

### TERMS AND CONDITIONS OF TRADE

To the fullest extent legally possible all contracts, dealings and/or arrangements made between White Opal Pty Ltd as Trustee for the H & J Rothfield Family Trust (ABN 35 607 076 778) and each of its subsidiaries, affiliates, associated companies and related entities ("Rothfield") and any Customer ("Customer") relating to any products, services or transactions are subject to the following Terms and Conditions of Trade ("these Terms") unless otherwise agreed in writing.

#### 1. PAYMENTS:

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- (a) Payments to be within 30 days of end of month of invoice date without deduction or set-off of any kind.
- (b) Rothfield may apply a payment received from the Customer to any amounts owed by the Customer (including interest, part payment of an invoice, administration, collection and other costs) in any order.
- (c) Rothfield is entitled to set-off or deduct any amount payable by Rothfield to the Customer.
- (d) Rothfield may require the Customer to pay a credit card surcharge (in addition to any payment) of up to 3% plus GST of the payment amount where the Customer pays by credit card.

#### 2. INTEREST:

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Interest is payable on overdue accounts at a rate of 15% per annum (calculated daily) plus a monthly administration fee of \$25 will apply.

#### 3. LIMITATION OF LIABILITY:

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- (a) The Customer must limit any claim upon Rothfield relating to goods, to the cost of replacement of goods or the supply of equivalent goods and relating to services, to the cost of having services supplied again.
- (b) Rothfield will not be liable for any claim arising after 7 days from delivery of goods or performance of services (or at all once goods have been unpacked, modified, on-sold or otherwise used or applied) after which there will be deemed to be unqualified acceptance.
- (c) Rothfield will not be liable in any way for any contingent, consequential, direct, indirect, special or punitive damage arising whether due to Rothfield's negligence or otherwise and the Customer acknowledges this limit of liability and agrees to limit any claim accordingly.
- (d) No other term, condition, agreement, warranty, representation or understanding whether express or implied in any way extending to or otherwise relating to or binding upon Rothfield is made or given
- (e) Rothfield will not be liable for any claim relating to or arising from any alleged fault or defect, whether caused or contributed to by Rothfield, the Customer or any 3rd party or otherwise.
- (f) If Rothfield submits to the Customer a proof of the goods / services Rothfield will not be responsible for any errors in the goods which appeared in the proof/services and which were not corrected by the Customer before the order was completed.
- (g) Without limiting the generality of the foregoing, Rothfield will not be liable to the Customer for loss, however caused, of any data stored on disks, tapes, CD-Roms etc. supplied by the Customer, unless Rothfield has agreed in writing to manage the Customer's digital assets.

#### 4. RETURNS:

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- (a) If Rothfield elects to take back product it must be in as new and saleable condition and upon terms agreed and a re-stocking fee will apply.
- (b) Custom made or custom processed goods or goods acquired by Rothfield specifically for the Customer will not be returnable.

#### 5. ORDERS AND QUOTES:

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- (a) If any dispute arises concerning any order (and including any measurement, quality, quantity, identity, or authority or any telephone, facsimile, e-mail or computer generated order) the internal records of Rothfield will be conclusive evidence of what was ordered.
- (b) Each order placed will be and be deemed to be a representation made by the Customer at the time that it is solvent and able to pay all of its debts as and when they fall due.
- (c) Failure to pay in accordance with these Terms will be and be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in clause 5(b) and that the representations were unconscionable, misleading and deceptive.
- (d) When any order is placed, the Customer must inform Rothfield of any material facts which would or might reasonably affect the commercial decision by Rothfield to accept the order and /

or grant credit in relation thereto. Any failure to do so will create and be deemed to create an inequality of bargaining position and will constitute and be deemed to constitute the taking of an unfair advantage of Rothfield and to be unconscionable, misleading and deceptive.

