

# APPLICATION FOR CREDIT



This Account application shall be in respect of CENTOR OCEANIA – Agritec Pty Ltd (ABN: 36113930466) for a 30 day credit account.

**PLEASE READ THIS APPLICATION THE NOTES AND THE TERMS AND CONDITIONS CAREFULLY SO THAT YOUR APPLICATION CAN BE AUTHORISED PROMPTLY. IT IS IMPORTANT THAT ALL INFORMATION IS SUPPLIED & COMPLETED FOR ALL REQUIRED SECTIONS.**

## SECTION ONE - GENERAL INFORMATION (MUST BE COMPLETED BY ALL APPLICANTS)

BUSINESS NAME: \_\_\_\_\_ ABN: \_\_\_\_\_  
TRADING NAME: (if applicable) \_\_\_\_\_  
PREVIOUS NAME OF BUSINESS: (if changed within the past 2 years) \_\_\_\_\_  
MAILING ADDRESS: \_\_\_\_\_  
SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_  
PHYSICAL ADDRESS: \_\_\_\_\_  
SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_  
TELEPHONE NO.: \_\_\_\_\_ FAX NO.: \_\_\_\_\_ MOBILE NO.: \_\_\_\_\_  
BUSINESS LEGAL STATUS: (Please tick)  
 SOLE TRADER (Please go to SECTION TWO Q1)  
 PARTNERSHIP (Please go to SECTION TWO Q2)  
 COMPANY (Please go to SECTION THREE Q3)  
 TRUST (Please go to SECTION THREE Q4)

## SECTION TWO - PROPRIETOR/DIRECTOR INFORMATION (PLEASE COMPLETE WHERE RELEVANT)

**Q1 SOLE TRADER Only**  
Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_ Driver Licence No \_\_\_\_\_  
Residential Address \_\_\_\_\_ Suburb \_\_\_\_\_ State \_\_\_\_\_ Postcode \_\_\_\_\_  
Phone No. \_\_\_\_\_ Mobile No. \_\_\_\_\_ Email \_\_\_\_\_  
If a business premise is leased, please provide: Lessor Name \_\_\_\_\_  
Lessor Contact Details \_\_\_\_\_  
**Please continue to SECTION FOUR**

**Q2 PARTNERSHIP Only** (Please provide name and residential address of each partner. Please provide details of any additional partners on a separate sheet)  
Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_ Driver Licence No \_\_\_\_\_  
Residential Address \_\_\_\_\_ Suburb \_\_\_\_\_ State \_\_\_\_\_ Postcode \_\_\_\_\_  
Phone No. \_\_\_\_\_ Mobile No. \_\_\_\_\_ Email \_\_\_\_\_  
  
Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_ Driver Licence No \_\_\_\_\_  
Residential Address \_\_\_\_\_ Suburb \_\_\_\_\_ State \_\_\_\_\_ Postcode \_\_\_\_\_  
Phone No. \_\_\_\_\_ Mobile No. \_\_\_\_\_ Email \_\_\_\_\_  
  
Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_ Driver Licence No \_\_\_\_\_  
Residential Address \_\_\_\_\_ Suburb \_\_\_\_\_ State \_\_\_\_\_ Postcode \_\_\_\_\_  
Phone No. \_\_\_\_\_ Mobile No. \_\_\_\_\_ Email \_\_\_\_\_  
If a business premise is leased, please provide: Lessor Name \_\_\_\_\_  
Lessor Contact Details \_\_\_\_\_  
**Is the above Partnership a Trustee of a Trust? If so, please complete 4a in Q4 in Section 3. If not, please continue to SECTION FOUR.**

# APPLICATION FOR CREDIT



## SECTION THREE - PROPRIETOR/DIRECTOR INFORMATION (PLEASE COMPLETE WHERE RELEVANT)

Q3

Registered Office Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Type of Company: Private  Public  A.C.N. \_\_\_\_\_

State of Incorporation/Registration: \_\_\_\_\_ Date Business Commenced: \_\_\_\_\_

### NAME & HOME ADDRESS OF EACH DIRECTOR

*(It is necessary to notify Agritec of any change in Directors or Company details. Please provide details of any additional partners on a separate sheet)*

Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Driver Licence No: \_\_\_\_\_

Residential Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Mobile No: \_\_\_\_\_ Email: \_\_\_\_\_

Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Driver Licence No: \_\_\_\_\_

Residential Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Mobile No: \_\_\_\_\_ Email: \_\_\_\_\_

Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Driver Licence No: \_\_\_\_\_

Residential Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Mobile No: \_\_\_\_\_ Email: \_\_\_\_\_

If business premises is leased, please provide: Lessor Name: \_\_\_\_\_

Lessor contact details: \_\_\_\_\_

### HOLDING OR PARENT COMPANY (if applicable)

Name \_\_\_\_\_ A.C.N. \_\_\_\_\_

Is the above company a Trustee of a Trust? If so, please also complete **4a** in Q4 below. If not, please continue to SECTION FOUR.

