



KEMBLA

STANDARD TERMS & CONDITIONS OF SALE

TERMS AND CONDITIONS

Payment terms

1. The terms of payment are strictly in accordance with the particulars provided in the Supplier's approval letter (or such other period as nominated by the supplier herein) from the date of invoice. Metal Manufactures Limited ABN 13 003 762 641 trading as MM Kembra and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (**Supplier**) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
2. Should the Customer not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to charge an administration fee of:
 - (a) 10 percent of the amount of the invoice payable; and
 - (b) a further 10 percent per annum payable per year, or part thereof, until payment by the Customer.

Jurisdiction

3. The Customer acknowledges and agrees that this agreement will be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
4. The Customer acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Customer is formed at the address of the Supplier.
5. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

Security/charges

6. The Customer charges in favour of the Supplier all of its estate and interest in any real property that the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
7. The Customer charges in favour of the Supplier all of its estate and interest in any personal property that the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
8. The Customer appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder.
9. Where the Customer has previously entered into an agreement with the Supplier by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the *Personal Property Securities Act 2009 (PPSA)*) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Customer under this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Purpose of credit

10. The Customer acknowledges and agrees that any credit provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

Formation of contract

11. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Customer's offer will complete a contract.
12. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.
13. Order forms and other documents provided to the Supplier by the Customer as confirmation of orders previously placed must be clearly marked with the word 'Confirmation'. Confirmation documents not so marked will be treated as original orders.
14. The price list attached to or referred to in any offer will remain open for acceptance for the period stated in the Supplier's offer. If the validity period has expired, the Supplier's offer shall lapse and prices will be subject to review at the time the order is placed.
15. The Supplier's offer may be revised in whole or part, or withdrawn prior to expiry of the validity period or acceptance of the offer by the Customer.

Inspection, testing & certification of compliance

16. The Supplier may select items to be inspected prior to despatch. Orders for items which must comply with International or Australian Standards (eg, SAA, BS, ASTM) must specify details of the standard. If tests are to be performed at the Customer's request the order must specify details of the routine or special tests and whether test certificates are required.
17. All tests and inspections shall be carried out by the Supplier's personnel at the Supplier's works and are final and binding unless prior agreement in writing is given to the Supplier.

Delivery duration & quoted delivery or completion times

18. Delivery or completion time or times stated by the Supplier are estimates based on present production commitments, availability of materials, labour, transport and other contingencies.
19. Delivery or completion estimates should be checked upon placement of the order. Such times are to be treated merely as estimates not involving any contractual obligation, unless the Supplier has expressly confirmed its agreement in writing and any such contract shall be subject to the Supplier not being delayed by instructions, or lack of instructions, or by industrial disputes, or by any cause whatsoever beyond its reasonable control.

Cancellation or deferral of order

20. Should an order be placed it cannot be cancelled or delivery deferred unless prior agreement in writing is given by the Supplier and then only on terms which will indemnify the Supplier against loss.

Prototypes, samples, drawings, tools

21. The Supplier agrees to submit at the Customer's request prototypes, samples, preliminary work and/or work produced in an experimental way provided that these items are available.
22. Such items will be considered an order and will be charged to the Customer's account unless otherwise specified.
23. All drawings, specifications and schedules prepared by the Supplier shall remain the property of the Supplier. Copyright is reserved accordingly and no copies may be made or extracts taken without the prior written consent of the Supplier.
24. Should an order be placed, all tools, dies, jigs and other equipment used in the manufacture of items by the Supplier for the Customer shall remain the sole property of the Supplier and may, unless otherwise agreed to by the Supplier be used by the Supplier in manufacturing items for other Customers.

Prices

25. All items will be priced subject to the following provisions unless otherwise specified in writing by the Supplier:
26. The Supplier's price is based on:
 - (a) the price stated in the published price list in respect of orders received and accepted within the dates stated in the most current price list on and between the effective date of the price list and the last date for the placement of valid orders; and
 - (b) prices are subject to adjustment for variances in the cost of insurance, freight and, where the Supplier accepts any order less than the minimum quantity either in weight or size stipulated in the price list.

