

K2 Systems Pty Limited ABN 67 640 799 695 Level 14, Australia Square, 264-278 George Street, Sydney NSW 2000 Email: info@k2-systems.com.au		Credit Application No.
		Date received:

CREDIT ACCOUNT APPLICATION

If your application for credit is approved, the Credit Conditions set out below this form (as amended from time to time in accordance with their terms) will apply to the provision of any credit to you by K2 Systems Pty Limited, ABN 67 640 799 695 (**K2 Systems**). Whether or not your application for credit is approved, the Terms and Conditions of Sale as set out below (as amended from time to time in accordance with their terms) will apply to the supply of goods and services to you by K2 Systems.

If your application for credit is approved, K2 Systems will notify you of that approval and the credit limit which applies to your account (which may differ from the amount requested by you in this form).

APPLICANT (CUSTOMER) DETAILS *(Complete the option which applies to you)*

Option 1: the Customer is a sole trader (individual)

Sole trader details*	Customer name:
	Date of birth:
Business details	Trading name (if any):
	ABN:
	Trading commencement date:
Address	Street:
	Postal:
Contact details	Telephone:
	Mobile:
	Email:

Option 2: The Customer is a company (or other corporate entity)

Company details	Company/ corporate entity name:
	ABN, ACN or ARBN (as applicable):
	Trading name:
	Trading commencement date:
Address	Street:
	Postal:
Contact	Contact name:
	Telephone:
	Mobile:
	Email:

Option 3: The Customer is a partnership

Partnership details	Partnership name (if any):
	ABN:
	Trading name (if any):
	Trading commencement date:
Address	Street:
	Postal:
Contact details	Contact name:
	Telephone:
	Mobile:
	Email:

Partner 1*	Name / Company name:	Date of birth / ABN, ACN or ARBN:
Partner 2*	Name / Company name:	Date of birth / ABN, ACN or ARBN:
Partner 3*	Name / Company name:	Date of birth / ABN, ACN or ARBN:

Section 4: The Customer is a trustee of a trust

(If you are a trustee, complete this section in addition to one of Section 1, 2 or 3)

Trust details	Trust name:	
	ABN of Trust:	
	Trust commencement date:	
Trustee 1*	Name / Company name:	Date of birth / ABN, ACN or ARBN:
Trustee 2*	Name / Company name:	Date of birth / ABN, ACN or ARBN:
Registered trading name of trustee (if any)	Trustee 1:	Trustee 2:
Address	Street:	
	Postal:	
Contact details	Contact name:	
	Telephone:	
	Mobile:	
	Email:	

DIRECTORS, SHAREHOLDERS AND TRUST BENEFICIARIES

Name of director, shareholder or trust beneficiary	Address	Phone	DOB

REQUESTED CREDIT LIMIT AND TRADE REFEREES

Requested credit limit	\$		
Trade referees (x3)	Name:	Phone:	Email:
	Name:	Phone:	Email:
	Name:	Phone:	Email:

CREDIT CONDITIONS

- The Customer warrants that all the information provided by it in this application is accurate, correct and complete as at the date these Credit Conditions are accepted by the Customer. If at any future time there is any change to the information regarding the Customer provided by it in this form, the Customer agrees to notify K2 Systems of the change immediately.
- K2 Systems may accept or reject the application for credit made in this form in its absolute discretion. The Customer agrees that it is not entitled to any credit unless and until it receives notice in writing from K2 Systems of the approval of such credit and the maximum amount of credit approved (**Credit Limit**). Until the Customer receives such notice, any goods or services that are to be supplied to the Customer by K2 Systems will only be provided on a cash in advance basis.
- The Customer agrees that the Credit Limit is a maximum limit, and the Customer is required to ensure at all times that the aggregate amount of all outstanding invoices issued by K2 Systems to the Customer is less than the Credit Limit. If the aggregate amount of all outstanding invoices reaches (or, with the further supply of goods or services, would reach) the Credit Limit, then any goods or services that are to be supplied to the Customer by K2 Systems will only be provided on a cash in advance / cash on delivery basis.
- The Customer may apply to increase or reduce the Credit Limit at any time in writing. K2 Systems may agree or decline to increase the Credit Limit in its absolute discretion and, if it agrees, such agreement may be subject to such conditions as K2 Systems requires (for example, the provision of a bank guarantee or, if not previously provided, the provision of a guarantee

