



## APPLICATION FOR 30 DAY ACCOUNT

All accounts provided by Fulton-Kennedy Group Pty Ltd ABN 67 673 638 214 trading as **Northside Cleaning and Packaging Supplies (NCPS)** (the "Supplier") to the customer specified below (the "Customer") are provided on the Terms & Conditions of Sale attached to this application. Customers and, where applicable, each guarantor of the Customer's obligations (each a "Guarantor"), are required to fully complete this application form and to sign where indicated before the Supplier considers whether it will approve this application.

### Legal Entity Name

Please Tick Sole Trader Company Partnership Trust

Government Other (specify):

ABN ACN/ARBN ARSN

Year of Registration

### Trading Name

No. of Years Trading  
under this name

Trading Address Postcode

Delivery Address (if different  
from Trading Address) Postcode

Postal Address (if different from  
Trading Address) Postcode

Purchasing Contact Name

Purchasing Contact Email

Purchasing Contact Number

Accounts Contact Name

Accounts Contact Email

Accounts Contact Number

Industry Type (Cafe/School/  
Hotel/Cleaning etc)

Expected Monthly Purchases \$

Are Purchase Order No's required? (Tick appropriate box)

Yes No

Any Special Delivery Instructions?  
(i.e. Hours/Days etc.)? If yes provide details:

Do you have other related businesses which hold  
an account with NCPS? If yes provide details:



**Business Principals** -Details of Directors, Partners, Sole Traders, Proprietors,

Trustees Name	Mobile	
Residential Address		Postcode
Name	Mobile	
Residential Address		Postcode

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**Trade references required** (Note: Landlords, Phone/Energy Suppliers are *not* accepted):

1. Company Name	Telephone
2. Company Name	Telephone

**I/We certify that the above details are true and correct and that I/We have read and do agree to abide by the Terms & Conditions of Sale attached to this application. All persons signing on behalf of a customer warrant that they are authorised to sign this agreement on behalf of the customer.**

Name of Authorised Person (please print)	Position
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Signature of Person	Date
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### Guarantee and Indemnity

This is a legal document and if necessary, seek professional advice.

In consideration of Fulton-Kennedy Group Pty Ltd ABN 67 673 638 214, trading as Northside Cleaning and Packaging Supplies ("NCPS") agreeing to supply

**("the Customer")**

Legal Entity

**of (address)**

with goods on credit from time to time.

I/We agree:

1. to guarantee payment in full and in accordance with NCPS attached Terms of Sale (the "Terms & Conditions of Sale") for all goods supplied on account to the Customer from the date of this guarantee (the "Guarantee");
2. that, where there is more than one Guarantor, the Guarantors enter into the Guarantee jointly and severally;
3. to be personally liable to pay NCPS the unpaid balance of the Customer's account with NCPS in the event the Customer is unable or willing to pay it;
4. as a separate undertaking, to jointly and severally indemnify the Supplier against all liability or loss the Supplier suffers or incurs if the amounts guaranteed cannot be recovered from the Customer or if any payment made to the Supplier is void or voidable under any law, or if a claim in relation to the payment is made, upheld, conceded or compromised;
5. NCPS may enforce this Guarantee, without the need for prior notice, at any time the Customer fails to pay for goods in accordance with the Terms & Conditions of Sale;
6. the Guarantor(s) liability will not be affected by NCPS affording the Customer time to pay or by NCPS not taking immediate steps to enforce the Guarantee;
7. this Guarantee shall be a continuing guarantee to NCPS for all amounts that are owed by the Customer from time to time to NCPS in respect of goods supplied on account to the Customer by NCPS including the legal costs associated with enforcement;
8. NCPS may at any time in its discretion and without the need to give any reason, refuse further credit or supplies of goods to the Customer;
9. NCPS may at any time vary, supplement or replace the Terms & Conditions of Sale by notice to the Customer and each Guarantor's liability under this Guarantee will continue and extend to the obligations of the Customer under the Terms & Conditions of Sale as varied, supplemented or replaced (as the case may be); and
10. NCPS can cancel this Guarantee at any time by writing to the Customer and/or the Guarantor/s. A Guarantor may cancel this Guarantee by writing to NCPS but not while any money is owing by the Customer to NCPS.