- (e) Rothfield may if, requested by the Customer, give the Customer a quote specifying:
  - (i) the work required to be done in order to fulfil the Customer's instructions; and
  - (ii) an estimate of Rothfield's charge for the performance of suchwork. ("Quote")
- (f) Where Rothfield has given the Customer a Quote:
  - (i) Rothfield need not commence work until the Quote has been accepted by the Customer;
  - (ii) the Customer may accept the Quote by instructing (orally or in writing) Rothfield to commence work; and
  - (iii) (without limiting any other provision of these Terms) acceptance by the Customer of the Quote will also be deemed to constitute acceptance by the Customer of these Terms.
- (g) Rothfield will not be bound by any quotation if an order is placed outside the period of the Quote's validity noted thereon and in the absence of such period being noted, 30 days from the date of the Quote.
- (h) Rothfield shall not be bound by any Quote if:
  - (i) it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Customer and those circumstances have materially changed; or
  - (ii) the Customer is in breach of these Terms.

#### 6. DELIVERY:

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- (a) Rothfield reserves the right to charge for any delivery.
- (b) The Customer will be deemed to have accepted delivery and liability for the goods immediately Rothfield notifies that they are ready for collection or when they are delivered to a carrier or to the Customer's business premises or site whether attended or not.
- (c) A document (including without limitation a consignment note) purporting to be signed by an officer(s) of Rothfield confirming delivery will be conclusive evidence of delivery as will any signed delivery docket.
- (d) Rothfield will not be liable for delay, failure or inability to deliver any goods or services.
- (e) Once the Customer has been notified that goods are ready for collection, the Customer agrees to pay all costs of holding or handling goods.
- (f) Frustrated Delivery: If time spent delivering exceeds 30 minutes or requires more than one attempt, the Customer agrees to pay all costs relating thereto plus a loading of 10% to cover administration costs.

#### 7. VARIATION:

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Variation or cancellation of any order, dealing or arrangement must be agreed in writing.

#### 8. EXCLUSIONS:

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- (a) No dealing with the Customer will be or be deemed to be a sale by sample or description.
- (b) If Rothfield publishes material about its goods, services or prices, any part which is incompatible with these Terms is expressly excluded.

#### 9. ON-SALE:

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The Customer agrees that upon on-sale of any goods to inform any third party involved of these Terms.

#### 10. SEVERABILITY:

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If a provision of these Terms would, but for this clause, be unenforceable, that provision must be read down to the extent necessary to avoid that result and if that provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of these Terms.

## 11. PRICE:

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- (a) All sales are made by Rothfield at its ruling price at the time of delivery unless indicated otherwise by Rothfield in writing (i.e. in a Quote).
- (b) All Government imposts and any GST ("**Imposts**") will be to the Customer's account.
- (c) Rothfield's price lists exclude Imposts unless expressly noted thereon.
- (d) In addition to the amount of an estimate or Quote, or where no estimate or Quote was given, in addition to the amount representing Rothfield's charge for the work done or goods supplied, Rothfield may charge to the Customer:
  - (i) fees for any preliminary work performed at the Customer's request;
  - (ii) fees for additional work required to be done as a result of the Customer changing their instructions;
  - (iii) fees for having to work from poor copy provided by the Customer;
  - (iv) fees for work which involves tables or foreign language and which was not notified to Rothfield before a Quote was prepared;
  - (v) fees for additional work required to be done as a result of author's corrections, including repagination or reformatting;
  - (vi) fees and other charges for work required to be done urgently including any overtime costs;
  - (vii) fees for handling or storing material or equipment supplied by the Customer for the purposes of an order;
  - (viii) other charges, fees or disbursements referred to in these Terms not specified in this clause.

## 12. DEFAULT:

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Default or breach by the Customer of these Terms or in any dealings with Rothfield will entitle Rothfield to retain all monies paid, call-up all monies due or owing (whether currently due and owing or not), cease further deliveries and recover from the Customer all loss of profits without prejudice to any other of its rights under these Terms or at law.

