

GENERAL TERMS AND CONDITIONS PART A - PARTICULARS

- 1. **Supplier:** TDJ Australia Pty Ltd
- 2. **Customer:** [insert company details from Account Application Form]
- 3. **Territory:** [insert]
- 4. **Goods:** [insert description of products to be supplied to the Customer]
- 5. **Is the Customer permitted to sell Goods to Sub-Distributors or appoint Sub-Distributors to sell Goods:** [Yes / No]
- 6. **Is the Customer permitted to sell Goods online:** [Yes / No]
- 7. **Customer's Website:** [insert or N/A]
- 8. **Supplier's trade marks:** [insert or N/A]

RC note: You should add or delete from this table the relevant marks applicable to the Goods being supplied to the Customer.

Mark/Logo	No
CRYSTAL MOBILE SOUND	1181641
CRYSTAL MOBILE	1687820
	1718228
AERPRO	664111
AERPRO	895143
AERPRO CONNECTIVITY	1178742
AERPRO - FIRST CHOICE	1411734
ADD	ADD

- 10. **Special Conditions:**
 - RC note: eg, FIS, freight loading charges, manufacture of white label goods for a Customer.*
 - 1. _____
 - 2. _____
 - 3. _____
 - 4. _____

PART B - OPERATIVE PROVISIONS

1 Definitions

In these Terms and Conditions, the following terms are defined as follows:

- (a) **Account Application Form** means the document of that name completed by the Customer and provided to the Supplier.
- (b) **Agreement** means the document of that name attached to the Account Application Form.
- (c) **Consequential Loss** includes (but is not limited to) loss of revenue or profit, loss of use, loss of production, loss of business, loss of reputation, loss of goodwill and loss of anticipated savings and any other indirect, remote, abnormal or unforeseeable loss, whether or not in the reasonable contemplation of the parties at the time of agreeing to these Terms and Conditions or the supply of the Goods.
- (d) **Consumer** means a retail customer of the Customer or Sub-Distributor who is located in the Territory to whom the Customer or Sub-Distributor sells the Goods.
- (e) **Customer** means the person or entity listed in the Account Application Form under the heading 'Customer Details'.
- (f) **Goods** means the goods described in Item 4 of Part A of these Terms and Conditions and all other goods supplied by the Supplier to the Customer from time to time pursuant to these Terms and Conditions.
- (g) **Intellectual Property Rights** means statutory and other proprietary rights in respect of trade marks, designs, patents, circuit layouts, copyright, confidential information, know how and all other rights with respect to intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.
- (h) **Personal Guarantee & Indemnity** means the document of that name attached to these Terms and Conditions.
- (i) **Special Conditions** means any special conditions set out in Item 10 of Part A to these Terms and Conditions.
- (j) **Sub-Distributor** means a party to whom the Customer is authorised to sell the Goods
- (k) **Supplier's Trade Marks** means the marks specified in Item 8 of Part A.
- (l) **Terms and Conditions** means these General Terms and Conditions, incorporating Part A (Particulars) and Part B (Operative Provisions).
- (m) **Territory** means the geographical area specified in Item of Part A of these Terms and Conditions.
- (n) **Trade Marks** means all names, registered and unregistered trade marks, logos, designs, trade dress and other brand designations used by the Supplier in connection with the Goods, including the Supplier's Trade Marks.