Q4

### TRUST Only (Please refer to point 2 of Conditions for Application of Credit)

#### 4a TRUST DETAILS:

Name of Trust \_\_\_\_\_

Type of Trust (e.g. Discretionary Family Trust/Unit Trust) \_\_\_\_\_

Country where Trust established \_\_\_\_\_

**TRUSTEE DETAILS:** (if more than one trustee, please provide details of any additional trustees on a separate sheet)

#### 4b IF TRUSTEE IS AN INDIVIDUAL:

Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Driver Licence No: \_\_\_\_\_

Residential Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Mobile No: \_\_\_\_\_ Email: \_\_\_\_\_

Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Driver Licence No: \_\_\_\_\_

Residential Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Mobile No: \_\_\_\_\_ Email: \_\_\_\_\_

Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Driver Licence No: \_\_\_\_\_

Residential Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Mobile No: \_\_\_\_\_ Email: \_\_\_\_\_

# APPLICATION FOR CREDIT



## SECTION FOUR - CONTACT DETAILS (MUST BE COMPLETED BY ALL APPLICANTS)

### PURCHASE CONTACT

Primary: Name \_\_\_\_\_ Phone \_\_\_\_\_ Email \_\_\_\_\_

Secondary: Name \_\_\_\_\_ Phone \_\_\_\_\_ Email \_\_\_\_\_

Do you quote a Purchase Order **YES**  **NO**

ESTIMATED MONTHLY PURCHASES \$ \_\_\_\_\_

### ACCOUNTS PAYABLE CONTACT

I/We give permission to Centor Oceania - Agritec Pty Ltd to send electronic messages / invoices & statements.

Primary: Name \_\_\_\_\_ Phone \_\_\_\_\_ Email \_\_\_\_\_

Secondary: Name \_\_\_\_\_ Phone \_\_\_\_\_ Email \_\_\_\_\_

**Please continue to SECTION FIVE**

## SECTION FIVE - CREDIT REFERENCES & PRIVACY AUTHORITY (MUST BE COMPLETED BY ALL APPLICANTS)

You acknowledge you have read our Privacy Policy Statement which is located on our website at <http://www.centorgroup.com/privacy>

1. I/We consent and agree that Centor Oceania - Agritec Pty Ltd may carry out all necessary credit checks for both Commercial and Consumer credit with any credit reference bureau as well as referees stated on the Credit Application Form.
2. I/We understand that it is the applicant's responsibility to advise Centor Oceania - Agritec Pty Ltd of any changes to the applicants details.
3. I/We consent and agree that Centor Oceania - Agritec Pty Ltd may obtain the above information from time to time for the purpose of reviewing and assessing credit worthiness.
4. I/We acknowledge that the above authorisations will continue to remain in full force and be effective until the credit facility is cancelled.
5. I/We agree in the event that the event that the account remains outstanding in excess of 60 days Centor Oceania - Agritec Pty Ltd may report the default to any credit reporting agency.

Name (Please print) \_\_\_\_\_

Signature: \_\_\_\_\_ Dated: / /

Name (Please print) \_\_\_\_\_

Signature: \_\_\_\_\_ Dated: / /

Name (Please print) \_\_\_\_\_

Signature: \_\_\_\_\_ Dated: / /

I This written agreement authorises Centor Oceania - Agritec Pty Ltd to access my/our credit file with any preferred credit reporting agency.

I **Note:** Must be signed by all persons whose names appear in Section 2 and/or Section 3 of the Credit Application.

### TRADE REFERENCES (Major suppliers with whom you are currently trading)

Company Name \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_ Account No. \_\_\_\_\_

Address \_\_\_\_\_ Suburb \_\_\_\_\_ Postcode \_\_\_\_\_

Company Name \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_ Account No. \_\_\_\_\_

Address \_\_\_\_\_ Suburb \_\_\_\_\_ Postcode \_\_\_\_\_

Company Name \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_ Account No. \_\_\_\_\_

Address \_\_\_\_\_ Suburb \_\_\_\_\_ Postcode \_\_\_\_\_

**Please continue to SECTION SIX**

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# APPLICATION FOR CREDIT



## SECTION SIX - DECLARATION (MUST BE COMPLETED BY ALL APPLICANTS)

At any time has any Proprietor, Director or Manager of the Applicant been the subject of Bankruptcy proceedings or been associated as a Manager, Member, Director or Partner of a business which has failed or was the subject of a Scheme of Arrangement, Receivership, Voluntary Administration, Liquidation or to which an Administration or Controller has been appointed?

