

# VEEDOL LUBRICANTS

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## TRADING TERMS

Effective 1 September 2014

### 1. Definitions

a) In these Trading Terms:

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

"**CCA**" means the Competition and Consumer Act 2010 (Cth).

"**Company**" means and includes Veedol Lubricants Pty Ltd (ACN 081 040 977).

"**Consumer**" means a person acquiring Goods

- i) of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- ii) at a price not exceeding \$40,000; or
- iii) that consist of a vehicle or trailer acquired for use principally in the transport of goods on public roads, but excludes a person acquiring the Goods, or holding himself or herself out as acquiring the Goods for the purpose of:
- iv) re-supply; or
- v) using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

"**Consumer Goods**" means 'goods of a kind ordinarily acquired for personal, household or domestic use or consumption', as that expression is used in section 3 of the Australian Consumer Law.

"**Consumer Guarantee**" means a consumer guarantee applicable to this contract under the Australian Consumer Law, including any Express Warranty.

"**Consumer Services**" means 'services of a kind ordinarily acquired for personal, household or domestic use or consumption', as that expression is used in section 3 of the Australian Consumer Law.

"**Containers**" means and includes any container, tank, intermediate bulk container (IBC), drum or other returnable packaging supplied by the Company to the Customer from time to time.

"**Customer**" means the person described in the accompanying application for a 30 day account as the person in whose name an account is maintained by the Company and/or the person or entity that purchases Goods and services from the Company.

"**Express Warranty**" has the same meaning as in section 2(1) of the Australian Consumer Law.

"**Fair or Reasonable**" means 'fair or reasonable' for the purposes of section 64A of the Australian Consumer Law.

"**Force Majeure Event**" is defined in clause 17.

"**Financing Statement**" and "**Financing change statement**" means a "financing statement" and a "financing change statement" within the meaning of section 10 of the PPSA.

"**Goods**" means any goods supplied by the Company to the Customer under these Trading Terms.

"**GST**" means "GST" within the meaning of the GST Act.

"**GST Act**" means the A New Tax System (Goods and Services Tax) Act 1999 (as amended) and the following expressions bear the same meaning as in the GST Act: "tax invoice", "taxable supply" and "value".

"**Insolvency Event**" means, in relation to a party, that one of the events specified in clause 15 has occurred in relation to that party.

"**Intellectual Property**" means any intellectual property including without limitation patents, trademarks, copyright, designs, layouts, circuit boards, knowhow, software, object codes, source codes, and confidential information.

"**PMSI**" means a purchase money security interest as defined in section 14 of the PPSA.

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

"**Proceeds**" means "proceeds" within the meaning of section 31 of the PPSA.

**"Register"** means the Personal Property Securities Register established under the PPSA.

**"Security Agreement"** means a "security agreement" within the meaning of section 10 of the PPSA.

**"Security Interest"** means a "security interest" within the meaning of section 12 of the PPSA.

- b) Terms and expressions defined in or for the purposes of the CCA or the PPSA have the same meaning when used in these Trading Terms.
- c) Any special conditions specified on a sales invoice shall, to the extent they are inconsistent with these Trading Terms, prevail over these Trading Terms.
- d) These Trading Terms shall, to the extent that they are inconsistent with any terms contained in any credit application, prevail over that credit application.
- e) Words importing the singular shall include the plural (and vice versa).

## 2. General

- a) These Trading Terms apply to:
  - i) The establishment, operation and use of the account of the Customer with the Company;
  - ii) All transactions effected by the Customer with the Company for the supply of goods or services on its account or on a cash basis unless otherwise expressly agreed in relation to any particular supply of goods; and
  - iii) The exclusion of all others including any terms and conditions of the Customer.
- b) These Trading Terms shall apply as if incorporated into each order placed by the Customer with the Company.
- c) These Trading Terms may be varied only with the written agreement of the Company.
- d) The Company may at any time and from time to time by written notice to the Customer, alter these Trading Terms.