2 Acceptance of Customer's Order

- (a) These Terms and Conditions as well as the Customer Credit Application, the Agreement and any Personal Guarantee & Indemnity executed by or on behalf of the Customer apply to every supply of Goods by the Supplier to the Customer. Any terms and conditions contained in the Customer's order for Goods (**Order**) and or any other terms whether oral or in writing which may deviate from or are inconsistent with these Terms and Conditions are expressly excluded, obviated and rejected by the Supplier. This exclusion and rejection includes any statement by the Customer that the Customer's terms and conditions shall prevail notwithstanding and stipulation by the Customer regarding the manner of declaring such rejection.
- (b) The Customer shall make an Order in writing by facsimile transmission, email or post or by telephone order placed with the Supplier. Orders must state unit quantities, unit descriptions, requested delivery dates and shipping instructions.
- (c) The Supplier will notify the Customer within seven (7) days of receipt of an Order if it is not able to fulfil the whole or any part of an Order for any reason, including if any Goods comprising the Order are unavailable and will be delivered to the Customer at a later time in accordance with the availability of the Goods ordered.
- (d) The Supplier will have no liability to the Customer in respect of any unavailability of any Goods ordered at any time and from time to time by the Customer.
- (e) An Order will be deemed accepted by the Supplier if notice pursuant to clause 2.1(c) is not given within seven (7) days of receipt of an Order

3 Terms of supply of Goods

- (a) The Customer unconditionally and irrevocably acknowledges and agrees that the Goods are supplied by the Supplier to the Customer strictly on the terms set out in these Terms and Conditions, including this clause 3.
- (b) The Customer acknowledges and agrees that, unless the parties agree otherwise in writing:
 - (i) the supply of Goods by the Supplier to the Customer is on a non-exclusive basis;
 - (ii) the Supplier may sell Goods to any other party in the Territory at any time and from time to time; and
 - (iii) the Supplier may itself advertise, sell and promote the Goods inside or outside the Territory at any time and from time to time.

Territory

- (c) The Customer is authorised to advertise, promote and sell the Goods to Consumers in the Territory.

- (d) The Customer unconditionally and irrevocably acknowledges and agrees that the Customer must not solicit orders for the sale of Goods outside the Territory without the prior written consent of the Supplier, which consent may be given, given on condition or withheld at the sole discretion of the Supplier.

Sales to Sub-Distributors

- (e) If 'Yes' is specified in Item 5 of Part A of these Terms and Conditions, the Customer is permitted to advertise, promote and sell the Goods to Sub-Distributors in the Territory for on-sale of the Goods by the Sub-Distributor strictly on the following terms and conditions:
- (i) the Customer can only supply Goods to Sub-Distributors who are located in the Territory;
 - (ii) Sub-Distributors are only authorised to sell Goods to Consumers of the Sub-Distributor;
 - (iii) Sub-Distributors are not permitted to sell Goods to any third party or sub-sub-distributor (other than Consumers);
 - (iv) Sub-Distributors are not permitted to sell the Goods online, whether from their own website or from any other third party website without the Supplier's prior written consent (which may be given, given on condition or withheld at the absolute discretion of the Supplier); and
 - (v) Sub-Distributors must not permit parties to whom they sell Goods (including Consumers) to on-sell the Goods in any forum, including online and Sub-Distributors must agree to use their best endeavours to prevent such sales;
- (f) If 'No' is specified in Item 5 of Part A of these Terms and Conditions, the Customer unconditionally and irrevocably acknowledges and agrees that the Customer is not authorised to sell the Goods to any sub-distributor or other third party (whether inside or outside the Territory) other than a Consumer.

Online selling

- (g) If 'Yes' is specified in Item 6 of Part A of these Terms and Conditions, the Customer is authorised to sell the Goods online to Consumers (located inside and outside the Territory) solely from the Customer's Website and from other third party websites.
- (h) If 'No' is specified in Item 6 of Part A of these Terms and Conditions, the Customer unconditionally and irrevocably acknowledges and agrees that the Customer is not authorised to sell the Goods online from the Customer's Website or any other third party's website.
- (i) The Customer acknowledges that the provisions of this clause 3 are lawful, reasonable, and necessary to protect the market of the Supplier for the supply of Goods inside and outside the Territory.
- (j) The Customer is not a partner or agent of or joint venturer with the Supplier and does not have the power or authority, directly or indirectly or through its servants or agents, to bind the Supplier to any agreement with a Sub-Distributor or Consumer or other third party or otherwise to contract, negotiate or enter into a binding relationship for or on behalf of the Supplier, except as provided by these Terms and Conditions.