Name of Guarantor

Guarantor Residential  
Address

Signature of Guarantor

Name of Witness

Signature of Witness

Dated

Name of Guarantor

Guarantor Residential  
Address

Signature of Guarantor

Name of Witness

Signature of Witness

Dated

## TERMS AND CONDITIONS OF SALE

### 1. Meaning of Words

In these terms and conditions of sale:

**Agreement** means

- the Application;
- these terms and conditions of sale;
- each Invoice (including on consignment invoices); and
- any other special conditions attached to these terms and conditions or the Application, or which the parties agree in writing form part of this Agreement.

**Application** means the application for a trade account, made pursuant to Part A of this Agreement.

**Buyer** means the customer specified in the Application.

**Credit Limit** means that sum approved by the Supplier from time to time.

**Goods** means all products and, if any, services provided to the Buyer from time to time including (without limitation) those specified in an Invoice.

**Invoice** means each invoice, delivery docket or similar document delivered to the Buyer in respect of the provision of Goods

**PPS Act** means the Personal Property Securities Act 2009 (Cth).

**PPS Property** means any property over which a Security Interest can be legally granted under the PPS Act.

**PPSR** means the Personal Property Securities Register established under the PPS Act.

**Security Interest** has the meaning given to that term under the PPS Act.

**Supplier** means Fulton-Kennedy Group Pty Ltd ABN 67 673 638 214 trading as Northside Cleaning and Packaging Supplies (NCPS).

### 2. Application

2.1 The Buyer has made the Application the Supplier may, in its absolute discretion:

- Reject the Application for any reason; or
- Accept the Application.
- If the Supplier accepts the Application, it will provide notice in writing to the Buyer of its acceptance.

### 3. Orders

#### 3.1 Orders

- If the Supplier accepts the Application, the Buyer may place orders for Goods with the Supplier (each order referred to as an Order).
- The Supplier is under no obligation to accept an Order.
- The Supplier reserves the right to set a minimum order / invoice value.
- All Orders and the supply of Goods shall be made on these terms and conditions.

#### 3.2 Stock Availability

- The Buyer understands some Goods may not be in stock at the time of Order.
- Where the Goods are not in stock, the Order will be recorded and delivered by the Supplier when available.
- The Supplier is not responsible or liable for any Order, or part of an Order, it is not able to supply. If part only of an Order is supplied, the Buyer must pay for those Goods delivered to it by the Supplier.

#### 3.3 Cancellations of an Order by the Supplier

- The Supplier may cancel any Order or cancel delivery of Goods at any time before the Goods are delivered.
- The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

### 4. Price

4.1 **Price** At the Supplier's sole discretion, the price payable for the Goods shall be either:

- the Invoice sum; or

b) subject to clause 4.2, a price agreed in writing by the Supplier.

#### 4.2 Variation of the Price

- Where the Supplier has agreed a price in writing with the Buyer in accordance with clause 4.1(b), the Supplier reserves the right to change the price if:
  - a variation to the Supplier's quotation is requested; and /or
  - there is an increase to the Supplier in the cost of the Goods
- Payment for all variations must be made in full in accordance with clause 5.

4.3 **Manifest Error** If the Supplier makes an unintentional clerical or other manifest error in the provision of its pricing, the Supplier may issue amended documentation for the correct sum.

4.4 **Deposit** The Supplier may require a non-refundable deposit to be paid before any Order is accepted.

### 5. Payment

5.1 **Trade Account** In the event the Application has been approved, all Goods will be immediately invoiced to the Buyer's trade account on despatch unless otherwise determined by the Supplier.

5.2 **Invoices** Invoices will be issued to the Buyer with each delivery or as otherwise determined by the Supplier.

#### 5.3 Payment Terms

- The Buyer must pay the Supplier on or before the due date/s as nominated by the Supplier, which may be:
  - Before delivery of Order
  - On delivery of Order
  - By way of a deposit and / or instalments
  - The date specified on any Invoice as being the date of payment; or
  - Otherwise, **WITHIN 30 DAYS AFTER THE END OF THE MONTH IN WHICH THE GOODS WERE INVOICED.**

5.4 **Method of Payment** All payments must be made in cleared funds deposited into the Supplier's nominated bank account. If paying by a Credit Card approved by the Supplier, the Buyer must provide all details including the CCV number to validate use of the credit card. Any credit card surcharge, as nominated on the Invoice, will be payable.