- and indemnity by officer(s) or shareholder(s) of the Customer or by beneficiaries of the trust of which the Customer is trustee).
5. If the Customer's application for credit is approved, then:
 - (a) all invoices of K2 Systems to the Customer must be paid in full within 30 days after the date of invoice. The Customers must not withhold payment of any account by reason of any account query, dispute or set off. Credit, and the delivery of goods and/or services by K2 Systems to the Customer, may be suspended if payment is not made when due.
 - (b) if the Customer defaults in making any payment when due, then:
 - (i) all money payable to K2 Systems by the Customer becomes immediately due and payable, and
 - (ii) K2 Systems may claim a general or particular lien over any goods owned by the Customer which are in the possession of, or which come into the possession of, K2 Systems (**Customer Goods**), for all sums payable by the Customer to K2 Systems, and K2 Systems shall have the right to sell any such Customer Goods by public auction or private treaty without notice to the Customer.
 - (c) K2 Systems may charge interest, calculated monthly, on amounts due to it from the Customer which remain unpaid, from the due date for payment until the date payment is received. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first business day of that month plus 2%.
 - (d) the Customer is liable for all costs, charges and expenses incurred by K2 Systems in recovering any outstanding money payable by the Customer to K2 Systems including debt collection agency fees, administration fees and legal costs (on a full indemnity basis). Such amounts must be paid by the Customer on demand, without set-off, deduction or withholding.
 - (e) the credit granted to the Customer may be reduced, suspended until further notice or terminated at any time by K2 Systems by written notice to the Customer. If credit is terminated, at K2 Systems' discretion and upon notice by K2 Systems, all money payable by the Customer to K2 Systems becomes due and payable:
 - (i) immediately; or
 - (ii) at such later time as K2 Systems specifies.
 - (f) K2 Systems may at any time impose as a condition precedent to the granting of any further credit or the maintenance of the existing Credit Limit in respect of new supplies by K2 Systems, the requirement that the Customer gives or procures such security or additional security as is required by K2 Systems in its absolute discretion. K2 Systems is entitled to withhold the supply of goods and/or services until such security or additional security is provided.
 - (g) K2 Systems may suspend the provision of goods and/or services by K2 Systems to the Customer on credit at any time if K2 Systems reasonably believes that the Customer is unable or unwilling to pay an amount to K2 Systems when due.
 - (h) K2 Systems may amend or replace these Credit Conditions in its absolute discretion by providing prior written notice to the Customer, which notice may be endorsed on or accompany an invoice, statement, correspondence or other document provided to the Customer. The amended or replacement Credit Conditions apply with effect from the date stipulated in the notice (which must be no earlier than the date the notice is given to the Customer) and do not affect accrued rights and obligations.
 6. The Customer represents and warrants to K2 Systems that:
 - (a) the Customer is not aware of any information, notice or court proceedings that may result in the appointment of a trustee in bankruptcy, administrator, controller or managing controller, receiver or receiver manager or liquidator to it or any of its property,
 - (b) the Customer does not intend to enter into any scheme of arrangement with creditors either formally through a court or otherwise,
 - (c) none of its officers (if it is a company, other body corporate or body politic), partners (if it is a partnership) or it (if it is a sole trader) has been a director of a company which has been placed in liquidation or has been declared bankrupt or has entered into an arrangement under the *Bankruptcy Act 1966* (Cth) (as amended).
 7. The Customer agrees to notify K2 Systems in writing as soon as practicable and in any event within 3 days of the occurrence of:
 - (a) a change in the name, legal status, ownership or control of the Customer;
 - (b) a change in its officers (if it is a company, other body corporate or body politic) or partners (if it is a partnership) of the Customer;
 - (c) the appointment of a liquidator, administrator or receiver, or the liquidation, administration, arrangement, receivership or bankruptcy of the Customer; or
 - (d) any step being taken to sell an asset or assets of the Customer with a value of 20% or more of the gross assets of the Customer, or sell, transfer, encumber or otherwise dispose of 20% or more of the shares (if it is a company or other body corporate) of the Customer.

On the occurrence of such an event, K2 Systems may reduce, suspend until further notice, or terminate the provision of credit to the Customer and/or may require the Customer to make a new application for credit.
 8. K2 Systems may at any time set off amounts payable by K2 Systems to the Customer from the amounts payable by the Customer to K2 Systems.
 9. These Credit Conditions are governed by the laws of New South Wales. The Customer submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them.

All Applicants must sign below:

1. I/We agree that the Terms and Conditions of Sale as set out below will apply to, and form part of, all contracts entered into between the Customer and K2 Systems.
2. I/We acknowledges that K2 Systems may change the Terms and Conditions of Sale upon written notice to the Customer and the Customer is bound by such changed terms and conditions in respect of all subsequent transactions.
3. I/We consent to K2 Systems collecting and dealing with any personal and credit related information disclosed in this Credit Application in accordance with the Terms and Conditions of Sale and K2 Systems' Privacy and Credit Reporting Policy which may be accessed at <https://k2-systems.com/>

Signed on behalf of the Applicant by: ☐ SOLE TRADER ☐ PARTNERS ☐ DIRECTOR/S ☐ AUTHORISED REPRESENTATIVE

Name and Title:

Signature:

Name and Title:		Signature:	
Name and Title:		Signature:	
NATIONAL CREDIT CODE DECLARATION			
I/We declare that the credit to be provided to me/us by K2 Systems in connection with this Credit Application is to be applied wholly or predominantly for: <ul style="list-style-type: none">• business purposes; or• investment purposes, other than investment in residential property.			
<div><div>IMPORTANT</div><p>You should only sign this declaration if the credit is wholly or predominantly for:</p><ul style="list-style-type: none">• business purposes, or• investment purposes other than investment in residential property.<p>By signing this declaration you may lose your protection under the National Credit Code.</p></div>			
Signed for and on behalf of Applicant:			
Signature		Date	
Name		Position	

