by Knotwood may from time to time:
  - (i) exhibit variations in pattern, veining, shade, colour, texture, surface, finish and markings;
  - (ii) mark or stain if exposed to certain substances or if the Customer does not follow the required maintenance; and
  - (iii) be damaged or disfigured by handling, impact or scratching,resulting in a natural variation in the Goods and/or its specifications in comparison with any samples, pictures or previous supplies of the Goods.
- (c) The Customer acknowledges and agrees that, subject to any guarantees under the ACL, any variation or difference in the Goods, as described in clause 12(b), shall be deemed as a minor or insignificant change to the Goods and/or its specifications and will not, under any circumstances, be deemed as a material change to the Goods, a failure of Knotwood to meet its obligations, a failure of Knotwood to supply the Goods, a fault in the Goods or a valid reason for the Customer to reject the Goods or terminate these Terms.
- (d) Subject to the ACL or any other applicable law, the Customer warrants that it will not: (i) bring or allege any Claim against Knotwood; (ii) set-off any amount it may owe to Knotwood; (iii) be entitled to any discount for the Goods; or (iv) reject any Goods as a result of or for any minor or insignificant change to the Goods and/or its specifications and will pay Knotwood the price for the Goods in accordance with these Terms.

## 13. PURCHASE FROM KNOTWOOD AND REPORTING OF SUSPECTED INFRINGEMENT

- (a) The Customer must exclusively obtain Knotwood branded Goods (or other Goods bearing any Knotwood trademarks or which incorporate Knotwood copyright material or designs) from Knotwood. Knotwood reserves the right to withhold the supply of Goods from the Customer who contravenes this clause 13(a) and Knotwood will not be liable to the Customer for any loss or damage resulting directly or indirectly from any such action.
- (b) If the Customer learns of any infringement or suspected infringement of any of Knotwood's intellectual property rights, including 'unofficial' goods bearing the Knotwood trade mark, the Customer must promptly notify Knotwood in writing giving particulars of the infringement (or suspected infringement).

## 14. ADVERTISING

The Customer must:

- (a) not itself or cause any other person to publish any advertising material relating to the Goods unless the advertising material has first been approved in writing by Knotwood;

- (b) proactively use and distribute the most recent versions of marketing or promotional material provided by Knotwood (if any is provided); and
- (c) not make or offer any warranty or guarantee, or make any representation, in relation to the Goods, other than any warranties, guarantees or representations expressly stated in the material provided by Knotwood.

## 15. TRADING POLICY

- (a) The Goods may only be resold by the Customer to consumers at retail level and may not be resold at wholesale level or to any other trader that is known or suspected to be purchasing for resale. The Customer will do everything reasonably within its control to guard against selling the Goods to resellers who may on-sell the Goods inside or outside of the Territory.
- (b) The Customer must not sell or offer for sale the Goods outside the Territory, directly or indirectly, by itself or through any other party including by means of the internet and the Customer will inform Knotwood if the Customer expands its retail operations outside of the Territory. The Customer may not supply and sell the Goods on the internet including on any website owned or controlled by the Customer without the prior written consent of Knotwood and subject to any requirements and/or policies notified by Knotwood from time to time. The Customer acknowledges and agrees that approval for internet sales remains at Knotwood's absolute discretion and may be withdrawn on 30 days' notice in writing by Knotwood. The Customer acknowledges and agrees that a breach of this clause 15 may result in immediate termination of these Terms under clause 23.