5.5 **Failure to Pay** If the Buyer fails to pay the Invoice by the due date the Supplier can:

- require immediate payment of the all amounts owing by the Buyer; and/or
- charge interest, and the Buyer agrees that it will pay interest, on all amounts outstanding at the rate of 1.5% per month (calculated daily) on any outstanding amounts calculated from the due date for payment until all payments have been received; and/or
- SUSPEND THE SUPPLY OF GOODS until such time as all amounts owing have been paid in full; or vary the price to include additional charges at the discretion of the Supplier;

5.6 **Damages** The Buyer must pay to the Supplier on demand all and any costs, expenses or losses incurred by the Supplier as a result of the Buyer's failure to pay any amounts in accordance with clause 5, including, any debt collection and legal costs (on an indemnity basis), and interest.

### 6. Credit Limit

6.1 **Approval** The approval of the Application is an indication only of the Supplier's intention at that time. The Supplier may vary and/or withdraw and/or suspend any credit facility at any time at its discretion and without any liability to the Buyer or any other party. No reason need be attributed by the Supplier for any variation, withdrawal or suspension of the credit facility.

6.2 **Suspension** The Supplier may suspend all Orders if any payments are outstanding, or if the Buyer exceeds their

Credit Limit. The Supplier will have no liability to the Buyer as a result of any suspension.

### 7 Delivery

7.1 **Additional Charges** Unless otherwise agreed by the Supplier, the price of the Goods excludes delivery. The Buyer will pay all delivery charges. Delivery charges will vary depending on the quantity and weight of Goods and the place and method of delivery.

7.2 **Insurance** Insurance for Goods in transit is not included in the Invoice. The Buyer must arrange its own insurances.

#### 7.3 Delivery Conditions

- The Supplier may limit the delivery area of the Goods. If the delivery address is outside the Supplier's delivery area, the Buyer will need to make its own collection and delivery arrangements.
- Where the Supplier agrees to deliver the Goods, the Supplier shall use reasonable endeavours to deliver the Goods at the times and on the dates specified in an Order, but shall not be liable for any delays in delivery whatsoever.
- Unless otherwise authorised by the Buyer, if there is no one at the delivery address to receive the Order the Supplier will not deliver the Goods. The parties will then negotiate an alternate delivery date and time. The Supplier may on-charge any additional delivery fee.
- All Supplier deliveries are to kerb side or street level only, unless previously arranged with the Supplier. The Supplier may charge additional delivery fees for additional delivery requirements to upper levels, specialist delivery of equipment or alternate delivery dates.
- Any person at the Buyer's nominated delivery address who signs as having received the Goods for and on behalf of the Buyer, is deemed to be the Buyer's authorised representative for the purpose of accepting the Order.
- Breakages, faults or shortages must be notified to the Supplier immediately upon the Buyer receiving an Order.

### 8 Title and Risk

#### 8.1 Title

- Title to and ownership of the Goods remains with the Supplier and shall not pass to the Buyer until payment for the Goods, and any other outstanding monies owing by the Buyer to the Supplier, is received in full. Until then, the Buyer holds the Goods on trust for the Supplier, as the Supplier's fiduciary agent and bailee.
- The Buyer must keep the Goods separate from the Buyer's own and those of third parties, in good repair and condition, properly stored, protected and insured. The Buyer indemnifies the Supplier against all losses, costs, charges, damages and expenses incurred as a result of the use or storage of the Goods by the Buyer. Until the Buyer has title to the Goods, the Buyer shall hold the proceeds of sale on trust for the Supplier, and shall hold the proceeds in a separate account.
- The Supplier is to have power to appropriate payments to such Goods and accounts as the Supplier thinks fit, notwithstanding any purported appropriation by the Buyer to the contrary.
- Until title in the Goods passes to the Buyer, the Supplier is authorised at any time to enter the Buyer's premises and retake possession of the Goods, or some of them, without being liable in trespass. The Buyer authorises the Supplier to take such action as may be necessary to re take possession of its Goods, including accessing the Buyer's premises with the assistance of a lock smith. In arranging such access, the Buyer is appointing the Supplier and its agents (including the locksmith) as the Buyer's agent for the purpose of gaining access to the Buyer's premises. The cost of the Supplier in recovering the Goods shall be reimbursed to the Supplier on an indemnity basis.
- The Supplier has the right of resell any Goods recovered by the Supplier from the Buyer. If the Goods are re sold at a price which is less than the price which was to be paid

for them by the Buyer, the Buyer will make up the shortfall within 14 days of demand.