THIS GUARANTEE, INDEMNITY AND CHARGE is between K2 Systems Pty Limited, ABN 67 640 799 695, of PO Box 458, Landsborough, Qld 4550 (**K2 Systems**) and the guarantor(s) stated below (**Guarantor**): K2 Systems has agreed to supply Goods and/or Services on credit to the applicant named in the Credit Account Application to which this Guarantee, Indemnity and Charge is annexed (**Customer**) at the request of the Guarantor. The Guarantor hereby jointly and severally agree with K2 Systems as follows:

1. Any capitalised terms in this Guarantee, Indemnity and Charge have the same meaning as set out in K2 Systems' Terms and Conditions of Sale.
2. At the request of the Guarantor, K2 Systems may, at K2 Systems' sole discretion:
 - 2.1. supply Goods and/or Services to the Customer under the Terms and Conditions of Sale as amended from time to time;
 - 2.2. make available a credit facility to the Customer.
3. The Guarantor give this Guarantee, Indemnity and Charge at the request of the Customer and in consideration of K2 Systems:
 - 3.1. providing a credit facility to the Customer; and/or
 - 3.2. refraining from immediately asking for payments of any amounts owing by the Customer to K2 Systems.
4. The Guarantor unconditionally and irrevocably guarantee to K2 Systems the due and punctual payment by the Customer to K2 Systems of all monies at any time actually or contingently owing to K2 Systems by the Customer either alone or jointly or severally with others on any account (**Guaranteed Monies**), including without limitation, by way of: (a) monies payable for Equipment and/or Services supplied by K2 Systems to the Customer; (b) interest; (c) costs and charges; and (d) loss, indemnity or damages from any past, present or future dealing by K2 Systems with the Customer.
5. This Guarantee, Indemnity and Charge shall constitute a continuing guarantee and indemnity to K2 Systems for all Guaranteed Monies which are now or may from time to time be owing or remain unpaid.
6. The Guarantor's obligations under this Guarantee, Indemnity and Charge are primary obligations and are not ancillary or collateral to any other right or obligation. The Guarantor's obligations may be enforced against the Guarantor without K2 Systems being required to take any action against the Customer whether by making a demand or under any security it may hold for the Guaranteed Monies.
7. The liability of the Guarantor under this Guarantee, Indemnity and Charge is absolute and unconditional and it shall not be avoided, released or affected by anything at all which, but for this provision, might operate to relieve the Guarantor of any obligation in whole or in part, including without limitation:
 - 7.1. K2 Systems making any variation or alteration in the terms of any agreement made with, or to be made with, the Customer, or the Terms and Conditions of Sale, or entering into any purchase or arrangement, including an arrangement which increases the Guaranteed Monies, any extension of time, any waiver of release, which may be made or given between K2 Systems, the Customer, the Guarantor and anyone else;
 - 7.2. any agreement between K2 Systems and the Customer becoming wholly or partly unenforceable;
 - 7.3. K2 Systems' failure to give notice, or any other omission, mistake, delay or negligence on K2 Systems' part;
 - 7.4. K2 Systems' refusal to supply and/or hire Equipment and/or Services to the Customer;
 - 7.5. the bankruptcy, winding up, liquidation, insolvency, or appointment of an administrator to, the Guarantor, the Customer or any other person;
 - 7.6. any change in the constitution, ownership, directors or management of the Customer;
 - 7.7. K2 Systems compounding or compromising with or releasing the Customer or any Guarantor of this Guarantee, Indemnity and Charge or any other person or corporation whatsoever or the release, abandonment, variation, relinquishment, loss or renewal