YES  NO

I/WE DECLARE THAT THE INFORMATION GIVEN ABOVE IS CORRECT AND I/WE HEREBY APPLY FOR CREDIT FACILITIES FOR THE PURPOSE OF GOODS AND SERVICE FROM CENTOR OCEANIA - AGRITEC PTY. LTD. I/WE FURTHER DECLARE THAT I/WE HAVE READ, ACCEPTED AND ACKNOWLEDGED THE TERMS AND CONDITIONS OF SALE OF GOODS & SERVICES AND THE CONDITIONS FOR APPLICATION OF CREDIT.

SIGNATURE	NAME	POSITION (Director/Partner/Owner)	DATE
1. _____			
2. _____			
3. _____			

Please continue to SECTION SEVEN

## SECTION SEVEN - GUARANTEE (MUST BE COMPLETED BY ALL APPLICANTS)

We, the GUARANTORS whose signatures appear below, have read the attached "Conditions for Application for Credit" and "Centor Oceania Terms and Conditions of Sale of Goods" (hereunder T&C); and in particular indemnity clause (point 11 in T&C) which provides that we guarantee the obligations of the applicant. The undersigned agrees to unconditionally guarantee payment of all sums owed, pursuant to this agreement and further agrees to its terms regarding venue and jurisdiction. This is intended to be a continuing guarantee and shall not be revoked except by written notice to the accounts department of Centor Oceania - Agritec Pty. Ltd.

SIGNATURE	NAME	POSITION (Director/Partner/Owner)	DATE
1. _____			
2. _____			
3. _____			

Please initial all pages to accept Terms & Conditions and mail entire document to the our office, faxed copies will not be accepted.

Agritec Pty. Ltd  
P.O. Box 8239,  
Carrum Downs, Victoria,  
Australia, 3201

### OFFICE USE ONLY

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Credit Limit: \_\_\_\_\_ Account No.: \_\_\_\_\_

Approved by: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Entered into JIWA: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

# CONDITIONS FOR APPLICATION OF CREDIT



1. The Applicant is not entitled to any credit facilities until the Applicant receives notice in writing from the Distributor stating that credit facilities have been granted.
2. Where the Applicant is a trustee
  - (a) the Applicant agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Distributor; and
  - (b) the Applicant warrants that it has full power and authority for the benefit purposes and objects of the trust to make this application on behalf of the trust and that the Applicant shall be bound by the terms of this Application and be liable for payment of all monies owing to the Distributor both personally and as trustee.
3. The Applicant declares that the above information is true and correct in every particular and is aware that the Distributor will rely upon the correctness of the representations and information contained herein in granting credit facilities and any transactions associated therewith or entered into pursuant thereto.
4. The Applicant (if a corporation) is solvent and able to pay its debts as they fall due and is not in liquidation or being wound up and no meeting is being called or resolution is being passed or order made for such purposes and no Receiver and Manager has been appointed in respect of the Applicant and the Applicant has not made any compromise or arrangement with its creditors or any class of them and no Application has been proposed or made to any Court for any order summoning a meeting of its creditors or any class of them.
5. The Applicant hereby agrees to allow the Distributor to check personal information about the Applicant with any credit provider named on the Applicant's Credit Application and with other providers that may be made in a credit report issued by a credit report agency for any of the following purposes:
  - (a) to assess the Applicant's credit worthiness;
  - (b) to assess an application by the Applicant for credit;
  - (c) to help the Applicant avoid defaulting on its credit obligation; and
  - (d) to verify a default by the Applicant.