## 8.2 Risk

- a) Risk of damage to or loss of the Goods passes to the Buyer at the time immediately before the Goods leave the Supplier's warehouse (regardless of the party paying for freight). The Buyer must insure the Goods in the name of the Buyer and (if the Goods have not been paid for in full) the Supplier for their respective interests. The Buyer must forward to the Supplier a copy of the insurance policy, or the insurance cover note, before the Goods leave the Supplier's warehouse.
- b) If any of the Goods are damaged or destroyed in transit prior to title passing to the Buyer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production to the insurer of these terms and conditions by us sufficient evidence of Suppliers' rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- c) If Goods supplied to the Buyer are on consignment or otherwise, then if such Goods are damaged, lost or stolen after they are despatched to the Buyer, then these Goods will be deemed to have been purchased by the Buyer.

## 9 PPS Act

**9.1 Definitions** In this clause 9, the terms "accession", "account", "amendment demand", "control", "financing change statement", "financing statement", "perfected", "proceeds", "purchase money security interest", "registration event", "security interest" and "verification statement" have the meanings given to them under the PPS Act.

**9.2 Security Interest** The Buyer acknowledges and agrees that any security interest created by this Agreement, or any transaction contemplated by it:

- a) extends to, and acts as a security interest in respect of, any:
  - 1 proceeds (including any account) derived from, or from a dealing with, the Goods;
  - 2 accession to the Goods; and
  - 3 continues in the Goods if the Goods become an accession.

**9.3 Further Assurances** The Buyer agrees to do anything which the Supplier may require from time to time to:

- a) enable the Supplier to register fully valid and effective financing statements or financing change statements with respect to any security interest over PPS Property created by this Agreement or any transaction contemplated by it; and
- b) ensure that any security interest which is purported to be reserved or created by this Agreement, or any transaction contemplated by it, is:
  - 1) a first ranking perfected security interest over all PPS property;
  - 2) perfected by control to the extent possible under the PPS Act; and
  - 3) if applicable, recorded as a purchase money security interest on the PPSR.

**9.4 Obligations of Buyer** The Buyer undertakes and agrees:

- a) to not, without first giving the Supplier 15 business days written notice, change its name, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the PPSR in connection with any security interest created by this Agreement or any transaction contemplated by it;
- b) to pay all costs in connection with the registration, discharge or amendment of any financing statement or financing change statement; and
- c) to not, without the Supplier's prior written consent, lodge or serve a financing change statement or an amendment demand in relation to any security interest created by this Agreement or any transaction contemplated by it.

**9.5 Use of Goods** The Buyer acknowledges and agrees that the Goods supplied by the Supplier to the Buyer under this

Agreement are not intended, and shall not be used, for personal, household or domestic purposes.

## 9.6 Waivers

- a) The Buyer waives its right to receive from the Supplier any verification statement or notice in relation to a registration event in accordance with section 157(3) (b) of the PPS Act.
- b) To the extent permitted at law, the parties to this Agreement contract out of, and the Buyer waives any rights under, the provision of the PPS Act listed in sections 115(1) and 115(7) of the PPS Act (other than section 96, 123, 126, 128, 129 and 134(1)).

## 10 Liability of Supplier

**10.1 Application of Australian Consumer Law** For the purposes of this clause 10:

**Australian Consumer Law** means Schedule 2 (Australian Consumer Law) of the Competition and Consumer Act 2010 (Cth).

**Consumer** means:

- 1) a natural person (an Individual) acquiring Goods for personal, domestic or household use or consumption;
- 2) an Individual or a corporation (a Person) acquiring Goods at a price not exceeding \$40,000; or
- 4) a Person acquiring Goods of a kind ordinarily acquired for personal, domestic or household use or consumption, but excludes a Person acquiring the Goods, or holding himself or herself out as acquiring the Goods, for the purpose of:
  - 1) resupply; or
  - 2) using them up or transforming them, in trade or commerce in the course of a production or manufacture, or in the course of repairing or treating other goods or fixtures on land.