- in whole or in part of any security, asset or right held by K2 Systems;
- 7.8. K2 Systems' failure to register K2 Systems' interests in respect of any property secured by the Customer or any Guarantor;
- 7.9. the fact that any other person fails to become bound or ceases to become bound as surety in respect of the Guaranteed Monies;
- 7.10. if the Customer is the trustee of a trust, it acting beyond its powers under the trust;
- 7.11. K2 Systems granting credit to the Customer above the credit limit set by K2 Systems for the Customer; or
- 7.12. anything else which might prejudice or discharge any Guarantor's liability under this Guarantee, Indemnity and Charge.
8. Any payment made to K2 Systems and later avoided by the application of any statutory provision or legal or equitable principle shall be deemed not to discharge the Guarantor's liability and, that in such event, the parties hereto are to be restored to the rights which each respectively would have had if the payment had not been made.
9. Notwithstanding the fact that this Guarantee, Indemnity and Charge may have been intended or expressed to be executed and given by more than one person it shall bind each person who executes, notwithstanding that any proposed or contemplated party does not execute this Guarantee, Indemnity and Charge.
10. Until K2 Systems has received all monies due from the Guarantor to K2 Systems under this Guarantee, Indemnity and Charge, the Guarantor agrees:
 - 10.1. in the event of any liquidation, provisional liquidation, receivership, voluntary administration, deed of company arrangement (**DOCA**), scheme of arrangement or other administration in insolvency of the Customer, that the Guarantor will not, without K2 Systems' prior written consent, lodge any proof of debt or similar claim for any debt or liability to the Guarantor on any account whatsoever, nor enforce any security held by the Guarantor in respect of the Customer and shall hold any such debt, liability or security and any rights or benefits in respect thereof on trust for K2 Systems;
 - 10.2. on K2 Systems' request, to lodge a proof of debt or similar claim in any such administration and enforce any such security and to execute all such documents and do all such things as K2 Systems may require to enable K2 Systems to have and receive the benefit of, or arising from, any such proof, claim or security;
 - 10.3. not to attempt, or purport, to be subrogated to K2 Systems;
 - 10.4. to waive all rights as surety which are inconsistent with this Guarantee, Indemnity and Charge; and
 - 10.5. that the Guarantor's liability under this Guarantee, Indemnity and Charge shall be that of principal debtor.
11. The Guarantor agrees that a certificate issued by any of K2 Systems' authorised officers stating any monies owed by the Customer or Guarantor to K2 Systems including monies due under this Guarantee, Indemnity and Charge, shall be conclusive evidence of such amounts owing by the Customer and each Guarantor.
12. All payments which a Guarantor is required to make under this Guarantee, Indemnity and Charge must be made without any set-off, counterclaim, condition or deduction and are payable on demand by K2 Systems.
13. As security for payment of the Guaranteed Monies, the Guarantor hereby charges in K2 Systems' favour, all of their respective present and future beneficial interests in real property with payment of the Guaranteed Monies. The Guarantor agree that, on demand by K2 Systems, the Guarantor will immediately execute such mortgage or other instrument of security (**Security Instruments**), as K2 Systems may require, and in the event that the Guarantor fail to do so within a reasonable time of being so requested, the Guarantor hereby irrevocably appoint any credit manager or solicitor engaged by K2 Systems to be each Guarantor's true and lawful attorney to execute and register such Security Instruments. No Guarantor will object to the lodgement by K2 Systems of a caveat noting the interest given by this Guarantee,

Indemnity and Charge, or any other security interest or other instrument of security, on the title of the charged property.

14. The Guarantor unconditionally and irrevocably guarantees K2 Systems the due and punctual performance by the Customer of K2 Systems' Terms and Conditions of Sale.

15. The Guarantor agrees to indemnify K2 Systems, on a full indemnity basis, against any and all losses, costs, charges, expenses, disbursements, collection and legal costs (the Guarantor acknowledges that collection costs may be calculated on a commission basis at a percentage rate of up to 20% of the amount due and expressly agrees to pay for those expenses, irrespective of the amount of work actually performed by the collection agent) which K2 Systems has incurred or incurs in the future:

15.1. as a result of the Customer's breach of any of the terms and conditions of the Credit Application and Contract or Terms and Conditions of Sale; or

15.2. otherwise arising out of the business relationship between the Customer and K2 Systems; or

15.3. in connection with the enforcement or discharge of this Guarantee, Indemnity and Charge or further security requested under clause 13; or

15.4. otherwise arising under, or in connection with, this Guarantee, Indemnity and Charge.

16. Until such time as the Guaranteed Monies have been irrevocably paid in full, if the Customer is wound up, K2 Systems may prove for all monies which the Guarantor may have paid under this Guarantee, Indemnity and Charge and need not apply, in discharge of the Guaranteed Monies, any monies which K2 Systems receives.

17. The Guarantor unconditionally and irrevocably indemnifies K2 Systems against any loss or liability which they may suffer because the whole or any part of the Guaranteed Monies is not recoverable from the Customer, and not recoverable from any Guarantor as surety, because of any default by the Customer in the performance and observance by the Customer of the Terms and Conditions of Sale, by reason of the Customer's insolvency or bankruptcy, or by reason of the Contract between the Customer and K2 Systems being void, voidable or unenforceable for any reason whatever, whether or not the circumstances were known to K2 Systems.

18. If the Customer goes into liquidation, voluntary administration, receivership, bankruptcy or appoints a trustee pursuant to the provisions of the Bankruptcy Act, then the Guarantor irrevocably appoint any credit managers or solicitors engaged by K2 Systems to be each Guarantor's true and lawful attorney to prove in any debt or claim in any bankrupt, insolvent or assigned estate or in the liquidation or administration of the Customer and to attend all meetings of creditors, and to vote at said meetings, and to receive all dividends in any such bankrupt, insolvent or assigned estate or any such winding up or administration and to appoint a proxy or proxies for all or any such matters.

19. The Guarantor agrees that it signs in both their personal capacity and as Trustee of every Trust of which the Guarantor is a Trustee and/or a beneficiary.

20. The Guarantor agrees to inform K2 Systems of any change in the Customer's structure or management including any sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship at least 7 days prior to any such change taking effect.