4 Price

- (a) The Supplier's prices for the sale of Goods to the Customer will be as specified by the Supplier in quotes provided by Supplier to the Customer or in price lists produced or disclosed by the Supplier from time to time.
- (b) A quotation is open for acceptance within the period stated in the quotation or within 30 days if no period is stated.
- (c) All prices are 'ex-warehouse' and do not include insurance or delivery charges and the Supplier may invoice the Goods sold at the Supplier's price relevant to the Goods ordered at the date of delivery of each order.
- (d) Where the Supplier publishes or discloses a price list for the sale of Goods, this list is an invitation to treat only and the Supplier may revise its price list for Goods on thirty (30) days prior written notice to the Customer and in accordance with clause 4.1(e). Any change of the price for the Goods will not affect orders by the Customer that were accepted by the Supplier before the expiration of the price change notice period set out in this clause 4.1(a).
- (e) If the Customer orders Goods pursuant to a price list and in respect of such Goods the Supplier is no longer able, for reasons outside its control, to supply such Goods at the price appearing in the price list, the Supplier shall notify the Customer that the price listed in the price list in respect of the Goods ordered by the Customer is no longer applicable and the supply of the Goods shall be subject to agreement at that time as to price between the Supplier and the Customer.
- (f) All prices appearing in price lists or quotes produced by the Supplier are exclusive of any tax levied on the supply of Goods by the *A New Tax System (Goods and Services Tax) Act 1999* (CItH) and any related or ancillary legislation or regulations (**GST**). The Customer shall pay to the Supplier such amount as is equal to the GST payable by the Supplier in respect of any supply of goods by the Supplier to the Customer (**GST Amount**) in addition to any consideration (excluding GST) that is payable for such supply. The Customer must pay the GST Amount to the Supplier in accordance with the terms and conditions applying to the payment of the consideration for the supply of goods by the Supplier to the Customer. If the Supplier is not entitled to an input tax credit for a taxable supply which is purchased by the Supplier in order to satisfy an order made by the Customer, then the Supplier may increase the price in respect of such order by the GST paid by the Supplier in respect of that taxable supply.

5 Property & Risk

- (a) All capitalised terms used this clause 5 that are not otherwise defined in clause 1 of these Terms and Conditions have the meaning given to those terms in the *Personal Properties and Securities Act 2009* (**PPSA**).

- (b)** The Customer acknowledges that these Terms and Conditions constitute a security agreement for the purposes of the PPSA and that a Security Interest exists in all Goods supplied to the Customer (and their proceeds).
- (c)** The risk in the Goods sold to the Customer pass to the Customer when all or part of the Goods are loaded for consignment at the Supplier's warehouse whether by carrier employed or engaged by the Supplier or the Customers. Notwithstanding anything contained herein, property in and legal title to all Goods sold and delivered by the Supplier to the Customer does not pass to the Customer until payment for all debts owing to the Supplier by the Customer pursuant to these Terms and Conditions has been received by the Supplier.
- (d)** Until the Customer has paid for all Goods supplied to it in full, the Customer must not do any of the following in relation to any of the Goods it holds except where they are sold as contemplated by clause 4.1(e):

 - (i)** create or allow any interest in (including a Security Interest), or dispose or part with possession of, the Goods;
 - (ii)** allow the Goods to be taken outside Australia; or
 - (iii)** allow the Goods to become an accession to or commingled with any other property.
- (e)** Until payment for all Goods supplied to a Customer has been received by the Supplier, the Customer will store the Goods separately and apart from its own goods and those of any other person or company. The Customer may re-sell any of the Goods on normal commercial terms before the Supplier is paid in full for all Goods supplied provided that:

 - (i)** the Customer re-sells as principal and has no right to commit the Supplier to any contractual relationship or liability to any third party;
 - (ii)** subject to 5.1(e)(i) as between the Supplier and Customer, the Customer re-sells as trustee, fiduciary agent and the bailee of the Supplier;
 - (iii)** the Customer holds the rights in respect of the re-sale proceeds on behalf of and as trustee for the Supplier and on request of the Supplier, will assign any claim against any such third party for any unpaid debt and for this purpose the Customer irrevocably appoints the directors of the Supplier for the time being as joint and several attorneys of the Customer to sign any documents to give effect to such assignment; and
 - (iv)** The Customer holds the proceeds of any re-sale or insurance claim on trust for the Supplier until the Supplier has been paid in full for those Goods which are subject to re-sale or insured loss, save that in the event any re-sale proceeds which the Supplier is able to recover in accordance with clause 5.1(e)(ii) are less than the amount owing by the Customer to the Supplier in respect of the Goods to which such re-sale proceeds pertain, the Customer or its successors shall be liable to account to the Supplier for the balance as a debt owing to the Supplier by the Customer to that maximum degree permitted by the law. The Customer must pay all monetary proceeds of the sale of the Goods, up to the amount owed, into a separate account until they are paid over to the Buyer, and must not mix them with any other amount or use them to pay a debt.
- (f)** If any of the events of default specified in 5.1(g)(i) to 5.1(g)(v) occurs the Supplier may, at its discretion, without further notice and without prejudice to any other of its rights, including rights arising under Chapter 4 of the PPSA:

 - (i)** enforce its rights under any Security Interest granted to the Supplier under these Terms and Conditions; and/or
 - (ii)** re-take possession of the Goods and re-sell them or any of them and may enter upon any of the Customer's premises by its servants or agents, for that purpose, without the liability on the part of the Supplier for any loss or damage suffered as a consequence of such entry or re-taking of possession and the Customer hereby agrees to provide the Supplier with an irrevocable licence to so enter any premises occupied by the Customer.
- (g)** An event of default will have occurred if:

 - (i)** the Customer is in breach of its payment obligations to the Supplier under these Terms and Conditions; or
 - (ii)** there is a breach of any term of any contract between the Supplier and the Customer, including these Terms and Conditions; or
 - (iii)** the Customer has provided any false or misleading information to the Supplier including information set out in any application for credit or to open an account with the Supplier; or
 - (iv)** the Customer commences to be wound up or is placed in liquidation, under official management or a receiver or a receiver and manager or an administrator is appointed in respect of the Customer, its undertaking or property or any part thereof, or an encumbrancer, by itself or an agent, takes or purports to take possession of the Customer's undertaking or property or any part thereof; or
 - (v)** the Customer parts with possession of the Goods or any of them otherwise than by way of sale in the ordinary course of its business.
- (h)** These provisions apply despite any arrangement under which the Supplier provides credit to the Customer and these provisions will prevail to the extent of any inconsistency between these provisions and any agreement or arrangement entered into by the Customer and the Supplier. In addition, the Supplier may recover the purchase price of the Goods sold to the Customer by legal proceedings and may file an application for the appointment of a liquidator to the Customer notwithstanding that property in the Goods has not passed to the Customer.
- (i)** If any Goods become an accession to or other property or become part of a product or mass, then:

 - (i)** the Supplier's Security Interest continues in the other property, product or mass; and
 - (ii)** references to the Goods in this clause 5 include the other property, product or mass.