## 3. Orders

- a) The Customer may place and the Company may accept or reject orders in part or full for the supply of Goods upon these Trading Terms by:
  - i) A communication in writing (including by e-mail); or
  - ii) Any other means that the parties agree including by telephone and by internet ordering.
- b) The Company reserves the right to specify a minimum order value which it will accept from time to time and to impose a surcharge should the Customer require delivery of goods having a value less than the minimum order value.
- c) Orders accepted by the Company cannot be cancelled or altered in whole or in part without the Company's written consent.
- d) Goods ordered by the Customer shall be supplied ex-stock of the Company. In the event that the Company is out of stock of any Goods ordered by the Customer at the time that they are required for delivery, any undelivered stock shall be placed on back order and shall be delivered as soon as possible after they become available, unless the Customer has within two (2) working days of receipt of the invoice showing the back order, notified the Company that they no longer require the Goods.

## 4. Pricing & Delivery

- a) All prices quoted or agreed are on a tax exclusive basis. The applicable amount of GST or other taxes will be disclosed on invoices.
- b) Unless otherwise agreed in writing the price charged shall be the price ruling at the date of delivery. Any price indications or price lists are subject to alteration to price ruling at the delivery date without notice, including the right to correct printing and clerical errors. The Company will make every attempt to advise the Customer of any increase in any published price list.
- c) Unless otherwise agreed in advance, the Company reserves the right to:
  - i) Charge the Customer for the cost of freight.
  - ii) Charge for re-scheduling and delivery for all variations to the original contract.
  - iii) Adjust prices if and when necessary prior to acceptance of any offer from the Customer.
- d) Whilst the Company shall use all reasonable endeavors to comply with the Customer's particular delivery requirements and order specifications, the Company shall be under no liability whatsoever should delivery not be made by the agreed date and the Customer will not be entitled to claim compensation by reason of failure to comply with their delivery requirements or minor variations to the Goods.
- e) Where Goods have been sourced from countries other than Australia, the Company reserves the right to request payment from the Customer for increase in costs caused through fluctuations in exchange rates,

- interest rates, customs duty, shipping costs, clearance and wharf-age charges. Failure by the Customer to accept such charges may result in cancellation of the Goods by the Company on the overseas supplier.
- f) Where Goods have been sourced from countries other than Australia the price of such Goods includes the cost of sea freight. The Goods may be air freighted at an additional cost.
  - g) Unless otherwise stated all prices are expressed in Australian dollars.

#### **5. Withholding Supply**

The Company reserves the right, irrespective of whether or not an order has been accepted and without notice to the Customer, to withhold supply to the Customer and/or to cancel any obligation it may have to the Customer and the Company will not be liable for loss of damage resulting directly or indirectly from such action where:

- a) The Company has insufficient Goods to fulfill the order,
- b) The Goods ordered have been discontinued,
- c) The Customer has failed to observe these Trading Terms or the Company's payment terms or
- d) The Company has determined, in its absolute discretion, that credit should no longer be extended to the Customer.

#### **6. Payment Terms**

- a) The Customer must (unless otherwise agreed in writing) pay the Company for the Goods or services supplied by the Company by the last day of the month following the month in which the Goods or services are supplied.
- b) If the Customer does not make payment as required by paragraph 6(a), the Company reserves the right to charge the Customer by way of liquidated damages for breach of contract, a default charge in relation to the unpaid amount calculated by applying an interest rate of 2% per month to the unpaid amount calculated on a daily basis from the date the unpaid amount became due until the date that it is paid in full.
- c) If the Customer fails to pay for any Goods or services supplied by the Company when due, then by notice to the Customer the Company may declare any amounts actually or contingently owing by the Customer to the Company to be immediately due and payable.
- d) Where payment is to be made by cash the amount owing is due and payable immediately.