## 10.2 If Buyer is a Consumer

- a) If the Buyer is a Consumer, the Goods come with guarantees that cannot be excluded under the Australian Consumer Law.
- b) If the Buyer is a Consumer, the Buyer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage.
- c) If the Buyer is a Consumer, the Buyer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

**10.3 Exclusion of Other Warranties** The Supplier does not give any warranty nor accept any liability in relation to performance or non-performance of its obligations under this Agreement except to the extent, if any, required by law or specifically provided for in this Agreement.

**10.4 Acknowledgement by Buyer** The Buyer acknowledges that (without limitation to the Buyer's rights under the Australian Consumer Law if the Buyer is a Consumer):

- a) the Supplier has not made any representations or warranties in relation to the Goods or the Buyer's Order;
- b) it is the Buyer's responsibility to satisfy itself in relation to the price, quality or otherwise of the Goods prior to delivery by the Supplier;
- c) the Supplier shall not be liable for any loss or damage to the products or any loss or damage caused, directly or indirectly, in relation to the Goods or the Buyer's Order;
- d) to the extent permitted by law, subject to clause 10.7, the liability of the Supplier is limited, at the Supplier's option, to the supplying of the Goods again or payment of the cost of having the Goods supplied again.

**10.5 Limitations to Apply to Employees and Agents of the Supplier** All limitations of liability under these terms and conditions shall apply for the benefit of the employees and agents of the Supplier to the same extent as they apply for the benefit of the Supplier against the Buyer or anyone claiming through or under the Buyer.

## 10.6 10.6 Manufacturer's warranty

a) The Goods may come with a manufacturer's warranty. This will depend on the Goods ordered and the Buyer must access the warranties provided by the manufacturer when purchasing the Goods.

b) Warranties can be voided if the Buyer tampers, alters or has another third party repair any faults that may occur during the period of warranty without prior written approval from the manufacturer. If this is the case, the Buyer will be fully responsible for the item and the warranty is voided.

**10.7 10.7 Liability** The total liability of the Supplier for loss or damage of every kind whether arising pursuant to this Agreement or out of or in relation to the Goods, their sale, delivery or the way they behave, in tort or contract, or in any other way whatsoever is hereby limited to the amount paid or agreed to be paid for the Goods by the Buyer to the Supplier at the date when such liability arises.

## 11 Cancellation of Orders and Return of Goods by the Buyer

**11.1 Cancellation of an Order by Buyer** An Order may be cancelled by the Buyer under the following conditions:

- a) If the Goods are a stock item as determined by the Supplier, cancellation in writing must be received by the Supplier at least one business day before they are packaged for delivery;
- b) If the Goods are to be specially ordered or custom made, cancellation in writing must be received by the Supplier before the Goods are ordered or before manufacture of the Goods commences.

**11.2 Return of Goods** Without limitation to the Buyer's rights under the Australian Consumer Law:

- a) If any item of the Goods is received and is damaged or faulty in any way, the Buyer must immediately contact the Supplier to inform the Supplier of the Buyer's contact name, address, phone and fax numbers, the invoice number and details of the fault or what is wrong with the item. Any delivery dockets or consignment notes must be kept and also submitted to the Supplier for consideration of any claims against the Buyer's delivery agent. Because the risk in the Goods rests with the Buyer in accordance with clause 8.2, the Buyer will need to consider its rights against the insurer and/or its delivery agent. The Buyer should take photographic evidence of any damage to the Goods, and may be required to forward the photographs email or post in order to assess damage to the Goods.
- b) The Supplier is not required to accept the return of any Goods. Any Goods agreed to be returned to the Supplier (either for evaluation of damage or for acceptance of return) must be arranged with the Supplier in advance. Any Goods accepted by the Supplier for return will be credited to the Buyer's account. The Supplier may determine that Goods returned will only be accepted in their original condition and in original packaging.