- (j) To the extent the law permits, the Customer waives its right to receive any notice (including notice of a Verification Statement) that is required by the PPSA. However, this does not prevent the Supplier from giving a notice under the PPSA.
- (k) The Customer agrees not to exercise its rights to make any request of the Supplier under section 275 of the PPSA. However this does not limit the Customer's rights to request information other than under section 275 of the PPSA.
- (l) To the extent the law permits, the Supplier need not comply with, and the Customer may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of. The Customer agrees that where the Supplier has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.
- (m) If the Supplier exercises a right, power or remedy in connection with these Terms and Conditions or a Security Interest that it provides for, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Supplier states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.
- (n) The Customer consents to the Supplier perfecting any Security Interest that it considers these Terms and Conditions provide for by registration under the PPSA. The Customer undertakes to promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a Financing Statement or Financing Change Statement in relation to a Security Interest or register any other document required to be registered under the PPSA.
- (o) The Customer shall indemnify and keep indemnified the Supplier from and against all actions, claims, liabilities, obligations, losses, damages, costs and expenses of whatever nature suffered or incurred, sustained or threatened against the Supplier and its employees and agents in any way whatsoever in respect of the Supplier's exercise of any of the Supplier's rights, including, without limitation, those under Part 4 of the PPSA.
- (p) The Customer agrees to indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a Financing Statement or Financing Change Statement in the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby.
- (q) The Customer will be deemed to have accepted the terms of this clause 5 by placing an order for any Goods, taking or accepting delivery of any Goods, or using any Goods whether or not the Customer acknowledges or signs these Terms and Conditions, the Account Application Form and/or the Agreement.

6 Insurance

- (a) All sales are made Free On Board at the Supplier's premises and the Customer will, at its own cost, insure the Goods against such risks as a prudent owner of the Goods would insure for at their full insurable value which shall include but shall not be limited to all damage which may occur at or in transit to and or from the Customer's premises by way of fire, theft, flood and or wilful damage, and the Customer shall immediately present documentary evidence to the satisfaction of the Supplier of the currency and extent of such insurance. Any monies payable in respect of any such insurance shall be held separately on trust by the Customer for the benefit of the Supplier in accordance with clause 5.1(e).
- (b) The Customer shall immediately notify the Supplier of the existence of any claim pursuant to which the Supplier may have an interest in accordance with clause 6.1(a). The rights in respect of any such claim of the Supplier shall be subrogated to those of the Customer to the extent of any monies outstanding to the Supplier in respect of Goods the subject of the claim. Notwithstanding any provision to the contrary, the Supplier shall not be liable in any way to the Customer in respect of any acts or omissions of the Supplier pursuant to the power of attorney granted under this clause.

7 Payment

- (a) The Customer will pay for all Goods supplied to the Customer by the Supplier within thirty (30) days from the date of invoice, unless otherwise stated on an invoice. In the event that invoices are paid in full within seven (7) days of the date of the invoice, the Customer shall be entitled to a discount of 2.50% of the GST inclusive invoiced sum.
- (b) The Supplier shall accept payments made by the Customer on Visa, Mastercard, or American Express (**Facility**) where the Customer has nominated one of the above in writing to the Supplier and the Supplier has authorised the Customer in writing of its acceptance of payments being made via such Facility. The Supplier shall charge 2.5% of the total payment amount (including GST) (**Facility Levy**) where any payment is made using a Facility where payments are made on or after the date on which the monthly statement in respect of the supply of Goods by the Supplier to the Customer is given to the Customer. The Supplier shall not charge a Facility Levy where payment is made under a Facility at the date of invoice.
- (c) The Supplier may, in its sole and unfettered discretion, charge interest to the Customer on all amounts which are sixty (60) days overdue to the Supplier from the date of sale of the Goods until payment is actually received at that rate which is equal to 2% greater than the rate specified by the *Penalty Interest Rates Act* (1983) (Vic). Where payment is not made by the due date, the Customer shall, in addition to any other obligations imposed hereunder, pay to the Supplier on demand all costs of the Supplier (including but not limited to storage delivery collection obsolescence, debt recovery commission costs and legal costs on a full indemnity basis) incurred by the Supplier in recovering overdue amounts from the Customer.
- (d) All payments received by the Supplier shall be applied as follows:
 - (i) Firstly, towards any costs of the Supplier referred to above (or any part thereof);
 - (ii) Secondly, towards any interest payable as set out above (or any part thereof); and
 - (iii) Thirdly, towards any amounts payable by the Customer to the Supplier.

Time of payment for any Goods sold to the Customer is an essential term of any contract between the Supplier and the Customer.