## 13. PRODUCTS AND SERVICES:

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- (a) Rothfield disclaims any responsibility or liability whatsoever relating to suitability for any particular purpose or process.
- (b) Rothfield may update, modify, make substitution or alter any of its goods or any component or raw material incorporated in or used in forming any part of any goods as part of its ongoing business. The Customer agrees to accept current goods in substitution for any goods ordered provided they are not materially different.
- (c) Rothfield disclaims any responsibility or liability relating to any goods:
  - (i) processed or made to designs, drawings, specifications or measurements etc. or with materials which are provided or approved (whether in part or fully) by or on behalf of the Customer; and/or
  - (ii) utilised, stored, handled or used incorrectly or inappropriately.

## 14. STYLE, OVERSET ETC.:

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- (a) If the Customer fails to give Rothfield specific instructions in relation to style, type or layout:
  - (i) Rothfield may use any style, type and layout which, in Rothfield's opinion, is appropriate; and
  - (ii) Rothfield may charge an additional amount for any additional work required to be done (including the production of additional proofs) as a result of the Customer subsequently altering the style, type or layout used by Rothfield.
- (b) The Customer must pay for matter produced on the Customer's instructions but not used in a publication for which it was intended.

## 15. CUSTOMER'S MATERIALS:

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- (a) If the Customer leaves property in Rothfield's possession without specific instructions as to what is to be done with it, Rothfield may, 6 months after gaining possession of the property, dispose of or sell the property and retain any proceeds of sale as compensation for holding and handling the property.
- (b) Rothfield has no obligation to insure any property of the Customer in Rothfield's possession unless Rothfield has agreed in writing with the Customer to do so. The Customer must pay the cost of any insurance arranged by Rothfield at the request of the Customer.
- (c) Rothfield will not be responsible for storing any data on disks, tapes, compact disks or other media when the Order has been completed. If Rothfield agrees to store such data, Rothfield may charge for doing so.
- (d) If Rothfield and the Customer agree that the Customer is responsible for supplying materials or equipment for the purposes of an order:
  - (i) the Customer must supply sufficient quantities of materials to allow for spoilage, such quantity to be specified by Rothfield;
  - (ii) Rothfield will not normally count or check the materials and if requested by the Customer to do so, may charge for counting or checking;

- (iii) Rothfield will not be responsible for any defects in the goods which are caused by defects in or the unsuitability of materials or equipment supplied by the Customer; and
- (iv) property in any materials supplied by the Customer and incorporated into the goods passes to Rothfield at the time of incorporation.

## 16. OTHER TERMS AND CONDITIONS AND NOTICE:

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- (a) Terms and/or conditions sought to be imposed by the Customer upon Rothfield will not apply unless agreed in writing by Rothfield.
- (b) The Customer will be deemed to have notice of any change to these Terms, immediately Rothfield adopts them.

## 17. RECOVERY COSTS:

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The Customer will pay (on a full indemnity basis) all costs and expenses of Rothfield, its legal advisers, mercantile agents and others acting on its behalf in respect of anything instituted or being considered as a result of any breach of these Terms or breach of any dealings with Rothfield.

## 18. ATTORNMENT:

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To give effect to its obligations arising under these Terms (and especially clause 23) the Customer hereby irrevocably appoints any solicitor for Rothfield from time to time, as its attorney.

## 19. CUSTOMER RESTRUCTURE:

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- (a) The Customer will notify Rothfield of any change in its structure or management including any sale or disposition of any part of the business of the Customer, any change in director, shareholder, management, partnership or trusteeship or sale of any material part of its business ("**Restructure**") within 7 days of any such change.
- (b) The Customer agrees it will:
  - (i) cause any new entity created by virtue of a Restructure ("**New Entity**") to be bound by these Terms; and
  - (ii) continue to be bound by these Terms despite a Restructure and will indemnify Rothfield for any loss or damage it suffers as a result of a breach of these Terms by the New Entity.

## 20. JURISDICTION:

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All contracts made with Rothfield will be deemed to be made in the State of Victoria, Australia and the Customer irrevocably agrees to submit to the jurisdiction of the appropriate Courts in or nearest Melbourne in that State.

## 21. CREDIT LINE:

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Rothfield can vary or withdraw any credit facility or limit it at any time at its discretion and without any liability to the Customer or any other party.

## 22. WAIVER:

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If Rothfield elects not to exercise any rights arising as a result of breach of these Terms it will not constitute a waiver of any rights relating to any subsequent or other breach.