## 11.3 Effect of Cancellation or Return of Goods

- a) If:
  - 1) the Buyer cancels an order in accordance with clause 11.1; or
  - 2) the Supplier agrees to accept the return of the Goods in accordance with clause 11.2,
- b) the Buyer must first pay any monies that are then owing by the Buyer to the Supplier, plus a restocking fee equal to 20% of the Goods cancelled or returned.

## 12 Termination

**12.1 Right to Terminate** The Supplier reserves the right to discontinue supply of Goods to the Buyer without prior notice and without prescribing any reason.

**12.2 Consequences of Termination** Upon the Supplier terminating this Agreement:

- a) this Agreement ends; and
- b) the Supplier ceases to have any obligations under this Agreement (subject to any obligation which is expressly stated to survive, or arise after, termination); and

- c) the Supplier may complete, at its election, any Orders which were placed before the termination of this Agreement;
- d) the Supplier may retain any money paid by the Buyer to the Supplier for Goods delivered;
- e) the Supplier may issue an Invoice and require payment for Goods delivered but which have not previously been Invoiced and
- f) the Supplier may take such action as is necessary to recover any Invoices which have not been paid, or to recover any Goods in respect of which title has not passed, and pursue any additional or alternative remedies provided by law.

### 13 Privacy Notes

- 13.1 **Agreement** The parties agree to the terms of the Privacy Policy which are set out in Schedule 1.

### 14 Building & Construction Industry Payments Act 2004

- 14.1 At the Suppliers' sole discretion, if there are any disputes or claims for unpaid Goods then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 14.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 (Qld), except to the extent permitted by the Act.
- 14.3 If Goods or Services are supplied to Buyers outside the jurisdiction of Queensland, then the intended / equivalent security of payment legislation of other State or Territory jurisdictions may apply.

### 15 Intellectual Property

- 15.1 **Copyright** Where the Supplier has designed, drawn or developed Goods for the Buyer, then the copyright in any designs and drawings and documents shall remain the property of the Supplier.
- 15.2 **Third Party Rights**
- a) The Buyer:
    - 1) warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Buyer's order; and
    - 2) agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

### 16 GST

- 16.1 **Meaning of Terms** Unless expressly stated to the contrary all amounts are exclusive of GST and all terms in this clause 16, unless otherwise defined, have the same meaning as those terms have in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and / or associated Commonwealth legislation, regulations and publicly- available rulings (the GST Law).
- 16.2 **GST Payable** If the Supplier is obliged to pay an amount of GST in respect of a Taxable Supply made by the Supplier to the Buyer pursuant to this Agreement, the Buyer shall pay the Supplier on demand that amount of GST upon production of a valid tax invoice.

### 17 Governing Law and Jurisdiction

- 17.1 **Governing Law** This Agreement is governed by and construed in accordance with the laws of Queensland.
- 17.2 **Jurisdiction** Each party irrevocably:
- a) submits to the non-exclusive jurisdiction of the courts of Queensland, with respect to any proceedings which may be brought relating to this Agreement

### 18 Miscellaneous

- 18.1 **Exercise Rights** Any waiver by a party of any right pursuant to this Agreement will not prevent any other exercise of that right or the exercise of any other right.
- 18.2 **Moratorium Legislation** Any law which varies, prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under this Agreement is excluded to the extent permitted by law.
- 18.3 **No Assignment**
- a) The Buyer must not:
    - 1) assign, transfer or novate all or any part of its rights or obligations under or relating to this Agreement;
    - 2) grant, declare, create or dispose of any right or interest in this Agreement; or
    - 3) undergo a change in control,
  - b) without express prior written consent of the Supplier
  - c) If any assignment, transfer or novation occurs without the Supplier's prior written consent, the Buyer indemnifies the Supplier for any Invoice rendered for any Goods ordered by the purported assignee or transferee.
- 18.4 **Remedies Cumulative** The rights and remedies under this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 18.5 **Severability** If anything in this Agreement is or is determined to be unenforceable, illegal, voidable or void then the offending provisions are severed for this Agreement and the rest of this Agreement remains in full force and effect.
- 18.6 **Further Assurance** Each party must promptly at its own cost do all things necessary to give full effect to this Agreement.
- 18.7 **Costs** Each party is responsible for its own costs incurred in respect of this Agreement.
- 18.8 **Time**
- a) Time is of the essence of this Agreement.
  - b) If the parties agree to vary a time requirement, the varied time becomes of the essence.
  - c) An agreement to vary a time requirement must be in writing.
- 18.9 **Variation**
- a) the Buyer or any agent or representative of the Buyer may not unilaterally vary the terms of this Agreement.
  - b) Before the Supplier accepts an Order, the Supplier reserves the right to amend any of these terms and conditions by notice in writing given to the Buyer. If the Buyer places an order or accepts Goods after the terms have been varied, the Buyer will be deemed to have accepted the terms and conditions as varied, supplemented or replaced (as the case may be).
- 18.10 **Waiver**
- a) No waiver of a right under or relating to this Agreement is effective unless it is in writing and signed by that party.
  - b) No other act, omission or delay by a party will constitute a waiver of a right.
- 18.11 **Counterparts**
- a) This Agreement may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument. A party who has executed a counterpart of this Agreement may deliver it to, or exchange it with, another party by:
    - 1) faxing; or
    - 2) emailing a PDF (portable document format) copy of,
    - 3) the executed counterpart to that other party.
  - b) If there is any difference between the counterparts, the counterpart which has been executed by the Supplier will be deemed to comprise the Agreement.
- 18.12 **Force Majeure** The Supplier shall not be deemed to be in breach of this Agreement as a result of Force Majeure. Force Majeure shall include any cause beyond the reasonable control of the Supplier, including strikes and lockouts, and delays in the receipt of Goods to the Supplier.
- 18.13 **Whole Agreement**
- a) This Agreement:
    - 1) is the entire agreement and understanding between the parties; and

- 2) supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.
- b) In the event of an inconsistency between the documents that constitute the Agreement, the Supplier will determine the interpretation to be applied, and that determination shall be conclusive.

### Schedule One – Privacy Policy

- 1 By completing your Order, you will have provided personal information to the Supplier including your credit card information.
- 2 The Supplier only collects information necessary for one or more of its functions or activities.
- 3 The Supplier may collect and disclose personal information about you for the purpose of providing you information about promotions, products and services, completing your Order, receiving payment for the Order and assessing you for the purposes of determining whether it is appropriate to extend you credit.
- 4 You acknowledge and agree that:
- a) certain items of personal information about you contained in any credit application may be disclosed to a credit reporting agency;
  - b) the Supplier may disclose information derived from any credit application to it and any information derived from any credit report relating to you to any other credit provider for the purpose of providing a reference or references regarding the accounts of the Supplier; and
  - c) any credit reporting agency may provide information to the Supplier regarding you.
- 5 If at any time you do not wish to receive any further material from the Supplier you may unsubscribe by making a written request to the Supplier.
- 6 The Supplier may also collect and disclose personal information about you for:
- a) Other purposes that are related to providing you information about promotions, products and services and that you would reasonably expect the Supplier to use your information for;
  - b) Other purposes we inform you about and that you consent to; and
  - c) Direct marketing communication where it is impractical for the Supplier to seek your consent before that particular use or disclosure and where you have not previously requested that we do not send you direct marketing communications.
- 7 The Supplier may only disclose your information to a third party including delivery services and related entities of the Supplier if it is reasonably necessary to provide you with information about promotions, products and services, to complete your Order and receive payment for the Goods. The Supplier may need to share information with recognised authorities, regulatory bodies, governments and organisations such as banks to investigate possible fraud or other unlawful activities.
- 8 The Supplier may use the personal information it collects to contact you if it needs to do so.
- 9 You may at any time make a written request to the Supplier to access any personal information the Supplier holds about you.
- 10 The Supplier endeavours to keep your personal information accurate, complete and up-to-date. If you become aware that the information collected by the Supplier is not accurate, complete and up-to- date, you must provide a written update to the Supplier.
- 11 The Supplier will take reasonable steps to protect the personal information that it holds from misuse, loss and from unauthorised access, modification or disclosure. The Supplier will also take reasonable steps to destroy or permanently de-identify personal information if it no longer requires such information.
- 12 The Supplier is not responsible for the privacy practices of any third party associated or otherwise with the Supplier. Please take care at all times to check the privacy policy of the other parties you are dealing with.