8 Cancellation

- (a) The Customer unconditionally and irrevocably acknowledges and agrees that the Supplier is not required to supply Goods to the Customer for any minimum term or in any minimum quantity and that the Supplier may elect to cease supplying Goods to the Customer at any time and for any reason.
- (b) Cancellation of any order of Goods by the Customer requires approval in writing from the Supplier at its sole discretion otherwise the Goods will be delivered to the Customer and the Supplier will be entitled to payment from the Customer in accordance with these Terms and Conditions.
- (c) The Supplier is not obliged to supply Goods in relation to any contract other than in respect of accepted orders and may cancel an order at any time if:
 - (i) there is a breach of any term of any contract between the Supplier and the Customer; or
 - (ii) the Customer has provided any false or misleading information to the Supplier including information set out in any application for credit or to open an account with the Supplier; or
 - (iii) the Customer commences to be wound up or is placed under official management or a receiver or receiver and manager or voluntary administrator is appointed in respect of the Customer, its undertaking or property or any part thereof, or an encumbrancer, by itself or by an agent, takes or purports to take possession of the Customer's undertaking or property or and part thereof; or
 - (iv) the Supplier is unable to supply Goods as a result of the failure of any supplier or the Supplier to deliver goods or provide services which are required in order for the Supplier to supply the Goods to the Customer.

9 Acceptance, Liability and Claims

- (a) Acceptance of the Goods delivered shall be deemed for all purposes to have taken place at the expiration of seven (7) days from the date of each delivery. After this period, Goods will not be accepted for return unless at the absolute discretion of the Supplier confirmed in writing prior to such return and then only upon conditions acceptable to the Supplier which shall include but shall not be limited to the stipulation that the Customer provide proof of the purchase date to the satisfaction of the Supplier. The return of any Goods shall be at the Customer's entire cost and risk as to loss or damage and provided the Goods are and remain sealed in the manner in which they were delivered, or otherwise subject to the consent of the Supplier. In the event of the Supplier agreeing to accept the return of goods which are not Warranty related or faulty, a restocking fee of up to 25% of the value of the goods may be levied by the Supplier on the Customer at the Suppliers sole discretion.
- (b) Nothing in these Terms and Conditions is intended or will be construed as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of all or any of the provisions of Division 1 of Part 3-2 of the Australian Consumer Law (**Consumer Guarantees**).
- (c) Notwithstanding anything else in these Terms and Conditions, the Supplier's maximum aggregate liability to the Customer:
 - (i) for failure to comply with a Consumer Guarantee (where applicable) under the Australian Consumer Law in respect of the supply of the Goods; and
 - (ii) for loss or damage suffered by the Customer as a result of any negligence (including as expressly provided for or referred to in these Terms and Conditions) or any breach of these Terms and Condition,is limited, at the Supplier's sole discretion, to:
 - (i) the replacement of the Goods or the supply of equivalent goods; or
 - (iii) the repair of the Goods; or
 - (iv) the payment of the cost of replacing the Goods or acquiring equivalent goods; or
 - (v) the payment of the cost of having the Goods repaired.
- (d) Subject to clause 9.1(c), certain Goods supplied by the Supplier may be covered by a written express warranty supplied with the Goods when sold to the Customer. To the extent permitted by law, any express warranty is in substitution for all other terms, conditions, warranties and representations, express or implied by statute or otherwise.
- (e) The Customer expressly acknowledges and agrees that it has not relied upon and the Supplier is not liable for any advice given by the Supplier, its agents or employees in relation to the suitability for any purpose of goods or materials supplied by the Supplier.
- (f) Without limiting the generality of any other provision of these Terms and Conditions but subject to clause 9.1(c), to the maximum extent permitted by law, except where caused by the Supplier's negligence, the Supplier is not liable to the Customer or to any other person in respect of any loss or damage (including Consequential Loss) however caused, which may be suffered or incurred or which may arise whether directly or indirectly in respect of the supply of the Goods or any ancillary services or advice or the failure or omission on the part of the Supplier to comply with its obligations hereunder.
- (g) Except as expressly provided to the contrary in these Terms and Conditions, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise are excluded to the extent permitted by law, including but not limited to the United Nations Convention on Contracts for the International Sale of Goods.
- (h) The Supplier's maximum aggregate liability to the Customer for all claims is:

- (i) at all times reduced to the extent the Customer or a third party contributed to the relevant liability; and
- (ii) capped to the price paid by the Customer to the Supplier for Goods supplied in the 6 month period preceding the Customer's written notice of the claim to the Supplier.