#### **7. GST**

- a) To the extent that a party makes a taxable supply in connection with these Trading Terms, the consideration payable by a party under these Trading Terms represents the value of the taxable supply for which payment is to be made, unless otherwise expressly agreed.
- b) Subject to clause 7(c), if a party makes a taxable supply pursuant to these Trading Terms for a consideration which, under clause 7(a), represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- c) A party's obligation to make payment under clause 7(b) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

#### **8. Default Arrangements & Enforcement Expenses**

If the Customer fails to pay any amounts when due, then in addition to any other amount payable under these Trading Terms, the Customer must pay to the Company upon demand any costs incurred in connection with enforcement of any of the Company's rights in connection with the supply of goods on these Trading Terms including without limitation:

- a) Any legal costs (on a solicitor and own client basis) incurred by the Company;
- b) Any mercantile agents fees incurred by the Company in recovering or attempting to recover any amount payable by the Customer under these Trading Terms; and
- c) Any dishonour or bank fees incurred by the Company in connection with payments or remittances that are made or which should have been made by the Customer.

#### **9. Exclusions of Warranties and Limitations of Liability**

- a) The Company acknowledges that the Australian Consumer Law and similar legislation provides:
  - i) Certain rights for Consumers that cannot be excluded; and
  - ii) In relation to the supply of Goods, that in some circumstances the Customer may be a Consumer.

- b) Subject to paragraph 9(c), the Company excludes any and all conditions, warranties, terms and consumer guarantees implied by statute, general law or custom (including without limitation the Australian Consumer Law) applicable to any supply of Goods.
- c) The Consumer Guarantees apply to any supply of Goods where the Customer is a Consumer, and the liability of the Company in connection with the Consumer Guarantees is not limited except as stated in paragraph 9(d).
- d) If the Customer is a Consumer in relation to the supply of Goods, and those Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the liability of the Company in connection with the Consumer Guarantees is limited to one of the following (as selected by the Company):
  - i) The replacement of the Goods or the supply of equivalent Goods;
  - ii) The repair of the Goods;
  - iii) The payment of the cost of replacing the Goods or of acquiring Goods equivalent to the Goods; or
  - iv) The payment of the cost of having the Goods repaired, except where it is not Fair and Reasonable to limit liability in this way.
- e) In so far as is permissible by law, the Company:
  - i) Excludes any liability in contract, tort (including negligence) or otherwise, in connection with any supply of Goods, for any indirect damages or losses, or for any special, punitive or exemplary damages;
  - ii) Limits its liability in contract, tort (including negligence) or otherwise, in connection with any supply of Goods, to the price payable by the Customer for the Goods; and
  - iii) Excludes any liability for or in connection with a claim that the Goods are not fit for a particular purpose or function or are of merchantable quality, except where the Company has a liability as contemplated by paragraphs 9(a) or (d).

#### 10. Advices

Any advice, recommendation, information, assistance or service provided by the Company in relation to the Goods sold or manufactured by it or their use or application is given in good faith and is believed by the Company to be appropriate and reliable. However, subject to paragraph 9 hereof, any advice recommendation, information, assistance or service provided by the Company in relation to any Goods supplied by the Company is provided without liability or responsibility on the part of the Company.

#### 11. Claims and Returns

- a) A Customer will be responsible for immediate examination of the Goods upon arrival at their destination and will be taken to have accepted Goods received by it as being in accordance with its order unless it notifies the Company in writing of its claim, including invoicing shortages, within 7 days from the date of receipt of the Goods.
- b) The Company will not accept the return of Goods that are specifically made to the Customer's specifications or ordered for special manufacture.
- c) No return of Goods that are allegedly defective or faulty will be accepted by the Company unless either:
  - i) The Customer is a Consumer in relation to those Goods and is entitled to return them because a Consumer Guarantee applies; or
  - ii) The Company has given prior written authorisation for the return of the Goods.
- d) All Goods for return must be inspected by a representative of the Company prior to the Company accepting any obligation for the return of the Goods.
- e) If the Company consents under paragraph 11(c)(ii) for the return of any Goods, the Customer must:
  - i) Provide to the Company a written statement setting out the reasons for return of the Goods;
  - ii) Give the Company details of the original invoice number and the date of delivery of the Goods;
  - iii) Provide to the Company a copy of the receipt or delivery docket relating to the Goods;
  - iv) Return the Goods in their original condition as at the time of their sale and/ or packed in their original, undamaged containers;
  - v) Pay the Company a handling charge equivalent to 25% of the purchase price of the Goods or the manufacturer's surcharge, which ever is the greater.
- f) In the event of the Company delivering the Goods to the Customer's nominated carrier, the Customer shall be responsible for the expense of that carrier, and the Company shall be liable only to replace defective or faulty goods and not Goods damaged in transit.
- g) In the event of the Company agreeing to accept a return of Goods, these shall be returned to the Company at the expense of the Customer, and the Company shall credit the Customer's account with an amount equal to the invoiced sum less the sum payable under clause 11 (e) (v) hereof.