The Applicant understands that this information can include any information about the Applicant's credit worthiness, credit standing, credit history or credit capacity providers are allowed to give to or receive from each other under the Privacy Act 1988. The Applicant agrees that the supplier may disclose a credit report or any personal information derived from another credit provider for any of the purposes mentioned above.
6. The Distributor may exercise any power under the Privacy Act 1988 (Cth) relevant to assessing this credit application or collecting overdue payments from the Applicant.
7. If the Distributor considers it relevant to assessing the application for commercial credit or for collecting overdue payments, the Applicant agrees to the Distributor obtaining a credit report containing personal credit information about the Applicant in relation to commercial credit provided by the Distributor and in relation to collecting overdue payments.
8. The Applicant agrees that the Distributor may give to and seek from any credit providers names in this credit application and any credit providers that may be named in a credit report issued by a credit reporting agency information about the Applicant's credit arrangements. The Applicant understands the information may be used to:
  - (a) assess an application by the Applicant for credit;
  - (b) notify other credit providers of a default by the applicant;
  - (c) exchange information with other credit providers as to the status of this credit account where the Applicant is in default with other credit providers or;
  - (d) assess the Applicant's credit worthiness.
9. The Applicant has read and understood the Terms and Conditions of Sale of Goods ("see the Terms and Conditions") attached to this Credit Application and in consideration of the Distributor supplying the goods the Applicant shall comply with, observe and perform the Terms and Conditions in respect of the purchase of the goods from the Distributor.
10. The Applicant agrees to indemnify the Distributor and keep the Distributor indemnified from and against and in respect of any claim, action, loss, cost, expense or liabilities suffered or incurred by the Distributor arising from or in any way related to the breach of any of the Terms and Conditions.
11. The Applicant hereby charges all of the Applicant's estate, right, title and interest in any land in favour of the Distributor to secure the payment of any monies owing to the Distributor under the Terms and Conditions attached to this Credit Application. The Applicant irrevocably authorises and consents to the Distributor lodging an absolute caveat over any such land to protect the Distributor's interest herein.
12. The Applicant has had full and ample opportunity prior to the execution of this Credit Application to obtain independent legal advice as to the extent and implications of this Credit Application and executes this Credit Application accordingly.

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# Centor Oceania Terms & Conditions of Sale



## 1. DEFINITION

In these Terms and Conditions:

**Company** means Agritec Pty Ltd (ABN 36113930466) trading as Centor Oceania.

**Contract** means these Terms and Conditions of trade.

**Customer** means the person, corporation or firm acquiring goods or services from the Company.

**Goods** means the provision of Goods or rendering of Service/s by the Company for the Customer.

## 2. APPLICATION

2.1 The Customer's Order is accepted by the Company on the basis that (subject to clause 8) these Terms and Conditions constitute the Contract between the Customer and the Company for the sale and purchase of the Goods.

2.2 This Contract supersedes all prior discussions, representations, agreements and arrangements in relation to the sale and purchase of the Goods.

## 2. INCOTERMS

An agreement by the Company to sell on the basis of any particular Incoterm shall be deemed to be a reference to the relevant term as set out in the rules for the interpretation of trade terms published by the International Chamber of Commerce "Incoterms 2010" (ICC Publication No. 560). In the event of any inconsistency between the Terms of Sale and the Incoterms 2010, the Terms of Sale prevails.

## 3. PURCHASE ORDERS

3.1 When ordering, an official order is to be submitted by the Purchaser to the Company quoting an order number, full description of the Goods to be purchased, the applicable Incoterm, the agreed price and payment terms, the place of Delivery, and the desired date of Delivery. Reference to the Company's quote number to the Purchaser should also be made (where applicable).

3.2 These Terms of Sale apply to the Purchaser and to the Company in respect of Goods ordered by the Purchaser and, unless otherwise agreed, any terms and conditions set out in the Purchaser's order will not bind the Company notwithstanding any statement by the Purchaser in its order that its terms and conditions shall prevail over these Terms of Sale.

3.3 A contract shall only be or be deemed to have been entered into between the Company and the Purchaser for the supply of the Goods when the Purchaser's order has been accepted by the Company in writing.

## 4. PRICE BASIS

4.1 The Price is that ruling at the date of dispatch of the Goods.

4.2 Any price quoted on any document or correspondence issued by the Company:

(a) excludes GST and any other taxes or duties imposed on or in relation to the Goods and services, in addition to payment of the Price of the Goods and services;

(b) excludes the cost of packaging, freight, delivery, or other costs incurred by the Company in the course of supply and delivery to the Customer;

(c) All prices payable by the Purchaser shall be in Australian dollars. If the Goods are purchased outside Australia, the Australian dollar figure is to be determined based on the prevailing exchange rates as at the date of delivery of the Goods.

(d) is based on costs of all kinds in relation to the Goods ruling at the date of the quotation and is subject to fair adjustment by the Company to take into account any alteration in such costs prior to delivery of the Goods or (in the case of delivery by installments) prior to the final delivery.

(e) The Purchaser shall be responsible for all charges, duties, taxes, fees or other expenses of any kind incurred in connection with the purchase of the Goods.

4.3 The extension of credit to the Purchaser by the Company shall be at the sole discretion of the Company and, where extended, unless otherwise advised in writing by the Company, the Company requires payment in full within thirty (30) days of the end of the month in which Delivery of the Goods occurs or as otherwise specified in the invoice.