10 Intellectual Property

- (a) The Customer will not copy or alter or modify or in any other way interfere with the Goods without the written consent of the Supplier.
- (b) Other than as specified in these Terms and Conditions, the Customer is granted no right, title or licence to, or interest in, any Intellectual Property Rights (whether or not registered) in the Trade Marks, the Goods and any packaging, labelling or promotional materials in respect of the Goods supplied by the Supplier or in any other Intellectual Property Rights owned by the Supplier (**Supplier IP Rights**).
- (c) The Customer acknowledges and agrees that any use of the Supplier IP Rights by the Customer will inure to the sole benefit of Supplier.
- (d) The Supplier grants to the Customer a revocable, non-exclusive, non-transferable licence to use the Supplier IP Rights in the Territory solely for the purpose of the Customer's sale of the Goods in accordance with these Terms and Conditions. The licence may be terminated on immediate written notice by the Supplier to the Customer.
- (e) The Customer unconditionally and irrevocably acknowledges and agrees that in using the Supplier IP Rights pursuant to the licence granted under clause 10.1(d), it will:
 - (i) act at all times to protect the value and the goodwill in the Goods and the Supplier IP Rights for the benefit of the Supplier;
 - (ii) comply with all directions of the Supplier in relation to the use of the Supplier IP Rights;
 - (iii) immediately cease to use the Supplier IP Rights upon receipt of written notice from the Supplier;
 - (iv) provide reasonable assistance, at the Supplier's request, with the protection of the Supplier IP Rights against infringement;
 - (v) whenever the Trade Marks are used, accompany such use with words indicating that it is the trade mark of the Supplier;
 - (vi) use the Supplier IP Rights only in relation to the Goods and for the purpose of these Terms and Conditions and not use any other trade marks in relation to the Goods other than Trade Marks;
 - (vii) ensure all copies of the Goods bear the Supplier's notice of ownership of the Intellectual Property Rights associated with the Goods; and
 - (viii) not use in the Customer's business any other trade mark, logo or name which is substantially similar to or so nearly resembles the Trade Marks as to be likely to cause deception or confusion.
- (f) If the Customer is authorised to sell Goods to Sub-Distributors under these Terms and Conditions, the Customer is authorised to sub-licence the Supplier IP Rights to such Sub-Distributors strictly on the terms and conditions specified in clauses 10.1(d) and 10.1(e).
- (g) The Supplier agrees to defend or, at its option, settle any claim or action against the Customer to the extent arising from a third party claim that the Goods infringe any Intellectual Property Rights of any party, provided the Supplier has control of such defence or settlement negotiations and provided the Customer gives the Supplier prompt written notice of any such claim and provides reasonable assistance in its defence.
- (h) The Supplier will not be liable under clause 10.1(g) if the infringement arises out of the Customer's activities after the Supplier has notified the Customer that the Supplier believes in good faith that the Customer's activities will result in such infringement.

11 Force Majeure

If any obligation of a party under these Terms and Conditions is prevented or delayed, in part or all (other than the payment of money), by reason of Act of God, or the consequence thereof including, but not limited to fire, flood typhoon, earthquakes or by reason of riots, wars, hostilities, government restrictions, trade embargoes, strikes, lockouts, labour disputes boycotting of goods, ship storage, manufacturer's bankruptcy, delays of damage in transportation or other causes beyond a party's control, the affected party may, at its option, perform the contract or the unfulfilled portion thereof within a reasonable time from the removal of the cause presenting or delaying performance or rescind unconditionally and without liability, this contract or the unfulfilled portion thereof.