## 16. EXCLUSION AND LIMITATION OF LIABILITY

- (a) All information, specifications and samples provided by Knotwood in relation to the Goods or Services are estimates only and, subject to any guarantees under the ACL, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services (including those under clause 12) will not entitle the Customer to reject the Goods upon delivery or collection or to make any Claim in respect of them.
- (b) Other than the warranties contained in clause 18, Knotwood gives no warranty in relation to the Goods or Services provided or supplied. Under no circumstances is Knotwood or any of its suppliers liable or responsible in any way to the Customer or any other person for any Liabilities (including consequential damages and loss of profits or loss of revenues) as a direct or indirect result of any defect, deficiency or discrepancy in the Goods or Services. 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:
  - (i) any Goods or Services supplied to the Customer; or
  - (ii) any delay in or other failure to supply of the Goods or Services,even if:
  - (iii) Knotwood knew such damages were possible; or
  - (iv) such damages were otherwise foreseeable.
- (c) The Customer expressly agrees that use of the Goods or Services is at the Customer's risk and to the maximum extent permitted by law, Knotwood excludes:
  - (i) all guarantees, conditions, warranties and terms implied by statute, general law or custom, except any non-excludable Condition, including without limitation all warranties that the Goods are fit for any particular purpose, safe, of a particular condition, suitability or quality or efficacious for any particular use;
  - (ii) the acts or omissions of the Customer or any third party not engaged by Knotwood; and
  - (iii) any event or circumstance outside of Knotwood's reasonable control, including a Force Majeure Event.
- (d) Despite anything to the contrary and to the maximum extent permitted by law, Knotwood's total Liability arising from or in connection with these Terms will be limited as follows:
  - (i) in respect of a Claim for the loss or damage of any Goods, an amount not exceeding \$100 in respect of the Goods lost or damaged; or
  - (ii) in respect of any other Claim, an amount not exceeding 50% of the price paid by the Customer to Knotwood in respect of the supply of the relevant Goods to which the Liability relates,or in Knotwood's absolute discretion, to Knotwood resupplying the Goods to the Customer.
- (e) The limitations and exclusions in this clause 16 do not apply to the extent that any Liability is directly attributable to: (i) the personal injury or death caused by Knotwood's gross negligence; or (ii) Knotwood's fraudulent acts or gross negligence.
- (f) The ACL may give the Customer certain consumer guarantees, which cannot be restricted, limited or varied.

## 17. INDEMNITY

The Customer indemnifies, and keeps indemnified, Knotwood, its officers, employees, contractors and agents (**Indemnified Parties**) from and against all Claims and Liabilities (including legal costs) sustained or incurred by the Indemnified Parties as a result of breach of these Terms by the Customer, arising from or in connection with these Terms or the provision of Goods or Services, the design, specification or use of the Goods supplied to the Customer or in connection with the recovery of overdue amounts. This clause 17 survives termination of these Terms.

## 18. WARRANTIES

The Customer acknowledges and agrees that:

- (a) subject to clause 18(c) and to the extent permitted by law, Knotwood gives no representations or warranties except as provided in writing and signed by a director of Knotwood;
- (b) subject to registration in accordance with clause 18(c), the Warranties as amended from time to time are incorporated into and supplement these Terms; and
- (c) the Warranties remain wholly subject to and conditional upon the Customer completing, signing and registering the Warranties with Knotwood and Knotwood providing confirmation of such registration in writing. For the avoidance of doubt, to the extent permitted by law, the Warranties will not form part of these Terms and shall not bind the parties until such time as the Warranties are registered with Knotwood in accordance with this clause 18(c). The Customer shall obtain a warranty registration form from Knotwood directly or via the 'warranties' subpage on the Website.

## 19. AGENCY AND ASSIGNMENT

- (a) The Customer agrees that: (i) Knotwood may at any time appoint or engage an agent to perform an obligation of Knotwood arising out of or pursuant to these Terms; (ii) Knotwood has the right to assign and transfer to any person all or any of its title, interest, benefit, rights, duties and obligations arising in, under or from these Terms provided that the assignee agrees to assume any duties and obligations of Knotwood owed to the Customer under these Terms; and (iii) Knotwood may, at its absolute discretion, assign or transfer any debt owed by the Customer to Knotwood, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.
- (b) The Customer must not assign, or purport to assign, any of its obligations or rights under these Terms without the prior written consent of Knotwood.

## 20. GST

- (a) In these Terms "**GST**" means the tax payable on Taxable Supplies under the GST Legislation, "**GST Legislation**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax and "**Taxable Supply**" has the meaning given to it in the GST Legislation.
- (b) Unless stated otherwise, all Quotes and invoices supplied by Knotwood are exclusive of GST. Where Knotwood makes a Taxable Supply to the customer under or in connection with these Terms or in connection with any matter or thing occurring under these Terms and the consideration otherwise payable for the Taxable Supply does not include GST, Knotwood will be entitled, in addition to any other consideration recoverable in respect of the Taxable Supply, to recover from the Customer the amount of any GST on the Taxable Supply.

## 21. NOTICES AND COMMUNICATIONS

- (a) A notice or other communication required or permitted to be given by one party to another under these Terms must be in writing to the address set out in the Form or Knotwood's invoice (or as varied pursuant to this clause 21) and (i) delivered personally; (ii) sent by pre-paid post to the address of the addressee; or (iii) sent by email to the email address of the addressee specified in the relevant Form or Knotwood's invoice.
- (b) A notice or other communication is taken to have been given (unless otherwise proved) a) if delivered personally, at the time of delivery; b) if sent by pre-paid post, on the second Business Day after posting; or c) if sent by email at the time of sending provided that the sending party does not receive a subsequent 'out of office' reply or similar response or a system administrator message stating that the email did not reach its intended recipient or was delayed and provided that notices in any way related to any change of address or termination may not be sent by email only, but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm (addressee's time) on a Business Day, the notice is deemed to be received at 9.00am on the following Business Day.
- (c) A party may only change its postal or email address for service by giving notice of that change in writing to the other party.