## 5. PAYMENT

5.1 The Customer agrees to accept and pay for the Goods in accordance with this Contract.

5.2 Payments on 30 Day Account must be made in full by the end of the month immediately following the date of the invoice (in this clause, "the Due Date").

5.3 Payments in respect of Equipment must be made in full on delivery.

5.4 Payments in respect of export orders must be made by cash or confirmed by irrevocable letter of credit from an Australian bank.

5.5 Payment in full on or before the Due Date is a condition precedent to future deliveries under this or any other Contract with the Customer.

5.6 Without prejudice to any other right or remedy the Company may have, it may charge the Customer on any overdue amounts interest at a rate of 5% per annum above the then maximum rate specified by the Company's bank for overdrafts of less than \$100,000.00.

5.7 Time of payments is of the essence of the Contract. Payment by EFT to the Company's bank account is the preferred option.

5.8 The Terms and Conditions as to payment may be revoked or amended at the sole discretion of the Company at any time by written notice to the Customer.

5.9 If the Customer does not make a payment by the Due Date then all money owed by the Customer to the Company (whether or not it is then payable) is immediately due and payable (without notice) by the Customer to the Company.

5.10 The Company will not be liable for any currency exchange costs or losses, or any transfer fees incurred by the Customer.

## 6. RISK AND TITLE

6.1 Risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods passes to the Customer at the time when the Goods have been placed on the vehicle which is to effect delivery from the Company's store or warehouse and the Goods remain at the Customer's risk unless and until the Company retakes possession of the Goods pursuant to this Contract.

6.2 In addition to any other rights the Company may have against the Customer, the Company may repossess the Goods if any sum due in respect of them is outstanding or if the Company reasonably believes that any such sum will not be paid in full when it falls due for payment.

6.3 Until full payment in cleared funds is received by the Company for all Goods and services supplied by it to the Customer, as well as other amounts owing to the Company by the Customer:

(a) title and property in all Goods remain vested in the Company and do not pass to the Customer;

(b) the Customer must hold the Goods as fiduciary Bailee and agent for the Company;

(c) the Customer must keep the Goods and maintain the labelling and packaging of the Company;

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(d) the Customer is required to hold the proceeds of any sale of the Goods on trust for the Company in a separate account however failure to do so will not affect the Customer's obligations to deal with the proceeds as trustee;

(e) the Company may without notice, enter any premises where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other Goods not the property of the Company, and for this purpose the Customer irrevocably licenses the Company to enter such premises and also indemnifies the Company from and against all costs, claims, demands or actions by any party arising from such action.

## 7. WARRANTY

Any warranties given by the Company with respect to the Goods are set out in the packaging in which the Goods are supplied or in enclosures supplied with the Goods.

## 8. LIMITATION OF LIABILITY

8.1 Except as specifically set out herein, or contained in any warranty statement provided with the Goods or services, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or services, whether implied by statute, common law, trade usage, custom or otherwise is hereby expressly excluded.

8.2 The Company is not liable for any loss or damage consequential or otherwise, however caused (including, but not limited to, the negligence of the Company), suffered by the Customer in connection with the Contract, any supply under the Contract, any misrepresentation by the Company or any statement by a third party accepted in good faith by the Company and repeated by it.

8.3 The Company is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, however caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

8.4 The Company will not be liable for any loss or damage suffered by the Customer where the Company has failed to deliver Goods or fails to meet any delivery date or cancels or suspends the supply of Goods.

8.5 If the Trade Practices Act 1974 (TPA) or any other legislation implies a condition or warranty into this Contract in respect of Goods or any services supplied by the Company, and the

Company's liability for breach of that condition or warranty may not be excluded, the exclusion in clause 8.2 does not apply to that liability and instead the Company's liability for any breach of that condition or warranty is limited to:

(a) in relation to the Goods, the Company doing any one or more of the following (at its election):

- (1) replacing the Goods or supplying equivalent Goods;
- (2) repairing the Goods;
- (3) paying the cost of replacing the Goods or of acquiring equivalent Goods; or
- (4) paying the cost of having the Goods repaired; and

(b) in relation to any supply of services, the Company doing either or both of the following (at its election):

- (1) supplying the services again; or
- (2) paying the cost of having the services supplied again.

(c) Nothing in these Terms and Conditions is intended to exclude, restrict or modify any rights which the Customer may have under any legislation which may not be excluded, restricted or modified by agreement.