21. This Guarantee, Indemnity and Charge and the construction and interpretation of it shall be governed by the laws of the State of New South Wales and, where applicable, the Commonwealth of Australia, in force for the time being and from time to time, and the parties to this Guarantee, Indemnity and Charge irrevocably submit generally and unconditionally to the jurisdiction of the Courts of New South Wales in respect of all claims, proceedings and matters arising out of or in respect of this Guarantee, Indemnity and Charge.

22. By signing this Guarantee Indemnity and Charge, the Guarantor consents to and authorises K2 Systems: to obtain from a credit reporting agency a consumer credit report containing information for the purpose of assessing whether to accept the Guarantor as a guarantor for credit applied for by, or provided to, the Customer, until the credit covered by the Customer's application ceases;

22.2. unless otherwise prevented by law, to obtain any information about any of the Guarantor's consumer or commercial credit or business history or their commercial activities or commercial credit worthiness from their bank or any other credit provider for the purposes of assessing whether to accept the Guarantor as a Guarantor for credit applied for by, or provided to, the Customer and to disclose information to a credit reporting agency;

22.3. unless otherwise prevented by law, to collect from, store, use, disclose to or exchange with any of the parties named in this Clause 22 or other credit providers, third party provider, solicitors, mercantile agents, insolvency administrators, insurers and insurance brokers, persons involved in the collection of trade debt, information about their personal or commercial worthiness or business history in order to assess the Credit Application and Trading Contract (including whether to accept the Guarantor), monitor the credit worthiness or withdrawing credit facilities, notification of the Guarantor's default, issues trade bills, insure risk processing any payment instructions, direct debit facilities and/or credit facilities requested by the Customer and/or Guarantor, and enable the daily operation of the Customer credit account and collect overdue accounts; and

22.4. to the extent permitted by law, to disclose the contents of a credit report by a credit reporting agency to K2 Systems' solicitors or mercantile agents.

23. The Guarantor agrees that, in dealing with information disclosed to K2 Systems by the Guarantor pursuant to Clause 22, K2 Systems will deal with that information in accordance with the Privacy Act 1988 (Cth) and the K2 Systems' Privacy and Credit Reporting Policy.

24. The Guarantor has the right to access the personal information K2 Systems holds about the Guarantor. Copies of K2 Systems' Privacy and Credit Reporting Policy are available upon request or visit <https://k2-systems.com/>.

25. The Guarantor must not exercise any right of set-off, withholding, deduction and/or counterclaim which reduces or extinguishes the obligation of the Customer or the Guarantor to pay any Guaranteed Monies.

26. THE GUARANTOR HEREBY UNDERTAKES A PERSONAL LIABILITY TO PAY THE GUARANTEED MONIES. Assets owned by the Guarantor (such as the Guarantor's own cash, shares, house or car and any other belongings and property) may end up being taken to satisfy liability under this Guarantee, Indemnity and Charge.

DEED OF GUARANTEE AND INDEMNITY

Legal Advice

Each Guarantor acknowledges that:

(a) the Guarantor has either:

(i) sought advice if necessary as to the purport, effect and consequences of and obligations created by this Guarantee, Indemnity and Charge from a solicitor or barrister independent of K2 Systems; or

(ii) having had the opportunity to seek such advice, determined such advice was not necessary and that it understood the effect and consequences of and obligations created by this Guarantee, Indemnity and Charge, before executing this Guarantee, Indemnity and Charge; and

(b) it enters into this Guarantee, Indemnity and Charge freely after considering such advice or electing not to obtain such advice.

EXECUTED AS A DEED BY:

If signed by an individual

Signature of Guarantor 1

Full name of Guarantor (BLOCK LETTERS)

Drivers' License Number of Guarantor

Address of Guarantor

In the presence of:

Signature of Witness

Full name of Witness (BLOCK LETTERS)

Signature of Guarantor 2

Full name of Guarantor (BLOCK LETTERS)

Drivers' License Number of Guarantor

Address of Guarantor

In the presence of:

Signature of Witness

Full name of Witness (BLOCK LETTERS)

If signed by a company

Executed as a deed in accordance with section 127 of Corporations Action 2001 (Cth)

Signature of Director/Secretary

Full name of Director/Secretary (BLOCK LETTERS)

Signature of director

Full name of Director (BLOCK LETTERS)

Terms and Conditions of Saleof K2 Systems Pty Limited

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

ACL means *Australian Consumer Law* as contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*

Business Day: a day (other than a Saturday, Sunday or a public holiday) in Sydney, New South Wales.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.8.

Consequential Loss means any:

- (i) loss of profits;
- (ii) loss of revenue;
- (iii) loss of production;
- (iv) loss or denial of opportunity;
- (v) loss of or damage to goodwill;
- (vi) loss of business reputation, future reputation or publicity;
- (vii) loss of use;
- (viii) loss of interest;
- (ix) losses arising from claims by third parties;
- (x) loss of or damage to credit rating;
- (xi) loss of anticipated savings; and
- (xii) loss of contract,

whether direct, indirect or consequential

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person who purchases the Goods and/or Services from the Supplier.