## 22. DISPUTE RESOLUTION

- (a) A party must not commence court proceedings (except proceedings seeking interlocutory relief) relating to any dispute arising out of or relating to these Terms (**Dispute**) unless it has complied with the procedure set out in this clause 22. A party claiming a Dispute must give each party to the Dispute notice in writing setting out the details of the Dispute and the



outcome sought. Despite the existence of a Dispute (including the referral of the Dispute to mediation), each party must continue to perform its obligations under these Terms (unless otherwise agreed).

- (b) If a Dispute is notified, the Dispute must immediately be referred to the party's respective senior management who shall use all reasonable endeavours to resolve the Dispute within 20 Business Days (or other period as agreed by the disputants) (**Initial Period**).
- (c) If the disputants cannot resolve the Dispute within the Initial Period, the disputants must refer the Dispute to mediation. The mediation must be conducted by a mediator who is independent of the disputants and appointed by agreement of the disputants or, failing agreement within seven (7) days of receiving any party's notice of dispute in this regard, by a person appointed by the Chair of Resolution Institute, or the Chair's designated representative. The Resolution Institute Mediation Rules shall apply to the mediation. This clause 22 survives termination of these Terms.

## 23. TERMINATION

- (a) These Terms commence on the date these Terms are accepted and will continue until terminated in accordance with this clause 23.
- (b) Termination without cause: Either party may terminate these Terms at any time without cause, upon at least 20 Business Days' prior written notice to the other party.
- (c) Termination for cause: Either party (**Affected Party**) may immediately terminate these Terms by written notice to the other party (**Other Party**) if the Other Party breaches a material obligation under these Terms and, where the breach is capable of remedy, does not remedy that breach within 10 Business Days after the Affected Party serves written notice on the Other Party requiring the breach to be remedied.
- (d) Termination by Knotwood: Knotwood is entitled to terminate these Terms immediately with or without notice if:
  - (i) the Customer is subject to an Insolvency Event that is not dismissed or rectified within five (5) Business Days of such event;
  - (ii) the Customer intends to cease, or ceases to carry on its business or there is a material change in the control of the Customer;
  - (iii) Knotwood ceases to supply Goods in the Territory;
  - (iv) the Customer purports to assign its rights under these Terms without Knotwood's prior written consent;
  - (v) the Customer damages the reputation of Knotwood as determined by Knotwood in its sole discretion; or
  - (vi) the Customer supplies false information in the Form.
- (e) On termination of these Terms:
  - (i) Knotwood will immediately cease providing the Goods;
  - (ii) the Customer must immediately pay for all Goods provided prior to termination, including Goods which have been provided and have not yet been invoiced to the Customer, and all other amounts due and payable under these Terms;
  - (iii) by Knotwood under clause 23(b) or 23(c), the Customer also agrees to pay Knotwood's additional costs, reasonably incurred, and which arise directly from such termination;
  - (iv) the Customer agrees to grant Knotwood rights of access to any premises where the Goods are located to allow Knotwood (or its personnel) to recover or repossess any Goods belonging to Knotwood; and
  - (v) the Customer agrees to promptly return (where possible) or delete or destroy (where not possible to return), any information, documentation or material owned by Knotwood that is in the Customer's possession or control.

## 24. MISCELLANEOUS

- (a) These Terms are governed by the laws of the State of Queensland, Australia. The parties irrevocably submit themselves to the non-exclusive jurisdiction of the courts of the State of Queensland, Australia.
- (b) These Terms are subject to change by Knotwood, and may be varied or amended from time to time, at Knotwood's absolute discretion.
- (c) These Terms and any Quotes, including any variations agreed to in writing by Knotwood, represent the entire agreement between the parties relating to the subject matter of these Terms and supersede all prior negotiations, agreements, arrangements and understanding between the parties.