8.6 Any warranty provided by the Company in the Contract does not apply in circumstances where:

(a) the Goods or services are not defective;

(b) the Goods were used or services required for a purpose other than for which they were intended;

(c) the Goods were repaired, modified or altered by any person other than the Company;

(d) the defect has arisen due to misuse, neglect or accident;

(e) the Goods have not been stored or maintained as recommended by the Company;

(f) the defect has arisen due to normal wear and tear on the Goods; or

(g) the Customer is in breach of the Terms.

8.7 The Customer acknowledges that:

(a) it has not relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by the Company in relation to the Goods or services or their use or application.

(b) it has the sole responsibility of satisfying itself that the Goods or services are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by the Company.

(c) any description of the Goods provided in a quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.

## 9. WARRANTY, COVENANT AND INDEMNITY BY THE CUSTOMER

9.1 The Customer warrants the accuracy of any specification or information provided by the Company, and the design, manufacture and installation by others of any equipment associated with the Goods or these Terms and Conditions.

9.2 The Customer covenants not to make any claim or take any proceedings against any employee or agent of the Company in connection with this Contract including in respect of any misrepresentation or negligence of the Company or any employee of the Company.

9.3 The Customer indemnifies and agrees to keep indemnified the Company in respect of any breach of clause 9.1 or clause 9.2.

9.4 If the Customer does not accept the Goods in accordance with this Contract the Customer must (without prejudice to any other rights of the Company) indemnify the Company in respect of any loss, damage or claim, including any license or other fee, the cost of labour and other overheads and redundancy payments attributable to the Customer's Order or its failure to accept the Goods.

## 10. DELIVERY AND PACKING SHORTAGES

10.1 The Price does not include the cost of carriage or insurance of the Goods from the premises of the Company or its subsidiaries to the point of delivery to the Customer and the Customer must bear all such costs, the cost of packing and the cost of any excess for special or express delivery requested by the Customer.

10.2 The Customer authorizes the Company to subcontract delivery in its absolute discretion.

10.3 Unless otherwise stated, all export Orders will be delivered Free on Board (FOB), Ex Works, which expression has the meaning assigned to it by the current version of International Commercial Terms (Incoterms); packing will be an extra charge.

10.4 The Company may charge for storage and administration costs incurred against Goods held for more than 14 days awaiting sufficient delivery instructions.

10.5 No refund of any charge made for packing will be made except in the cost of non-expendable pallets or containers which are charged for and for which credit will be given if returned carriage paid in good condition.

10.6. Subject to clause 9, it is a condition precedent to any claim for damages to the Goods, short delivery, delivery to the wrong place, or non-delivery that notice be given to the Company and the carrier within seven days of delivery in the case of inland orders and twenty-eight days of delivery in the case of export orders, in all cases taking into account date of dispatch.

#### 11. RETURN OF GOODS

11.1 Subject to clause 8, the Customer must not return Goods for any reason except upon the written consent of the Company obtained in advance of such return.

11.2 Any consent given under clause 10.1 may specify the Terms and Conditions and charges upon which any such return may be made.

11.3 The Company will not under any circumstances accept Goods for return that:

- (a) have been specifically produced, imported or acquired to fulfill any contract;
- (b) are discontinued Goods or no longer stocked by the Company;
- (c) have been altered in any way;
- (d) have been used; or
- (e) are not in their original condition and packaging.

11.4 If the Company accepts Goods for return, the Customer will receive a credit for the returned Goods equal to the price charged by the Company less a 15% deduction for handling and restocking charges, and any further deduction agreed for any wear and tear.

#### 11.5 The Customer must:

- (a) obtain the Company's prior written approval for return of Goods; and
- (b) pay all freight charges and costs associated with return of Goods.

11.6 Subject to clause 8, if any Goods returned by Customer to the Company for warranty service are determined by the Company not to be covered by the warranty, the Customer must reimburse the Company for all related shipping and other costs incurred by the Company, and pay to the Company an amount equal to the Company's standard service charge in effect at the time.

#### 12. EXTENDED DELIVERIES

12.1 If the Contract provides for the Goods to be specified by the Customer by schedule from time to time, any schedule relating to the Contract and delivered by the Customer is subject to acceptance by the Company.

12.2 Where a schedule is accepted under clause 11.1, any requirements stated in the schedule to be "firm" are deemed to form part of the Contract and may only be cancelled with the prior written approval of the Company.

#### 13. CANCELLATION

13.1 If, through circumstances beyond the control of the Company, the Company is unable to effect delivery or provision of Goods or services, then the Company may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

13.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on the Company after that order has been accepted.

13.3 If the Customer purports to cancel an order and the Company agrees to the cancellation, any deposit paid by the Customer will be forfeited.