## 23. SECURITY FOR PAYMENT:

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The Customer agrees subject to clause 42 that:

- (a) despite anything to the contrary contained herein or any other rights which Rothfield may have howsoever, where the Customer is the owner of land, realty or any other asset capable of being charged ("**Asset**"), the Customer agrees, upon Rothfield's written request, to mortgage and/or charge all of their joint and / or several interest in the Asset to Rothfield to secure all amounts and other monetary obligations payable by the Customer to Rothfield;
- (b) it grants a lien to Rothfield over any of its property in the possession or control of Rothfield until the Customer has met and paid all that is owed to Rothfield on any account whatsoever;
- (c) it will execute any documents and to do all things requested by Rothfield to register a mortgage (or such other security Rothfield requires) over any current or later acquired real property the Customer has an interest in;
- (d) it consents unconditionally to Rothfield lodging a caveat noting Rothfield's interest in any current or later acquired real property the Customer has an interest in; and
- (e) Rothfield may (without limitation) exercise its rights under clause 18 to effect compliance with this clause 23 where the Customer fails to comply with any provision of these Terms.

#### 24. FORCE MAJEURE:

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Rothfield will not be in default or breach of any dealing with the Customer as a result of Force Majeure (i.e.: anything beyond Rothfield's reasonable control).

#### 25. SAMPLING:

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The Customer must pay for all goods provided to or ordered by the Customer as "sampling" unless otherwise agreed in writing.

#### 26. FINANCED STOCK:

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Without in any way limiting clause 12, if the Customer is in default of any part of these Terms (including but not limited to clause 1(a), Rothfield may bill the Customer (and the Customer must pay) for Financed Stock. For the purposes of this clause, "**Financed Stock**" means finished goods and any components or raw materials of goods which have been reasonably acquired or made by Rothfield (but not yet paid for by the Customer) in order to provide goods and/or services to the Customer.

#### 27. STATIC STOCK:

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Rothfield may bill (and the Customer must pay in accordance with these Terms) for all finished goods and any components or raw materials of goods that have been reasonably acquired or made by Rothfield in order to provide goods and/or services to the Customer and which have been held by Rothfield in excess of 6 months.

#### 28. INTELLECTUAL PROPERTY:

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- (a) If Rothfield utilises any design, patent or intellectual property or follows any instruction provided by or on behalf of the Customer, the Customer indemnifies Rothfield against any claim, proceeding, damages or liability for any loss, cost or expense arising as a result whether for any alleged infringement of any intellectual property or otherwise.
- (b) The Customer must not advertise, use or represent any intellectual property of Rothfield or of any goods or services themselves in any way without the prior written consent of Rothfield.
- (c) If the Customer breaches or permits any breach of this clause, it acknowledges Rothfield may suffer claims by third parties as a result (e.g.: by models who's images are reproduced without authority and/or by parties who are entitled to exploit any intellectual property) and clause 36 will apply.
- (d) Unless Rothfield and Customer agree otherwise, drawings, sketches, paintings, photographs, designs, typesetting, dummies, models, negatives, positives, blocks, engravings, stencils, dies, plates or cylinders, electros, stereos, discs, tapes, compact discs, or other media or data and other material produced by Rothfield in the course of or in preparation for performing an order (whether or not in fact used for the purposes of performing an order) are the property of Rothfield.
- (e) Copyright in all artistic and literary works authored by Rothfield shall be the property of Rothfield.
- (f) The Customer:
  - (i) warrants that the Customer has copyright in or a licence to authorise Rothfield to reproduce, all artistic and literary works supplied by the Customer to Rothfield for the purposes of an order and the Customer hereby expressly authorises Rothfield to reproduce all and any of such works for the purposes aforesaid; and
  - (ii) hereby indemnifies and agrees to keep indemnified Rothfield against all liability, losses or expenses incurred by Rothfield in relation to or in any way directly or indirectly connected with any breach of copyright or of any rights in relation to copyright in such literary and artistic works supplied as aforesaid;
- (g) The Customer is hereby granted a non-exclusive license to use the copyright in any literary and/or artistic works authored by Rothfield for the purposes of an order however the exercise of such licence shall be conditional upon Rothfield having received all monies due to Rothfield under these Terms.
- (h) The Customer must keep confidential and not use any ideas communicated by Rothfield to the Customer without Rothfield's written consent.
- (i) All disks, tapes, CD-Roms or other media (other than media supplied by the Customer) used by Rothfield to store data for the purposes of completing an order are the property of Rothfield. The Customer cannot require Rothfield to supply to the Customer any data so stored. If Rothfield does supply any data so stored or created, Rothfield may charge for supplying such data to the Customer.