12 Delivery

The Supplier may deliver the Goods by instalments or partial shipment and the Customer will accept each such delivery. Requirements of the Customer are not a condition of the essence of the contract. The Supplier is under no liability for either direct or Consequential Loss to the Customer arising from delay or postponement in delivery.

13 Clerical Errors

Clerical errors, typing errors or other errors in computations, catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note or specifications of the Supplier shall be subject to correction by the Supplier.

14 Modification

All modifications and amendments to these Terms and Conditions must be in writing signed by a duly authorized signatory of the Customer and the Supplier.

15 Jurisdiction

All contracts between the Supplier and the Customer shall be governed by the laws of the State of Victoria and the parties shall submit to the non-exclusive jurisdiction of the courts of the State of Victoria (and any courts which can hear appeals from such courts).

16 Execution

Any contract between the Supplier and the Customer may be executed on behalf of the Customer by any agent or employee of the Customer and the Customer warrants that any individual executing these Terms and Conditions or placing orders with the Supplier is duly authorised on behalf of the Customer. The Customer shall indemnify and keep indemnified the Supplier from and against all actions, claims, liabilities, obligations, losses, damages, costs and expenses of whatever nature suffered or incurred, sustained or threatened against the Supplier in any way whatsoever in respect of the Supplier's acceptance and or conduct in respect of the satisfaction of any order received from the Customer or from persons purporting to act on behalf of the Customer.

17 Severance

If any provision of these Terms and Conditions is void, voidable, illegal or unenforceable in accordance with its terms, but would not be void if it were read down and is capable of being read down, such provision will be read down accordingly. If such clause is read down and remains void, voidable, illegal or unenforceable, or is incapable of being read down and the provision would not be void, voidable, illegal or unenforceable if a word or words were omitted, that word or words shall be severed and in any other case the whole provision is severed, save that in any cast the remainder of these Terms and Conditions shall remain in full legal force and effect.

18 Waiver

The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right conferred upon that party by this Deed does not operate as a waiver of the power or right, nor does any single exercise of any power of any power or right preclude any other or further exercise of that power or right or the exercise of any other power or right under this Deed.

19 Special Conditions

The Special Conditions (if any) to these Terms and Conditions will apply to these Terms and Conditions. If there is any conflict between any Special Condition and the Customer Credit Application, the Agreement or any other provision of these Terms and Conditions, the Special Condition will prevail to the extent of the inconsistency.

Dated: day of 2017.

If the Customer is a company with 2 or more directors:

EXECUTED by [insert Company Name] in accordance with section 127(1) of the Corporations Act 2001 (Cth)

Signature: _____

Signature: _____

Name of Director/Secretary:

Name of Director/Secretary:

If the Customer is a company with a sole director:

EXECUTED by [insert Company Name] in accordance with section 127(1) of the Corporations Act 2001 (Cth)

Signature: _____

Name of sole director:

If the Customer is a company and an authorised representative of the Customer (who is not a director of the Customer) executes this Customer Credit Application:

SIGNED by [insert name]]on behalf of [insert customer name]:

Signature: _____

Witness signature: _____

Name:

Witness name: _____

Position/capacity: _____

Witness address: _____

Address: _____

The named individual above warrants that they are duly authorised to sign this Account Application Form for and on behalf of all the Customer.

TDJ Australia Pty Ltd

If the Customer is an individual sole trader:

SIGNED by [insert name]:

Signature: _____

Name: _____

in the presence of:

Witness signature: _____

Witness name: _____

Witness address: _____

If the Customer is a partnership:

SIGNED by [insert Partnership's Firm Name and ABN], a firm within the meaning of the Partnership Act 1958 (Vic), in the presence of:

Signature: _____

Name of Witness:

Signature: _____

Name of Partner:
