

# TERMS AND CONDITIONS OF TRADE



Following are the Terms and Conditions of Trade (“**Trading Terms**”) for **ABC BRICK SALES PTY LTD** (ACN 108 793 460) including, but not limited to any related body corporate, any subsidiary or associated entity and as trustee of any trust from time to time (individually and together called “**ABC**”).

1. **Payment:** The Customer must pay for all purchases within 30 days from the end of the month in which the invoice is generated, or within any alternative credit period granted in writing by ABC. Amounts payable by the Customer under these Credit Terms must be paid in full without deduction, retention or set-off of any kind and for any reason
2. **Interest and Administration fee:** ABC is entitled to charge the Customer:
  - (a) interest on amounts not paid within the credit period specified by ABC at a rate equivalent to 3% p.a. above the annual business overdraft interest rate of its principal banker, as determined and calculated by ABC, in its discretion; and
  - (b) if any account remains unpaid at the end of the second month after the invoice is generated, an immediate amount the greater of \$20.00 or 10.0% of the amount overdue for administration fees, which sum shall become immediately due and payable. The Customer acknowledges that this fee is a genuine pre-estimate by ABC of the loss, costs and expenses which shall be incurred by reason of the Customer’s default in payment and the recovery thereof.
3. **GST:** Each amount payable by the Customer under these Trading Terms in respect of a Taxable Supply by ABC is a GST exclusive amount and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. “Taxable Supply” and “GST” have the meanings set out in the A New Tax System (Products and Products and services) Act 1999 (Cth).
4. **Withdrawal or Variation of Credit:** ABC may at any time, without the need to provide a reason, vary or withdraw any credit granted to the Customer. Where the Customer completes a further Application for a Commercial Trading Account, that Application will not be in derogation of but in addition to any previous general Trading Terms existing except as notified by ABC (or any of its related entities, subsidiaries and assigns and as Trustee of any Trust) in writing.
5. **Charge over Customer’s Property:** As security for payment to ABC of all moneys payable by the Customer and for the Customer’s obligations generally under these Trading Terms, the Customer charges in favour of ABC the whole of the Customer’s undertaking, property and assets (including without limitation all of the Customer’s interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired. The Customer irrevocably appoints each Officer as the Customer’s attorney to do all things necessary to create and register each such charge. Upon demand by ABC, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to ABC to further secure payment of the money payable by the Customer. If the Customer fails within a reasonable time of such demand to execute such mortgage or other instrument, then the Customer acknowledges that ABC may execute such mortgage or other instrument as the Customer’s attorney pursuant to the appointment of ABC as the Customer’s attorney set out in these Trading Terms.
6. **Suspension or Ceasing of Supply:**
  - (a) ABC may in ABC’s complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products and Services to the Customer or amend these Trading Terms.
  - (b) Without limiting clause 6(a), if an Event of Default occurs, ABC may, without prejudice to ABC’s other rights, call up moneys owed to ABC by the Customer, retain all moneys paid on account, or cease further deliveries and recover from the Customer all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any Products and Services for which payment remains outstanding.
7. **Liability of ABC:** ABC will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by ABC, its employees, contractors or agents.
8. **Certification:** A statement signed by an Officer certifying the amount of any moneys payable by the Customer, or identifying any products and services, as being “unpaid for” is, in the absence of manifest error, conclusive and binding on the Customer.
9. **Notification of Change of Details:** The Customer will provide written notice to ABC of any change in the Customer’s structure or management, including any change of director, shareholder, partnership, trusteeship or address within 7 days of the change.
10. **Continuing Guarantee:** All guarantees under or related to these Trading Terms will be continuing guarantees and will terminate only with ABC’s written agreement.
11. **Set-Off:** ABC may at any time set-off amounts owed by ABC to the Customer against amounts owed by the Customer to ABC.
12. **Property:**
  - (a) Where Products are to be supplied by way of sale, property in the Products shall not pass until the Customer has paid all money owing to ABC in full. Risk in the Products passes to the Customer at the time of delivery.
  - (b) The Customer holds the Products as fiduciary bailee and agent for ABC and must keep the Products physically separate from all other Products of the Customer, and clearly identified as

owned by ABC until payment of all moneys owed by the Customer to ABC. If an Event of Default occurs, then without prejudice to ABC's other rights, ABC may, without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of the Products.

- (c) If the Customer sells any of the Products supplied while money is owed to ABC, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- (d) If the Products are resold, or Products and/or services using the Products are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for ABC. Such part of the book debts and proceeds will be deemed to equal in dollar terms the amount owed by the Customer to ABC at the time of the receipt of such book debts. The Customer must not assign or grant a security interest in respect of such book debts without ABC's prior written consent.
- (e) If the Customer uses the Products in some manufacturing process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing process as relates to such Products in trust for ABC. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to ABC and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged.

### 13. Personal Property Securities Act (Cth) 2009 ("PPSA"):

The Customer grants to ABC (under clause 6.1) a "Financing statement", "financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled" and all related terms have the meaning given to them by the PPSA.

- (a) In consideration of ABC supplying the Products to the Customer at the request of the Customer, the Customer by signing these Trading Terms:
  - (i) grants to ABC a "Purchase Money Security Interest" ("PMSI") in all Products supplied by ABC to the Customer from time to time as security for payment of the purchase price of the Products;
  - (ii) grants to Parkside a "Security Interest" ("SI") in all of its present and after-acquired property and in all of its present and future rights in relation to any personal property (as defined in the PPSA) from time to time as security for payment of any amount owed by the Customer to Parkside and as security for the performance by the Customer of the obligations set out in these Credit Terms;
  - (iii) agrees that any Products or proceeds of sale of the Products coming into existence after the date of these Trading Terms will come into existence subject to the PMSI and SI granted herein and these Trading Terms without the

need for any further action or agreement by any party;

- (iv) acknowledges that the Customer has received valuable consideration from ABC and agrees that it is sufficient;
  - (v) agrees that the PMSI and SI has attached to all Products supplied now or in the future by ABC to the Customer and that the attachment of the PMSI has in no way been deferred or postponed.
- (b) ABC reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these Trading Terms.
  - (c) The costs of registering a financing statement or a financing change statement can be charged to the Customer by ABC at ABC's complete discretion, and may, where applicable, be charged to the customer's credit account with ABC.
  - (d) The Customer must promptly, on request by ABC, execute all documents and do anything else reasonably required by ABC to ensure that the PMSI and SI created under these Trading Terms constitutes a perfected security interest.
  - (e) The Customer must not agree to allow any person to register a financing statement over any of the Products in which ABC has any PMSI and/or SI without the prior written consent of ABC and will immediately notify ABC if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to any such Products.
  - (f) The Customer must not allow the Products to become accessions or commingled with other Products unless ABC has first perfected any PMSI or SI that ABC has in relation to the Products.
  - (g) If ABC perfects any PMSI and/or SI that ABC has in relation to the Products, the Customer must not do anything that results in ABC having less than the security or priority granted by the PPSA that ABC assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage.
  - (h) The Customer irrevocably grants to ABC 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 ABC has cause to exercise any of ABC's rights under Chapter 4 of the PPSA, and the Customer will indemnify ABC for any claims made by any third party as a result of such exercise.
  - (i) The Customer acknowledges and agrees that:
    - (i) Nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these Trading Terms;
    - (ii) The Security Agreement created by these Trading Terms may only be reinstated on the terms considered appropriate by ABC at its complete discretion.
  - (j) The Customer acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of any PMSI and SI

created under these Trading Terms, and the Customer waives its right to: -

- (i) not have Products damaged or be inconvenienced any more than necessarily incidental if ABC removes an accession under s.92 PPSA;
- (ii) to receive notice of any intention to remove an accession under s.95(1)(a);
- (iii) to apply to the Court for an order postponing the removal of the "accession" or to determine the amount payable to ABC for the retention of the accession under s.97 PPSA
- (iv) to receive notice of a decision to enforce the security interest in personal property in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA;
- (v) to receive notice of the enforcement of liquid assets under s.121(4) PPSA
- (vi) to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA;
- (vii) to receive a Statement of Account if no disposal under s.132(4) PPSA; and
- (viii) to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA; and
- (ix) to receive notice of a verification statement in relation to any registration event (including registration of a financing statement or a financing change statement) relating to the PMSI and SI created under these Trading Terms under s.157 PPSA.

**14. Effect of Other Terms:** These Trading Terms are supplemented by the Trading Terms on ABC's website at [www.parksidegroup.com.au](http://www.parksidegroup.com.au) from time to time, and are in no way affected or amended by any other express or implied terms. No terms of the Customer apply to any agreement between the Customer and ABC.

**15. Expenses:** The Customer must pay to ABC any costs, charges and expenses (including all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by ABC in connection with the entry into these Trading Terms, the exercise or attempted exercise of any power, right or remedy under these Trading Terms and/or the failure of the Customer to comply with these Trading Terms.

**16. Service of Notices and Documents:** All notices or documents required to be given to ABC for the purposes of the PPSA must be given in accordance with the PPSA. Any notices or documents required to be given by ABC to the Customer for the purposes of the PPSA or for any other purposes will be effectively 'given', 'served' and 'delivered' if sent by ABC to the Customer by pre-paid ordinary post to any one of the following addresses: -

- (a) the last address for the Customer known to ABC;
- (b) if the Customer is a Company, the registered office or principal place of business; or
- (c) if the Customer trades under a registered business name, any address contained on a current business extract for that business name.