#### 29. DISCOUNTS:

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- (a) Any discount offered by Rothfield is at its complete discretion and will only be available provided the Customer is not in breach of any part of these Terms nor in default in any of its dealings with Rothfield.

- (b) Unless otherwise agreed in writing, early payment discounts (if any) will be noted on the face of the relevant invoice and are subject to these Terms.

#### 30. SPECIFICATIONS:

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- (a) Any illustration drawing or specification supplied by Rothfield ("**Specs**") (other than a proof) are drafts and approximates and are for illustration purposes and the Customer should not rely on the accuracy of such Specs in any way.
- (b) Any tangible or intellectual property rights in Specs remain the property of Rothfield and may be recalled at any time.
- (c) Specs are to be treated at all times as confidential and not made use of without the prior written consent of Rothfield.

#### 31. NO SET-OFF:

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No Set-off or counterclaim will be made or applied by the Customer until payment in full of all bona fide invoices raised by Rothfield (whether current or overdue) and this clause may be pleaded as a bar to any action taken prior to such payment in full.

#### 32. TRUSTS:

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The Customer agrees that these Terms binds it not only in its own capacity but also as the Trustee of every trust of which it is a trustee.

#### 33. NO MERGER:

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Termination of these Terms and/or dealings between the Customer and Rothfield ("**Cessation**") will not end those provisions of these Terms that are capable of surviving Cessation.

#### 34. PARTIAL DELIVERY/FORWARD ORDERS:

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If the Customer places forward orders or request partial or instalment delivery, the Customer agrees:

- (a) to pay for so much of any order as is from time to time delivered by Rothfield; and
- (b) that no delay or failure to fulfil any part of any order will entitle the Customer to cancel or vary any order or delay or reduce any payment.

#### 35. ACCEPTABLE VARIATION:

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The Customer will accept variation in quantities at plus or minus 5% and will pay pro-rata for the actual quantity delivered.

#### 36. INDEMNITY:

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The Customer indemnifies Rothfield against any claim or loss arising from or related in any way to any contract or dealing between Rothfield and the Customer or anything arising therefrom or arising as a result of or subsequent to any breach of these Terms.

#### 37. INSOLVENCY:

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If the Customer commits or is involved in any act of insolvency, it will be deemed in default under these Terms. An act of insolvency includes bankruptcy, liquidation, receivership, administration or the like and failure to pay in accordance with these Terms.

#### 38. ALL DIVISIONS:

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The Customer agrees that these Terms will apply to all dealings between the Customer and Rothfield and any part or member of the Rothfield's Group.

#### 39. PALLETS:

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The Customer will return all pallets provided with goods and indemnifies Rothfield for the full replacement cost thereof, if not returned to Rothfield promptly and in good order.

#### 40. EXCLUSION OF WARRANTY:

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Rothfield is not bound by any warranty (and the Customer agrees not to make any claim against Rothfield in relation to any warranty) in respect of goods or services unless all goods and services have paid for in full without set-off or deduction of any kind.

#### 41. PROPERTY:

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- (a) The legal and equitable title to goods will only be transferred from Rothfield to the Customer when the Customer has met and paid all that is owed to Rothfield on any account whatsoever ("**Full Payment**").