## 12. Retention of Title Arrangements

- a) Property in and title to any Goods remains with the Company until the Customer has paid in full (and in cleared funds) all amounts owing by the Customer to the Company in connection with the Goods.
- b) Despite paragraph 12(a), risk in the Goods passes to the Customer upon delivery to the Customer or his agent or to a carrier commissioned by the Customer.
- c) Notwithstanding any of the matters set forth in this paragraph 12, the Customer may sell the Goods to a third party in the ordinary course of their business and shall hold the proceeds of any sale of the Goods on trust for the Company.
- d) The Customer acknowledges that until its total indebtedness under these Trading Terms is discharged it holds the Goods as bailee of the Company and that a fiduciary relationship exists between them.
- e) The Customer must insure the Goods until sold to a third party.

## 13. Storage and Handling arrangements

- a) Without in any way limiting the operation of clause 12, upon delivery of the Goods to the Customer or its agent or to a carrier commissioned by the Customer, the Customer hereby covenants and where appropriate warrants with the Company that, in the storage and handling of the Goods, the Customer shall comply with all relevant environmental laws and regulations, and on the acquisition of the Goods will possess and comply with all necessary and/or relevant permits and licenses, and the Customer shall ensure that it is familiar with and adheres to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods.
- b) Unless otherwise agreed by the Company, the Customer must identify and store the Goods in a manner that clearly shows that they are the property of the Company.

## 14. Personal Property Securities Act arrangements

### a) **Acknowledgement of security agreement and security interest**

*The Customer acknowledges and agrees that:*

- i) *The Trading Terms are a security agreement for the purposes of the PPSA;*
- ii) *The Company has a security interest in the Goods and in any present or after acquired property that represents Proceeds of the Goods and/or in which the Goods have been attached or incorporated, including co-mingled goods; and*
- iii) *The security interest secures all amounts owing by the Customer to the Company in connection with the relevant Goods under these Trading Terms.*

### b) **Acknowledgment of arrangements for financing statements**

The Customer acknowledges and agrees as follows:

#### i) *Financing statements and financing change statements*

The Company may at any time register a financing statement (or, if relevant, a financing change statement) on the Register in relation to its security interest in the Goods that may include terms that:

- describe the Company as the "secured party" and the Customer as the "grantor";
- describe the Goods supplied by the Company to the Customer from time to time pursuant to these Trading Terms as collateral in the class of "other goods" (or in such other class as the Company may reasonably determine is applicable to the Goods);
- specifies that the security interest that the Company holds in the collateral is a PMSI in accordance with item 7 of the table in section 153(1) of the PPSA to the extent that it secures payment of the amounts owing in connection with that collateral; and
- specifies that the security interest affects Proceeds and, in particular, all present and after acquired property that represents Proceeds of the Goods.

#### ii) *Period of registration*

The Company may register a financing statement or financing change statement on the PPSA Register for any period that the Company determines (in its discretion).