13.4 The Company, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice. The Company may request additional information or the provision of further security to a credit facility and may suspend or cancel a credit facility if the information or security requested is not provided within a reasonable time.

#### 14. LAWFUL USE OF THE GOODS

14.1 The Customer must:

- (a) acquaint itself with the requirements of all relevant Governmental and statutory or other authority relating to the Goods and to the applications to which the Goods are put.
- (b) comply with such requirements at all times while the Goods are in its possession or under its control.

(c) procure that any Customer of the Goods from the Customer acquaints itself with and complies with such requirements.

(d) obtain all necessary licenses or permits under all relevant laws and regulations in relation to the Goods.

14.2 The Customer must comply with instructions by the Company relating to the Goods.

14.3 The Customer indemnifies and agrees to keep indemnified the Company in respect of any breach of clause 14.1 or 14.2

#### 15. PATENTS

No right or license is granted to the Customer under any patent copyright, registered design or other intellectual or industrial property right or interest other than the right to resell the Goods.

#### 16. GOODS MADE TO THE CUSTOMER'S SPECIFICATION

16.1 If the Goods are manufactured to the design or specification of the Customer, the Customer warrants that the design, specification and Goods do not infringe any patent, copyright, registered design or other like protection of any other person and comply with any applicable statute, statutory instrument or regulation for the time being in force.

16.2 The Customer indemnifies and agrees to keep indemnified the Company in respect of any breach of clause 15.1

#### 17. VARIATION WITHIN SPECIFICATION

Variation by the company within the specification for the Goods does not constitute a breach of Contract or impose upon the Company any liability whatsoever.

#### 18. PERSONAL PROPERTY SECURITY ACT 2009 (Cth) ("PPSA")

18.1 The Purchaser consents to the Company creating and maintaining a registration on the Register (in any required form) in relation to any security interest contemplated or created by the Agreement.

18.2 The Purchaser agrees to sign any necessary documents and provide all reasonable assistance and information to facilitate the registration and maintenance of a security interest on the Register. The Company reserves the right to register a financial statement or financial charge statement in respect of any security interest and you waive the right to receive notice of a verification statement in relation to any registration of a security interest on the Register, by way of clause 6.1 or 6.2, in respect of the Goods.

18.3 The Purchaser undertakes to do any and all acts that are reasonably required by the Company so as to:

18.3.1 allow the Company to create and maintain a perfected security interest (including a purchase money security interest) pursuant to the PPSA in respect of the Goods and its proceeds (including proceeds of sale);

18.3.2 allow the Company to register a financing statement or financing change statement;

18.3.3 ensure that the Company maintains its secured position under the PPSA;

18.3.4 not register a financing charge statement without the Company's prior written consent; and

18.3.5 not register or commit to the register of a financial statement or financing change statement in respect of the Goods, in favour of third party, without the Company's prior written consent.

18.4 The Company and Purchaser agree that no information (as defined in section 275(1) of the PPSA) will be provided to an interested person or person requested by an interested person. This clause may be waived by providing written notice to the Company authorising the disclosure of the above information to a specified party.

18.5 In the event that the Agreement is subject to Chapter 4 of the PPSA, the Company and Purchaser agree that, pursuant to section 115(1) of the PPSA, the Purchaser waives sections 95, 96, 118, 121 (4), 125, 130, 132 (3)(d), 134, 135, 142 and 143.

18.6 Additionally, in the event that chapter 4 of the PPSA applies to the Agreement, the Company and Purchaser agree that, pursuant to section 115(7) of the PPSA, the following provisions do not apply to the Agreement: sections 127, 129(2), 129 (3), 130 (1), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.

18.7 The Agreement (including clause 7 of these Terms and Conditions) is a security agreement for the purposes of the PPSA. For the avoidance of any doubt, collateral, for the purposes of section 20(2) of the PPSA includes, but is not limited to, Goods (as described in the Agreement) or Goods provided at any subsequent time.



18.8 The Company may apply amounts received in connection with the sale of the equipment to satisfy obligations secured by security interests contemplated or constituted by the Agreement at its absolute discretion.

18.9 The Purchaser agrees to notify the owner in writing of any change to its details as set out in the Agreement within 7 days of the date of any such change.

**19. REPAIR**

The Customer acknowledges that any goods left with the Company for inspection or repair etc. are subject to the provisions of the Uncollected Goods Act 1967 as amended which confers on the Company right of sale in certain circumstances after a period of 6 months from the date which the goods are ready for re-delivery.

**20. ASSIGNMENT**

The Company may assign, sub-Contract or sub-let this Contract or any part thereof without seeking the consent of the Customer.