- (d) If a provision of these Terms is invalid or unenforceable (in whole or in part) it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- (e) In entering into these Terms, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by Knotwood or any of its officers, employees, contractors or agents relating to or in connection with the subject matter of these Terms.
- (f) The failure of Knotwood at any time to require performance by the Customer of any provision of these Terms shall not affect in any way the full rights of Knotwood to require such performance at any time thereafter nor shall the waiver by Knotwood of a breach of any provision in these Terms be deemed a waiver of the provision itself or any other provision in these Terms.
- (g) Where anything depends on the consent or approval of a party then, unless these Terms provide otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.
- (h) The Customer acknowledges and agrees that these Terms shall form part of and be incorporated into any invoice issued by Knotwood and received by the Customer from time to time.

## Guarantee and Indemnity

- (a) I/We, a/the director(s) of the Customer, in consideration for Knotwood supplying and continuing to supply the Goods and Services to the Customer, personally guarantee, and understand that I/We are personally liable for, the Customer's performance of its obligations under the Terms, and guarantee the due and punctual payment of every debt and Liability incurred by the Customer in accordance with the Terms from time to time and indemnify Knotwood for any loss suffered as a result of any default by the Customer. I/We agree to make any due payments to Knotwood upon written demand being left at or sent by pre-paid post to the street address set out in the Form.
- (b) I/We agree that an application for credit made by the Customer is deemed to have been accepted from the date of the first invoice by Knotwood to the Customer and, without further notice to me/us, this guarantee will extend to all Liabilities from the Customer to Knotwood.
- (c) This guarantee extends to credit given to the Customer in the future by a company which is not now, but at the time such credit is extended, a Related Body Corporate of Knotwood.
- (d) I/We agree to pay all reasonable expenses, interest, costs or disbursements that Knotwood incurs in recovering any outstanding monies, including debt collection fees and legal costs as a result of the Customer's default under these Terms.
- (e) This guarantee is an unconditional and continuing guarantee and in relation to every debt and Liability is a principal obligation. I/We understand that my/our Liability under this guarantee is absolute and will not be affected:
  - (i) if Knotwood grants any extension of credit, time or other indulgence to the Customer or varies the terms of the Customer's account (even if this increases my/our Liability under this guarantee);
  - (ii) by the release of any of the Guarantors or if this guarantee is or becomes unenforceable against one or more of the Guarantors;
  - (iii) if any named Guarantor fails to properly execute this guarantee;
  - (iv) by any payment by the Customer being later avoided by law, whether or not I/We have been given notice of these matters;
  - (v) by any circumstance, act or omission which, but for this provision, might affect it in law or in equity.
- (f) Any condition or agreement under this guarantee by or in favour of two (2) or more persons is deemed to bind them jointly and severally or be in favour of each of them severally. If the Guarantor comprises more than one (1) person, Knotwood may at any time, and from time to time, proceed against any or all of them in respect of the Guarantor's obligations as Knotwood may choose in its absolute discretion, and Knotwood is not to be obliged to make any claim against all the persons comprising the Guarantor.
- (g) The guarantee is governed by and will be construed in accordance with the laws of the State of Queensland, Australia and the I/We irrevocably submit ourselves to the non-exclusive jurisdiction of the courts of the State of Queensland, Australia.
- (h) By signing below as Guarantor, I/We certify that I/We understand the terms of this guarantee. In particular, I/We understand that if the Customer fails to make any required payments to Knotwood, Knotwood may recover the amount of these payments from me/us personally. I/We acknowledge that the terms of this guarantee provide that we grant a charge over all of our interests of any kind in present and future Real Property and that Knotwood may also register Real Property mortgages over all of our interests of any kind in Real Property from time to time as security for our obligations under the guarantee.
- (i) **I/We certify that I/We have:**
  - (i) **been advised, and have had the opportunity, to seek independent legal advice in relation to the meaning and effect of this guarantee before executing this guarantee; and**
  - (ii) **received, read and understood the Terms prior to entering this guarantee and agree to be bound by the Terms.**
- (j) The definitions in the Terms shall apply in this guarantee.

All directors, sole traders, business partners and any other Guarantors must complete, print and sign below as Guarantors in the presence of independent witnesses (not spouses or family members).

.....  
Signature of Guarantor

.....  
Full name of Guarantor (print)

.....  
Title / role of Guarantor

.....  
Address

.....  
Date

.....  
Signature of Guarantor

.....  
Full name of Guarantor (print)

.....  
Title / role of Guarantor

.....  
Address

.....  
Date

.....  
Signature of Witness

.....  
Full name of Witness (print)

.....  
Address

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Date

.....  
Signature of Witness

.....  
Full name of Witness (print)

.....  
Address

.....  
Date