Other charges

27. All items are subject to the following provisions.
 - (a) Freight charges ex works to the port of destination are included in the price for the item purchased as specified in the current price list, unless otherwise specified or in the event of special or unusual deliveries that incur additional costs. The Supplier shall nominate the carrier or carriers ex works to the port of destination.
 - (b) Carriage at or beyond the port of destination and all costs and charges in relation thereto shall be the responsibility of the Customer.
 - (c) Insurance charges covering the items ex works to the port of destination are included in the price for the items purchased as specified in the current price list, unless otherwise specified in the price list. The insurer shall be as nominated by the Supplier.
 - (d) Insurance of the items at or beyond the port of destination and all costs and charges in relation thereto shall be the responsibility of the Customer.

Packing, method of delivery & point of delivery

28. Should an order be placed, the sale of all items will be subject to the following conditions:
 - (a) The method of delivery will be as nominated in the Supplier's offer unless otherwise specified.
 - (b) The Customer at his own expense shall provide all necessary facilities, labour and equipment to offload the items at the nominated point of delivery unless otherwise specified.

Errors in Supplier documents

29. Clerical errors and misprints in computation, typing or otherwise in the Supplier's documents including catalogues, price lists, delivery docket, invoice or statement or credit note shall be subject to correction by the Supplier by means of re-issue of the document or by adjusting dockets with reference to the original transaction.

Warranties

30. Subject to the following provisions, all items that are the subject of a sale are warranted against faulty materials and manufacture for the period specified in the schedule of warranties listed on the Supplier's website at www.kembra.com.au.

31. Consumer Warranty against defects pursuant to *Competition and Consumer Regulations 2010*

- (a) 'Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.'
- (b) The benefits to the Customer under this warranty are in addition to other rights and remedies of the Customer under consumer legislation in relation to the goods or services to which this warranty relates.
- (c) In relation to KempresTM Tools:
 - (i) at the time of purchase the Customer will be provided with a warranty registration card for completion;
 - (ii) the Customer must fill it out to ensure warranty validation and prompt service response;
 - (iii) the Customer must retain a copy of its warranty registration card and original receipt/invoice as proof of purchase; and
 - (iv) the Customer must send a copy of the warranty registration card to the Supplier within thirty (30) days of purchase, either by email to sales@kembra.com.au or facsimile 1800 817 846, as detailed on the warranty registration card.
- (d) What the Customer must do to be entitled to a warranty claim.
 - (i) In order to claim under warranty the Customer must notify the Supplier of any major or minor failure or if the goods fail to be of an acceptable quality, within thirty (30) days of noticing the fault.
 - (ii) The Customer should call the national Customer service response (8am – 5pm Monday to Friday excluding public holidays), on 1800 804 631 to give the Supplier notice of its claim and details (in relation to KempresTM Tools) of its warranty card registration and provide proof of purchase.
- (e) Honouring the Warranty
 - (i) The Supplier agrees to assess any claim under warranty within sixty (60) days of receiving notification of a claim.
 - (ii) The Supplier will notify the Customer of the assessment and provide them with information regarding replacement or repair of goods.
- (f) Claiming under the Warranty
 - (i) If the goods are small enough to be mailed to the Supplier then the Customer will bear the costs of mailing or delivering the goods. If the goods are found to be in need of repair or the Supplier opts to replace the goods then the Company will also reimburse the Customer for the reasonable costs of sending/delivering the goods to the Company. The Customer should retain all receipts for the purpose of being reimbursed for its expenses.
 - (ii) If the warranty claim relates to installed goods, the Company will offer a free initial inspection and service of the goods.