**21. CUSTOMER RESTRUCTURE**

The Customer must notify the Company in writing of any change in its structure of management including any change in director, shareholder or management or change in partnership or trustee within 7 days of the date of any such change.

**22. FORCE MAJEURE**

The Company shall have no liability whatsoever under or in any way related to the sale and purchase of the Goods or otherwise for any failure to fulfil any obligation hereunder to the extent that such fulfilment is prevented by circumstances beyond its reasonable control including but without limitation to industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts of terrorism, or acts of war. Should an event of force majeure occur, then the Company may terminate the Contract by written notice to the Customer.

**23. WAIVER**

23.1 Any waiver by the Company must be in writing signed by the Company.

23.2 Failure by the Company to enforce any right or remedy is not a waiver of any right or remedy, or a waiver of a continuing breach.

23.3 No person acting without the express written authority of a Director of the Company is authorized to give or make on behalf of the Company any undertaking, assertion, statement or admission in respect of the Goods or their supply at variance with these Terms and Conditions.

**24. OWNERSHIP AND CONFIDENTIALITY OF PROPRIETARY INFORMATION**

24.1 The Purchaser acknowledges that all Proprietary Information in respect of the Goods and all right title and interest therein are the sole property of the Company and the Purchaser shall gain no right of title or interest in the Proprietary Information whatsoever. The Purchaser specifically acknowledges the Company's exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon which is developed, supplied, installed or paid for by or on behalf of the Purchaser or any customer of the Purchaser.

24.2 The Purchaser acknowledges that the Proprietary Information is confidential and contains trade secrets and that its disclosure will cause the Company to suffer financial loss.

24.3 The Purchaser shall implement all measures necessary to safeguard the Company's ownership and confidentiality of the Proprietary Information.

24.4 For the purposes of this clause "Proprietary Information" means any and all information relating to the Goods or the installation thereof including designs, drawings, instruction booklets,

specifications, drawings, componentry, trademarks and patents and any and all proprietary information, intellectual property and copyright in such proprietary information.

**25. GOVERNING LAW**

25.1 This Contract is governed by the laws of Victoria, Australia and any dispute between the parties in connection with the Contract is to be resolved in accordance with the laws of Victoria (Australia).

25.2 The parties irrevocably submit generally and unconditionally to the jurisdiction of the courts of Melbourne in the state of Victoria in respect of claims, proceedings and matters arising out of or in connection with this Contract.

25.3 So far as it is consistent with these Terms and Conditions, the convention on Contracts for the International Sale of Goods 1980 (sometimes known as the Vienna Convention) applies to any export sale.

**26. PLACE OF AGREEMENT**

The contract for the sale of the Goods arising from these Terms and Conditions is made in the State or Country where the company issuing the invoice for the Goods is registered and the parties agree to submit all disputes arising between them to the Courts of such State or Country and any Court competent to hear an appeal therefrom.

**27. VARIATION**

Any variation to these Terms and Conditions must be in writing signed by a Director of the Company, and refer expressly to the provisions being amended.

**28. NOTICE**

28.1 Any Notice must be in writing and delivered by hand or sent by post, as follows:

Address: PO Box 8239, Carrum Downs, Victoria, Australia, 3201  
Attention: Company Director

28.2 A Notice is regarded as given by the sender and received by the addressee:

(a) If the Notice is delivered by hand, when delivered to the addressee.

(b) If the Notice is sent by post, on the second business day following the date of postage/when delivered to the addressee.

(c) If sent by facsimile, when the transmission is successfully completed (as reported by the sender's machine), unless the addressee informs the sender that the transmission is illegible or incomplete by telephone or Notice within 2 hours of the transmission being received.

(d) If sent by electronic mail, when the addressee opens the message (as reported by the sender's machine), unless the addressee informs the sender that the transmission is illegible, incomplete or corrupted by telephone or Notice within 2 hours of the transmission being received.

28.3 A Notice is delivered on receipt:

(a) On a day which a business day or after 4:00pm (recipient's time) is regarded as received at 9:00am on the following business day.

(b) Before 9:00am (recipient's time) on a business day it is regarded as received at 9:00am on that day.

**29. PRIVACY**

29.1 The Company is bound by the Privacy Amendment (Private Sector) Act 2000 and will ensure that all credit and personal information obtained in connection with the Customer will be appropriately collected, used, disclosed and transferred and will be stored safely and protected against loss, unauthorized access, use, modification or disclosure and any other misuse. Such information may be accessed by request to the Company in accordance with the Privacy Act.

29.2 The Company requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by the Company in connection with this Contract.