Delivery Location: has the meaning set out in clause 4.1.

Force Majeure Event: has the meaning given to it in clause 16.1(a).

Goods: the goods (or any part of them) set out in the Order.

GST means the goods and services tax or similar value added tax levied or imposed in Australia under the GST Act and includes any replacement or subsequent similar tax.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Intellectual Property Rights: all intellectual property rights (including but not limited to, copyright, patents trade marks and domain names) in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Loss means any losses, liabilities, damages, costs, charges or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct or indirect (including Consequential Loss), fines and penalties

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, as the case may be.

PMSI means a purchase money securities interest and has the meaning given in section 14 of the PPSA.

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

PPSR means the Personal Property Securities Register established under section 147 of the PPSA.

Security Interest has the meaning given in section 12 of the PPSA.

Services: the services supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: K2 Systems Pty Limited ABN 67 640 799 695 whose address is at PO Box 458, Landsborough, Qld 4550.

Taxable Supply and **Tax Invoice** have the same meaning as in the GST Act.

Verification Statement has the meaning given in section 155 of the PPSA.

1.2 Construction. In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference

to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(e) a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the Order and/or Service Specification are complete and accurate.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (**Order Confirmation**) at which point the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.

2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

3.1 The Goods are described in the Order.

3.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

3.3 The Supplier reserves the right to make minor modifications to the specification of the Goods and the Services Specification. In particular, the Customer must accept any commercially customary deviations in quality, quantity, weight or other deviations unless explicitly agreed otherwise in writing.

4. DELIVERY OF GOODS

4.1 The Supplier shall deliver the Goods Ex Works (Incoterms 2020) or such other location as the parties may agree (**Delivery Address**) at any time after the Supplier notifies the Customer that the Goods are ready.

4.2 Delivery of the Goods shall be completed on delivery to or collection of the Goods by the carrier appointed by the Supplier to transport to the Delivery Address.

4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to receive the Goods, provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 If the Supplier fails to deliver the Goods, its liability shall, subject to any rights which the Customer may have under the ACL, be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate

delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

- 4.5 If the Customer fails to accept or take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

- 4.6 If 14 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods or a storage charge may be applied.

- 4.7 If agreed by the parties, the Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. DEFECTS

- 5.1 The Customer must inspect the Goods upon delivery and must within 24 hours of such time notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or Order. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident.

- 5.2 The Customer will, within a reasonable time following delivery, grant the Supplier access to the Goods in order to inspect for any alleged defects.

- 5.3 Subject to any rights which the Customer may have under the ACL, should the Customer fail to notify the Supplier within the specified period then the Goods shall be deemed to be in compliance with the Order and free from any defect.

- 5.4 Returns will only be accepted provided that:

- (a) the Supplier has agreed that the Goods are defective; and
- (b) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (c) the Goods returned are in as close a condition to that in which they were delivered as is possible.

- 5.5 Notwithstanding clauses 5.1 to 5.4 but subject always to any rights the Customer may have under the ACL, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result including:

- (a) the Customer's breach of a clause of this Contract;
- (b) the Customer's, or the Customer's agent's, negligent act or omission (including the misuse or abuse of the Goods, improper servicing or repairs of the Goods by the Customer);
- (c) the Customer's use of the Goods in violation of any laws;
- (d) the Customer's failure to use the Goods for its intended purpose or in accordance with the Supplier's instructions or the manufacturer's instructions;
- (e) of vandalism;
- (f) the Customer's failure to take reasonable precautions to protect the Goods and mitigate any loss (including, but not limited to, failing to store the Goods in a safe place);

- (g) circumstances where a claim had been made by or against a third party.

- 5.6 Notwithstanding anything contained in this clause, if the Supplier is required by the ACL to accept a return, then the Supplier will only accept a return on the conditions imposed by the ACL.

- 5.7 For K2 products the Warranty Terms apply as can be viewed at <https://k2-systems.com/>.

6. USE OF GOODS

- 6.1 Unless otherwise agreed in writing, the Goods are not intended for use in life-sustaining or life-supporting devices and systems, nuclear power plants, for military purpose, aerospace or other purposes where failure or misuse of the product can reasonably lead to life-threatening situations or cause catastrophic consequential damage.

- 6.2 If the Customer uses the Goods in the circumstances described in clause 6.1, this shall occur at the Customer's own risk and sole responsibility. The Customer hereby indemnifies and holds harmless both the Supplier and the manufacturer on demand from any Loss and liability resulting from the use of Goods and Services in the circumstances described in clause 5.1, including the cost of an appropriate legal defence.

7. WARRANTIES, EXCLUSION OF LIABILITY AND INDEMNITIES

- 7.1 To the extent permitted by law and subject to clause 7.2, all conditions or warranties (whether express or implied by statute or common law or arising from conduct or by previous course of dealing or trade custom or trade usage or otherwise) as to the quality of the Goods or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Supplier) are hereby expressly excluded.

- 7.2 Nothing in these Conditions excludes, restricts or modifies the application of the ACL and any rights which the Customer may have thereunder.

- 7.3 To the fullest extent permitted by law, the Supplier's liability for any breach of a consumer guarantee implied by the ACL (and which cannot be excluded) shall be limited to any one or more of the following (as determined by the Supplier in its absolute discretion the repair or replacement of the Goods or the supply of substitute Goods (or the cost of doing so);

- (a) in the case of Goods, the replacement repair or payment of the cost of replacement or repair of the Goods; and;

- (b) in the case of Services, supplying the Services again or payment of the cost of having the Services supplied again.

- 7.4 Subject to any rights which the Customer may have under the ACL, the Supplier accepts no liability for any Loss whether suffered by the Customer or by any third party and whether or not the Supplier was aware that such Loss was possible or such Loss was otherwise foreseeable, whether such Loss arises from any representation, recommendation or advice made or given in relation to the Goods or the use of the Goods.

- 7.5 Exclusion of liability for structural analysis: the Supplier employs and provides the software tool 'K2 Base' free of charge. This tool supplies proposals for a static calculation or structural analysis of a mounting system for solar technology. These structural analysis' are provided without obligations and the Supplier cannot be held liable for any Loss or compensation claims arising from false calculations.

- 7.6 The Customer is liable for and indemnifies the Supplier against all liability, claims, damage, loss, expenses or costs (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against the Supplier and any environmental loss, cost, damage or expense) in respect of personal

injury, damage to property, or a claim by a third party, in respect of the Customer's use of the Goods or the Customer's breach of the Contract. The Customer's liability will be reduced to the extent that the Supplier's breach of the Contract of negligence is causative of the liability, claims, damage, loss, or expenses.

- 7.7 Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Contract. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Contract.
- 7.8 This clause 7 shall survive termination of the Contract.
- 7.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 7.3(a).
8. TITLE AND RISK
- 8.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 8.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
 - (b) any other goods that the Supplier has supplied to the Customer.
- 8.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (c) if the Goods were supplied by the Supplier for the purposes of resale, the Customer must not sell the Goods except in the ordinary course of the Customer's business;
 - (d) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (e) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - (f) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1(b); and
 - (g) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 8.4 The Customer holds and agrees to hold the proceeds of any sale, lease or other dealing with the Goods on trust for the Supplier.
- 8.5 The Supplier has the right to keep or resell any Goods repossessed under clause 8.6 and any other rights it may have under the PPSA.
- 8.6 In addition to any other rights the Supplier may have under Chapter 4 of the PPSA, if before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1(b), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored (without committing a trespass) in order to recover them.
9. SUPPLY OF SERVICES
- 9.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 9.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 9.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the

Customer in any such event.

- 9.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
10. PPSA
- 10.1 The Customer acknowledges and agrees that it grants the Supplier a Security Interest in the Goods and their proceeds by virtue of the Supplier's retention of title pursuant to clause 8.
- 10.2 The Customer undertakes to:
- (a) do all things necessary and provide the Supplier on request all information the Supplier requires to register a financing statement or financing change statement on the PPSR; and
 - (b) not to change its name in any form or other details on the PPSR without first notifying the Supplier.
- 10.3 The Customer waives its rights to receive a Verification Statement in respect of any financing statement or financing change statement in respect of the Security Interest created by these Conditions.
- 10.4 To the maximum extent permitted by law, the Customer waives any rights it may have pursuant to, and the parties contract out of, the following sections of the PPSA:
- (a) section 95 (notice of removal of accession);
 - (b) section 123(2) (notice of seizure);
 - (c) section 125 (obligation to dispose of or retain collateral);
 - (d) section 129(2) (notice of disposal by purchase);
 - (e) section 130 (notice of disposal);
 - (f) section 132(3)(d) (contents of statement of account after disposal);
 - (g) section 132(4) (statement of account if no disposal)
 - (h) section 135 (notice of retention);
 - (i) section 142 (redemption of collateral); and
 - (j) section 143 (reinstatement of security agreement).
- 10.5 The Customer appoints the Supplier as its attorney to sign in the Customer's name all documents which the Supplier considers necessary to enforce or protect its rights and powers under these Conditions and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Conditions and the Security Interest created by these Conditions.
- 10.6 If so requested, the Customer will reimburse the Supplier for any fees payable by the Company in relation to the registration of the Security Interest created by these Conditions, including registration fees and maintenance fees.
- 10.7 These Conditions create a Security Interest in all Goods which the Supplier has supplied to the Customer and all Goods which the Supplier supplies to the Customer in the future. Initial registration of a financing statement by the Supplier in respect of the Customer under the PPSA covers Security Interests in Goods supplied now or subsequently under these Conditions.
- 10.8 Unless otherwise defined in these Conditions, the terms and expressions used in this clause 10 have the meanings given to them, or by virtue of, the PPSA.
11. CUSTOMER'S OBLIGATIONS REGARDING SERVICES
- 11.1 The Customer shall:
- (a) ensure that the terms of the Order are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services;
 - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to its premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects.
- 11.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any Loss sustained or incurred by the Customer arising directly or indirectly from

the Supplier's failure or delay to perform any of its obligations as set out in this clause 11.2; and

- (c) the Customer shall reimburse the Supplier on written demand for any costs or Losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

12. CHARGES AND PAYMENT, MINIMUM ORDER QUANTITY

12.1 The price for Goods shall be the price set out in the Order Confirmation or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods. The minimum order quantity is AUD100.

12.2 In respect of Goods and Services, the Supplier shall invoice the Customer on the date of delivery (unless otherwise agreed in writing between the parties).

12.3 The Customer shall pay each invoice submitted by the Supplier (unless otherwise agreed in writing between the parties):

- (a) in the event that the Customer does hold a credit account with the Supplier, full payment of the invoice must be received within 30 days of the date of the invoice ;
- (b) in the event that the Customer does not hold a credit account with the Supplier, full payment of the invoice must be received before the date of dispatch of the Goods,
- (c) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

12.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of GST. If GST is imposed on a Taxable Supply made by the Supplier to the Customer under or in connection with these Conditions, the cost of the Taxable Supply shall be equal to the GST-exclusive consideration that the Customer must pay to the Supplier for the Taxable Supply under the Contract increased by an amount (the GST Amount) equal to the amount of GST payable on that Taxable Supply and the GST Amount is, subject to the Supplier issuing a Tax Invoice to the Customer, payable at the same time and in the same manner as the consideration to which it relates..

12.5 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount until the date payment is received. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first business day of that month plus 2%compounding quarterly.

12.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

13.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

14. TERMINATION

14.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract (including failure to make payment by the due date) and (if such breach is remediable) fails to

remedy that breach within 7 Business Days after receipt of notice in writing of the breach;

- (b) the other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business;
 - (c) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
 - (d) the Supplier gives the Customer one month's written notice.
- 14.2 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:
- (a) the Customer fails to make pay any amount due under any Contract on the due date for payment; or
 - (b) the Customer becomes subject to any of the events listed in clause 14.1(b), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

15. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest under these Conditions and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16. GENERAL

16.1 Force majeure:

- (a) For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, pandemic, fire, flood, storm or default of suppliers or subcontractors.
- (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. However, the Customer shall not be entitled to rely on a Force Majeure Event in respect of its payment obligations under the Contract.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 3 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

16.2 Assignment and subcontracting:

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontractor delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be sent by registered post to its registered office (if a company) or (in any other case) its principal place of business, or sent by e-mail to the other party's e-mail address.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the third Business Day

after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax or e-mail, on the next Business Day after transmission.

- (c) This clause 14.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, „writing“ shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

16.4 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

16.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

16.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

16.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by both parties.

16.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, New South Wales law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.

17. PRIVACY

17.1 The Supplier is committed to protecting the Customer's privacy. The Supplier's policy is to comply with appropriate Australian Privacy Principles for the handling of personal information as set out in the *Privacy Act 1988* (Cth) (as amended from time to time).

17.2 The Supplier may need to collect personal information about the Customer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy and Credit Reporting Policy.

17.3 By ordering Goods from the Supplier, the Customer consents to and authorises the Supplier to collect, use, store, disclose to or exchange personal information in accordance with the Supplier's Privacy and Credit Reporting Policy.

17.4 The Supplier's Privacy and Credit Reporting Policy sets out:

- (a) the information about the Customer that the Supplier collects and holds;
- (b) why the Supplier collects and holds it and for what purposes it is used;

- (c) how the Customer may access the personal information and seek any correction of the information;

- (d) how the Customer may complain about a failure of the Supplier to comply with the *Privacy Act 1988* (Cth) or Credit Reporting Privacy Code;

- (e) how the Supplier will deal with the complaint; and

- (f) information about credit reporting, including the credit reporting bodies the Supplier may disclose the Customer's credit information to.

17.5 As set out in the Privacy and Credit Reporting Policy, the Supplier is likely to provide the personal information contained within the Credit Application to the credit reporting body CreditorWatch. The information and matters that are notified to a credit reporting body are information that identifies the Customer (for example legal name, address, date of birth, driver's licence number and contact details), trade reference details and information, any future payment defaults in relation to debts with the Supplier, and serious credit infringements. The policies set out the Customer's rights to access the information and how to contact the credit reporting bodies not to use or disclose the information in certain circumstances.

17.6 The Customer has the right to access the personal information the Supplier holds about the Customer.

17.7 Copies of the Supplier's Privacy and Credit Reporting Policy are available upon request or visit <https://k2-systems.com/>.

18. TRUSTEE CAPACITY

18.1 If the Customer is the trustee of a trust (whether disclosed to K2 Systems or not), the Customer warrants to K2 Systems that:

- (a) the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
- (b) the Customer has the right to be indemnified out of trust assets;
- (c) the Customer has the power under the trust deed to sign this agreement; and
- (d) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising K2 Systems.

18.2 The Customer must give K2 Systems a copy of the trust deed upon request.