- (b) The Customer acknowledges that until the Customer has met and paid all that is owed to Rothfield on any account whatsoever, the Customer holds the goods as bailee for Rothfield and that a fiduciary relationship exists between the Customer and Rothfield.
- (c) Rothfield reserves the right to take possession and dispose of the goods as it sees fit at any time until Full Payment and the Customer grants permission to Rothfield to enter any property (whether owned by it or otherwise) where any of the goods are, in order to do so and with such force as is necessary.
- (d) Immediately upon delivery the Customer accepts liability for the goods.
- (e) A document signed by an officer of Rothfield identifying goods and certifying that monies are owing to Rothfield will be conclusive evidence of Rothfield's title thereto.
- (f) Upon sale or disposition of goods prior to Full Payment the Customer agrees to hold all proceeds upon trust for Rothfield in a separate bank account, agrees not to mix proceeds with any other monies and will immediately account to Rothfield therefore even if Rothfield may have granted any credit facility and/or time to pay. Failure by the Customer to comply with this subclause does not render invalid the trust to be established under this subclause.
- (g) Until Full Payment the Customer agrees:
  - (i) to keep all goods as fiduciary for Rothfield and to store them in a manner which:
    - A. shows Rothfield as owner; and
    - B. will keep them safe and free from deterioration, destruction, loss or harm.
  - (ii) only to sell or use goods in the usual course of business; and
  - (iii) sale on terms, at cost or less than cost will not be "in the usual course".
- (h) Clause 41 is not intended to create a charge and must be read down to the extent necessary to avoid being a charge.
  - (i) If the Customer uses or incorporates any of the goods in any production, process or manufacture or combines them with anything to create a finished or combined new thing for disposition then upon such disposition prior to Full Payment, the Customer agrees to hold such part of the proceeds thereof (and until payment is received by the Customer, that part of any applicable book debt) as equals the costs of the goods used and/or incorporated therein (at the prices invoiced by Rothfield to the Customer) upon trust for Rothfield until Full Payment.
- (j) The Customer agrees, at Rothfield's request, to do all acts matters and things including sign all documents (provided they are on terms similar to or having the same effect and are on terms no more onerous on the Customer than these Terms) to ensure Rothfield holds a valid and perfected security interest under the Personal Property Securities Act 2009 (Cth). Any failure by the Customer to promptly comply with any such request constitutes a default by the Customer pursuant to clause 12.

#### 42. PERSONAL PROPERTY SECURITIES ACT 2009 (AUSTRALIA):

- (a) Where the Personal Property Securities Act 2009 ("PPSA") is in force, the Customer acknowledges that these Terms create a security interest under the PPSA in favour of Rothfield in all goods supplied by Rothfield to the Customer (and all goods previously supplied by Rothfield to the Customer), and for avoidance of doubt, the proceeds of sale of those Good.
- (b) The Customer consents to Rothfield effecting a registration on the PPSA register (in any manner Rothfield considers appropriate) in relation to any security interest contemplated by these Terms and further agrees:
  - (i) to do all things necessary and required by Rothfield to make sure that the security interest is a perfected "purchase money security interest" under the PPSA; and
  - (ii) not to allow any third party to acquire a security interest in the goods.
- (c) To the extent that the goods are for the Customer's business use, the Customer agrees to the extent permitted under the PPSA, that the Customer has no right:
  - (i) to receive notice of removal of an accession under the PPSA;
  - (ii) under Chapter 4 of the PPSA; or
  - (iii) under the PPSA to receive a copy of any verification statement of financing change statement under the PPSA.
- (d) Without in any way limiting clause 42(c), the Customer agrees that to the extent permitted under the PPSA, the Customer hereby waives its rights under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142 and 143 of the PPSA.
- (e) Unless otherwise agreed to in writing by Rothfield, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- (f) The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (g) The Customer must not assign or grant a security interest in respect of any accounts owed to it in relation to the goods without Rothfield's prior written consent.
- (h) Without limiting any other provision of these Terms, if the Customer makes a payment to Rothfield at any time whether in connection with the supply of goods or otherwise, Rothfield may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.
  - (i) Everything the Customer is required to do under this clause 42 is at the Customer's expense. The Customer agrees to pay or reimburse Rothfield's costs and expenses in connection with anything Rothfield does under this clause 42.