Disclaimers

32. Product data, design details and performance figures contained in the Supplier's published literature and advice given by the Supplier is provided only as a guide to available information and the Supplier does not accept any liability whatsoever (including arising from negligence) for its accuracy and for injuries, expense or loss or for the results obtained by the Customer if the Customer relies upon such information or advice it is entirely at the Customer's own risk.
33. All orders are accepted on the understanding that the Customer will be responsible for determining that the items sold or manufactured by the Supplier are suitable for a particular application.
34. If any defect or failure in the items supplied becomes apparent under proper use within the applicable warranty period (as specified in the warranties schedule on the Supplier's website) and the Supplier is notified of the details, the Supplier will either supply fresh goods in replacement or, at its option, arrange repair of the original item free of charge, provided the Supplier and the supplier, the supplier represents, are satisfied that the defect or failure is due solely to faulty workmanship or the use of faulty materials.
35. Owing to the obligations placed upon it, the Supplier reserves the right not to accept liability for deficiencies, damaged or faulty items, or errors in dispatch, unless notice in writing is given to the carrier and the Supplier within twenty-four (24) hours from receipt of the consignment. Neither can it accept any claim for loss of items advised but not delivered unless notice is given in writing to the Supplier and the carrier within seven days of the date of the advice note, or in the case of exported items, if within a reasonable time from the date of shipment.
36. Neither the Supplier nor the original equipment supplier, who the Supplier represents, shall be liable for, nor is any guarantee or other undertaking given or implied in respect of, any act or omission by the Supplier in respect of the following:
 - (a) if performance figures are not obtained unless the specification to which the Supplier is working lays down such figures or unless the Supplier has made specific guarantee in writing;
 - (b) for any injury loss or damage suffered by the Customer, which may in any degree be attributed to the use of items or installation supplied by it or to the adoption of data, design, materials or advice given by the Supplier as to the use of the items or installation notwithstanding any want or care on the part of the Supplier in compiling or giving any advice or information;
 - (c) for liquidated damages suffered by the Customer or others consequent to the supply of items later than the date of dispatch confirmed by the Supplier, unless expressly confirmed in writing by the Supplier;

- (d) for loss, damage or delay caused by government order, war, civil commotion, force majeure, accidents, fires, strikes, lockouts or delay in obtaining raw materials through shortage or advantage in price there of or any other cause beyond the control of the Supplier;
 - (e) for any loss or damage, direct or consequential, or for any accident, or the effects of any accident or other expenses sustained by the Customer or any other person, arising from any defect or failure in items supplied by it where consumer legislation does not apply; or
 - (f) whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer.
37. Where the Supplier's suppliers are prepared to offer the acceptance of any damages, this will be relayed to the Customer in the event of non payment of damages or dispute regarding damages, the Supplier shall advise details to the supplier and shall pass any proposals for settlement to the Customer.
 38. The Customer's rights to indemnify or compensation shall, to the extent permitted by consumer legislation be limited to the cost of replacement of the items, obtaining equivalent items, or having the items repaired, whichever is the lowest.
 39. Subject to clause 82 the provisions contained in clauses 32-39 herein are in lieu of and exclude all other warranties, conditions and liabilities, expressed or implied, whether under common law statute or otherwise, in relation to items supplied by the Supplier, and no variation of these provisions shall be binding on it unless expressly accepted in writing by an authorised representative of the Supplier.

Retention of title

40. Title in the goods does not pass to the Customer until the Customer has made payment in full for the goods and, further, until the Customer has made payment in full of all the other money owing by the Customer to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).
41. Whilst the Customer has not paid for the goods supplied in full at any time, the Customer agrees that property and title in the goods will not pass to the Customer and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
42. Until payment in full has been made to the Supplier, the Customer will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
43. The Customer will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Customer will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Customer on trust for the Supplier absolutely.
44. The Customer's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 43 hereof unless and until the funds held on trust are remitted to the Supplier.
45. The Customer agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the goods of the Supplier and to repossess the goods which may be in the Customer's possession, custody or control when payment is overdue.
46. The Customer will be responsible for the Supplier's costs and expenses in exercising its rights under clause 45. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against the Supplier, its employees, servants or agents.
47. The Customer agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Customer on those goods, and the Customer hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Customer.
48. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

Cancellation of terms of credit

49. The Supplier reserves the right to withdraw credit at any time, whether the Customer is in default under the terms of this agreement or not.
50. Upon cancellation with or without notice all liabilities incurred by the Customer become immediately due and payable to the Supplier.

Indemnity

51. The Customer agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

Provision of further information

52. The Customer undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.

53. If the Customer is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Corporations

54. If the Customer is a corporation, the Customer warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Customer's obligations to the Supplier.

Trustee capacity

55. If the Customer is the trustee of a trust (whether disclosed to the Supplier or not), the Customer warrants to the Supplier that:
- the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
 - the Customer has the right to be indemnified out of trust assets;
 - the Customer has the power under the trust deed to sign this agreement; and
 - the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
56. The Customer must give the Supplier a copy of the trust deed upon request.

Partnership

57. If the Customer enters into this agreement as partners, the Customer warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Customer's obligations to the Supplier.
58. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Insolvency

59. If the Customer becomes insolvent, the Customer remains liable under this agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Customer being insolvent.

Waiver

60. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Customer must be made by the Customer's authorised officer in writing.
61. Until ownership of the goods passes, the Customer waives its rights it would otherwise have under the PPSA:
- under section 95 to receive notice of intention to remove an accession;
 - under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
 - under section 121(4) to receive a notice of enforcement action against liquid assets;
 - under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
 - under section 130 to receive a notice to dispose of goods;
 - under section 132(2) to receive a statement of account following disposal of goods;
 - under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
 - under section 135 to receive notice of any proposal of the Supplier to retain goods;
 - under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
 - under section 142 to redeem the goods;
 - under section 143 to reinstate the security agreement; and
 - under section 157(1) and 157(3) to receive a notice of any verification statement.

Costs

62. The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Customer. The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).
63. The Customer will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Customer to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
64. Subject to clauses 65 and 67, payments by, or on behalf of, the Customer will be applied by the Supplier as follows.
- Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 46 and 63.
 - Secondly, in payment of any interest incurred in accordance with clause 70.
 - Thirdly, in payment of the outstanding invoice(s).

65. The Supplier may apply and allocate payments received by, or on behalf of, the Customer in a manner in the Supplier's absolute and unfettered discretion, including so as to attribute the payments to satisfy obligations which are or are not secured by a purchase money security interest or otherwise.
66. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, in its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at any time whatsoever.
67. Payments allocated (and/or reallocated) under clause 65 and/or 66 will be treated as though they were allocated or reallocated, respectively, in the manner determined by the Supplier on the date of receipt of payment.

Taxes and duty

68. The Customer must pay GST on any taxable supply made by the Supplier to the Customer under this agreement. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply.
69. If as a result of:
- any legislation becoming applicable to the subject matter of this agreement; or
 - any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
- the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay the Supplier these additional amounts on demand.

Interest rates

70. The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.

Set-off

71. All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
72. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Customer by the Supplier.

Miscellaneous

73. The Customer will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Customer under the PPSA.
74. The Customer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Customer or the Customer's authorised representative.
75. The Customer further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
76. The Customer irrevocably grants to the Supplier the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Customer shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
77. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions of the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.
78. No claim for any alleged shortage in quantity, length or weight will be considered unless the carrier's delivery document is endorsed with full particulars of the alleged damage or shortage and notice in writing is given to the Supplier and the carrier within twenty four (24) hours of receipt of the consignment. The Customer's complaints or grievances will be given respectful and sympathetic consideration as well as technical assessment by the Supplier, if applicable. In the event, however, of any dispute or difference arising between the Customer and the Supplier in connection with the sale which cannot be settled by direct negotiation the same shall be referred to the arbitration in Australia of a person mutually agreed upon or failing agreement of some person nominated by the New South Wales State Chamber of Commerce. The submission shall be deemed to be a submission to arbitration within the meaning of any arbitration act, or any statutory modification or re-enactment thereof.

Severance

79. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
80. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation

81. The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Customer.

82. No employee, servant or agent of the Supplier is authorised to alter, vary or waive these terms and conditions or any one or more of them by oral agreement. The Customer acknowledges and agrees that nothing contained in any terms and conditions of purchase or acquisition which might apart from the provision of this clause have been applicable to the purchase of items by the Customer shall take precedence over or amend or in any way affect these terms and conditions. The Customer confirms their acceptance of this provision by taking delivery of the items and agrees not to subsequently attempt to amend, add to, or override the provisions hereof, in particular, it is expressly agreed by the Customer that the contractual conditions (if any) of the Customer are excluded in their entirety. These terms and conditions are to be read as including any terms and conditions of sale specified by the Supplier's suppliers. Where such conditions differ from the above conditions, the Supplier's terms and conditions shall override, unless objection is notified to the Supplier's secretary in writing not more than seven days after the date of this sale.
83. Any proposed variation to these terms and conditions by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
84. Variations requested by the Customer will only be binding upon the Supplier if they are accepted in writing.

Consent to register

85. The Customer hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
86. The Customer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Entire agreement

87. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
88. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Customer and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.

Privacy Act

89. The Customer agrees to the terms of the Privacy Statement pursuant to the Privacy Act 1988 (as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012 contained in this document