#### iii) *Payment of fees and costs*

Upon request made by the Company, the Customer must pay to the Company all fees, charges and expenses that the Company may reasonably incur in:

- preparing, lodging or registering any financing statement or financing change statement in relation to any security interest that is granted to the Company under the Trading Terms;

- maintaining any such registration; or
  - enforcing any security interest granted to the Company under the Trading Terms.
  - These fees, charges and expenses may be incurred by or with an agent that acts on behalf of the Company.
- iv) *When registration to be effected*  
The Company may register its security interest on the Register at any time so long as the Company believes on reasonable grounds that it will become a secured party in relation to the Goods including without limitation when the Customer signs or otherwise adopts or accepts the Contract Terms in a manner proposed by the Company.
- v) *Attachment*  
A security interest in Goods created according to the Trading Terms will attach to the Goods at the time that the Customer obtains possession of them and not at any later time.
- vi) *Do all things necessary*  
The Customer must do anything reasonably required by the Company to enable the Company to register the security interest as a PMSI and to maintain that registration.
- vii) *Separate financing statement may be registered if required.*  
If the Company considers that it has or may have a security interest that is not a PMSI in relation to any Goods, it may register a financing statement in respect of that security interest (and that financing statement may be in addition to a financing statement registered by the Company in relation to a PMSI in the same Goods).
- c) **Confidential Information**
- i) The Company and the Customer agree that neither party will disclose to an interested person or to any other person, any information of the kind described in section 275 (1) of the PPSA except that the Company may disclose that information to an interested person where section 275(7) of the PPSA applies.
- ii) The Customer agrees that it will not authorize the disclosure of any information of the kind described in section 275 (1) of the PPSA.
- d) **Enforcement**  
If the Customer fails to pay an amount owing when due or if it fails to perform any of its obligations in connection with the supply of Goods, the Customer agrees that the Company shall be entitled to exercise its enforcement rights and remedies as a secured party in accordance with the provisions of the PPSA including (without limitation) the rights contained in section 123 of the PPSA to seize the Goods by any method permitted by law. For these purposes, and without limiting any other rights of the Company under the PPSA as a secured party, the Customer further agrees:
- i) upon demand made by the Company, to immediately deliver up the Goods to the Company;
  - ii) to irrevocably authorise the Company to enter any premises occupied by the Customer in order to search for, retrieve and remove those Goods to which the Company has title and which are the subject of a security interest as provided for by these Trading Terms;
  - iii) to do all things necessary to immediately facilitate the Company's access to the Customer's premises and to assist the Company to locate and identify the Goods;
  - iv) to authorize the Company to resell the Goods seized and apply the proceeds of sale in payment of any monies that the Customer owes it; and
  - v) that in the event of any inconsistency with the provisions contained in section 123 of the PPSA and the provisions contained in this paragraph 14 (d), the provisions of this paragraph 14 (d) shall prevail.
- e) **Notices**
- i) *PPSA Notices*  
The Customer agrees that the Company does not need to give the Customer any notice under the PPSA (including without limitation a notice of a verification statement received from the Registrar) unless the notice is required by the PPSA and that requirement cannot be excluded.
- ii) *Where default*  
In the event of a default by the Customer in performing of any of its obligations in connection with a supply of Goods under the Trading Terms, the Customer agrees that (as between the parties to the

Trading Terms) the Company is not obliged to give notice to any other secured party with interests in the same collateral or to any other third party of any enforcement or recovery action that it takes or which it may take with respect to its security interest in any of the Goods.

#### **15. Insolvency Events**

If the Customer:

- a) becomes insolvent or bankrupt;
- b) is the subject of an application to wind up, or if a Liquidator, Provisional Liquidator, Receiver, a Receiver and Manager, or an Administrator is appointed with respect to the Customer or any of the Customer's assets;
- c) makes an arrangement or composition with the creditors of the Customer or attempts to make such an arrangement or composition;
- d) is unable to pay their debts as they fall due and/or trades whilst being insolvent;
- e) fails to comply with a statutory demand made under the Corporations Act 2001 (Cth) for payment of a debt;
- f) ceases business;
- g) has execution levied against any of their assets; or
- h) has a Mortgagee Liquidator, Provisional Liquidator, Receiver, Receiver and Manager or Administrator enter or seek to enter into possession of any of its assets,

then any monies actually or contingently owing to the Company at that time under any contract formed on these Trading Terms (including any amounts which would not otherwise be payable until a later date or dates) are immediately due and payable (without the need for any demand by the Company).

#### **16. Change of Shareholding**

The Customer agrees to notify the Company in writing of any change in ownership or shareholding of the Customer within seven (7) days from the date of such change or immediately if an Insolvency Event as specified in paragraph 15 hereof occurs and the Customer shall indemnify the Company against any loss or damage incurred by it as a result of its failure to notify the Company of such change or Insolvency Event.

#### **17. Force Majeure**

- a) The Company may suspend any or all of its obligations to the Customer that are affected by any act of God, fire, flood, storm, earthquake, strike, lockout, trade dispute, breakdown of plant or machinery, theft, crime, delays in shipping, or the inability of the Company to procure necessary materials or articles preventing or retarding performance of the contract or any other cause not reasonably within the control of the Company (each a Force Majeure Event) and the Company is not responsible for any delay, default, loss or damage due to any Force Majeure Event.
- b) During the period of total or partial suspension of delivery the Customer may purchase elsewhere, at its own cost and risk, such quantities of alternative goods as may be necessary to cover its requirements during such period in substitution for the goods not delivered by the Company. Whether or not the Customer makes these arrangements the Company shall not be under any liability in respect of such suspension, and in particular, the Company shall be under no obligation to deliver at any future date any goods not delivered during the period of suspension.
- c) When a Force Majeure Event ceases to affect the performance of any of the Company's obligations, the Company must lift any suspension of those obligations that it makes under clause 17 a).

#### **18. Cancellations and Variations of Orders**

- a) The Customer may not cancel or vary an order unless the Company in its absolute discretion consents in writing to the cancellation or variation.
- b) The Company may charge the Customer for any reasonable costs incurred in preparation of any order that has been varied or cancelled.
- c) The Company reserves the right to immediately cancel any contract for the supply of Goods or suspend any such supply without incurring any liability to the Customer in any of the following circumstances:
  - i) The Customer is overdue with any payment due under these Trading terms or is otherwise in breach of these Trading Terms or
  - ii) An Insolvency Event has occurred.
- d) Cancellation by the Company under this clause shall be without prejudice to the Company's right to recover payment from the Customer for Goods previously supplied.

#### **19. Insurance and Intellectual Property**

- a) Unless otherwise agreed in writing by the Company, the Company accepts no responsibility for the insurance of the Goods or any of the Customer's property or materials.

- b) Any Intellectual Property that is presently existing or which is developed in the future by or for the Company in connection with the supply of its goods (including the Goods) vests in and is owned by the Company, and the Customer must do all things and sign all documents reasonably required by the Company to give effect to this clause.

## **20. Containers**

- a) Containers in which the Goods are delivered and for which a deposit charge may be made, remain the property of the Company and must not be used for any other commodity than that contained therein at the time of delivery. The Customer must return to the factory or store of the Company from which the Goods were delivered the Containers in good order and condition. The Containers will be deemed to be still in the Customer's hands until received at such factory or store. The Customer will pay rental charges as determined by the Company from time to time on all Containers that are not received into the Company's factory or store within six weeks of the Company dispatching the Goods to the Customer.
- b) Containers in which the Goods are delivered and for which a separate price is shown on the face of the invoice are, unless otherwise specified thereon, sold or hired with the Goods and their price as shown on the invoice must be paid with the price of the Goods. If the Containers are returned in good order and condition by the Customer at the Customer's expense to the Company's factory or store from which the Goods were delivered within three months from the date of invoice, the Company will repurchase the Containers from the Customer for their full invoice price. The Company may offer less than the full invoice price for Containers repurchased after the expiration of three months from the date of invoice.
- c) In the case of Containers which are received at a factory or store of the Company otherwise than in good order and condition, only such part of the deposit or of their invoice price as in the opinion of the Company is reasonable, having regard to their actual condition, will be allowed to the Customer.
- d) The Customer acknowledges and agrees that it is their responsibility to inspect Containers received from the Company at the time of their delivery and to immediately notify the Company in the event of identifying any damage to the Container. In the event that the Customer fails to notify the Company as aforesaid, the Customer will be liable for the cost of any repairs to the Container that are necessary, which costs the Customer will pay immediately on receipt of a certificate from the Company detailing the repairs that it has made to the Container and the costs of such repairs.
- e) The Company will keep a record of the number and type of Containers delivered to the Customer (which the Customer agrees will be conclusive evidence of the number and type of Containers delivered to the Customer) and the Company may charge the Customer for the replacement cost or such lesser amount determined by the Company for each Container not returned or damaged by the Customer as it may reasonably determine.

## **21. Pallets**

At all times the Company retains the right of possession of any pallets used for the delivery of Goods and the Customer agrees to indemnify the Company in respect of any loss or damage that the Company may suffer with respect to any pallets that are not returned to the Company by the Customer in good order and condition within one month of delivery of the Goods.

## **22. Weights**

In the absence of a proven defect in the Company's system of weighing, the weights of Goods sold under these Trading Terms shall be the last weight determined by the Company's system of weighing prior to delivery of the Goods.

## **23. Set-off**

The Company at its sole and unfettered discretion may at any time and from time to time set off any amount owing by the Company to the Customer in respect of Goods and/or services supplied by the Customer to the Company whether or not that amount has become due and payable or whether that amount shall be due actually or contingently (in this paragraph 23, referred to as "the amount owing by the Company") against any amount owing by the Customer to the Company in respect of Goods and/or services supplied by the Company to the Customer whether or not that amount has become due and payable or whether that amount shall be due actually or contingently (in this Condition 23, referred to as "the amount owing by the Customer") with the effect that:

- a) If the amount owing by the Company exceeds the amount owing by the Customer then the Company may set off the amount owing by the Company against the amount owing by the Customer and pay to the



Customer an amount equal to the difference between those two amounts in full and final satisfaction of the amount owing by the Company.

- b) If the amount owing by the Company is less than the amount owing by the Customer then the Company may set off the amount owing by the Company against the amount owing by the Customer and the amount owing by the Company shall be deemed to have been satisfied in full without any payment from the Company to the Customer, and the net amount owing by the Customer to the Company shall forthwith become due and payable.

**24. Certificate**

A certificate of the Customer's liability under any contract or contracts formed on these Trading Terms, signed by an officer of the Company, is prima facie evidence of the Customer's liability to the Company under these Trading Terms as at the date of the certificate.

**25. Termination**

- a) Either party may terminate the arrangements under these Trading Terms by not less than 30 days notice to the other or immediately by notice to the other party if the other party is subject to an Insolvency Event.
- b) Upon termination all amounts actually or contingently owing by the Customer to the Company are immediately due and payable and the Customer shall immediately on demand deliver up to the Company all Goods purchased from the Company for which it has not paid.

**26. Time**

Time is of the essence for payment of any monies owed by the Customer to the Company pursuant to the provisions specified in these Trading Terms.

**27. Jurisdiction**

- a) These Trading Terms are governed by the laws of the State of New South Wales.
- b) The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales in relation to any dispute or claim arising under or in connection with the supply of Goods or otherwise concerning these Trading Terms.

**28. Notices**

- a) Any notice required by or contemplated by these Trading Terms must be in writing in the English language.
- b) Any notice by one party to the other shall be sufficiently served if served:
  - i) Personally;
  - ii) By facsimile transmission to the number specified in the application made to the Company by the Customer to establish the arrangements under these Trading Terms or as otherwise notified to the other party, with a transmission confirmation receipt marked "OK";
  - iii) By e-mail to the address specified in the application made to the Company by the Customer to establish the arrangements under these Trading Terms or as otherwise notified to the other party, if the e-mail is acknowledged by the recipient; or
  - iv) By pre-paid post to the party to be served at the registered office of the party or to the address specified in the application made to the Company by the Customer to establish the arrangements under these Trading Terms or as otherwise notified to the other party, (in which case it is taken to be received 3 days after the date of posting).