**17. Transactions:** The Customer will be liable for all transactions and expenses involving the Customer's credit account including any fraudulent use of the

account by the Customer or any person authorised by the Customer to use the account or the Customer's employees, agents or contractors. The Customer will also be liable for any fraudulent use of the Customer's credit account which is directly or indirectly caused or contributed to by the Customer's negligence.

**18. Application of Moneys Received:** If ABC receives or recovers money in respect of a debt of the Customer, ABC may use the money to pay off whichever debt or part of a debt ABC chooses and is not compelled to apply the money as directed by the Customer or any other person.

**19. Indemnity:** The Customer will indemnify ABC in relation to any direct or indirect loss, liability or damage suffered by ABC or any other person as a result of the Customer's negligence or breach of these Trading Terms.

**20. Trusts:** These Trading Terms bind the Customer both personally and as trustee of any trusts of which the Customer is trustee.

**21. Joint and Several:** If the Customer consists of more than one person, the obligations of each person are joint and several.

**22. Severance:** Each clause, subclause and part of these Trading Terms is separate and independent. If any clause or subclause or part is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.

**23. Waiver:** Any waiver by ABC must be in writing signed by ABC. In the event that ABC elects not to exercise any of ABC's rights arising in connection with these Trading Terms, ABC's election will not constitute a waiver of any rights relating to any other breach of these Trading Terms.

**24. Amendments:** These Trading Terms may only be amended with ABC's express written agreement.

**25. Assignment:** The Customer may not assign any agreement under these Trading Terms without ABC's prior written consent.

**26. Application of Laws:** These Trading Terms are governed by the laws of the state as determined by ABC in its sole discretion. The Customer submits to and consents to the laws of the state (as determined by ABC in its sole discretion) having jurisdiction over these Trading Terms.

**27. Estimates:**

(a) All estimates, quotations and/or prices given by ABC in respect of Products and/or Services are valid for a period of thirty (30) days, unless specified otherwise.

(b) ABC will use reasonable endeavours to be as accurate as possible when providing guidelines in respect of proposed order quantities, however, ABC does not warrant or guarantee that quantities calculated are correct, and the Customer acknowledges that it does not rely on any advice, guidance or estimates given by ABC, and agrees to carry out its own investigations in respect of the quantity of any order(s). The Customer agrees that ABC will not be responsible for any difference between any estimate provided and the quantity of Products actually used.

- (c) The Customer agrees to obtain an independent schedule of quantities in respect of any estimate provided for comparison before placing an order for Products from ABC.

**28. Delivery:**

- (a) The Customer authorises ABC to deliver Products to the place nominated by the Customer (“**the Premises**”), and to leave the Products at the Premises, whether or not any person is present to accept delivery.
- (b) Delivery of the Products is to the kerb of the Roadway. In the event that the Customer requires delivery which crosses over the kerb, the Customer agrees and acknowledges that any damage whatsoever incurred in respect of the delivery will be the sole responsibility of the Customer and/or their agent.
- (c) ABC and/or its agent(s) will not be responsible for pulling down or erecting any temporary fencing, barriers or other obstacles encountered while effecting delivery of Products. The Customer agrees and acknowledges that this is the responsibility of the Customer and/or its nominated agent who accepts delivery for and on behalf of the Customer, and it is the Customer’s obligation to provide appropriate and safe access for the delivery of the Products.
- (d) The Customer will ensure that any mud or dirt that is on the road or workspace in which delivery is to be effected will be minimised, and accepts that in the event that ABC and/or its nominated agent deems the road to be inaccessible or in an unreasonable state for any reason, delivery will be effected at the discretion of ABC and/or its nominated agent.
- (e) In the course of delivery of the Products, the Customer agrees and acknowledges that ABC and/or its nominated agent will not be responsible to ensure that roadways (or other parts of the delivery site) are left in a clean condition after delivery.
- (f) The Customer must at all times ensure that adequate and suitable roadways and cross overs are available on site and must use all reasonable endeavours to assist ABC and/or its nominated agent in the delivery of all Products.
- (g) In the event that there is insufficient room on site to safely deliver all or part of the Products, ABC may, at its discretion, either stockpile any excess Product on site, or take the excess Product back to the supplier to be redelivered at a later date. The Customer agrees and acknowledges that a redelivery fee will be charged (at ABC’s absolute discretion) for any stock which was not able to be safely delivered on site in the first instance.
- (h) The Customer agrees and acknowledges that ABC may charge additional fees (at their absolute discretion) for any specific or non-standard requests including, but not limited to rigid body truck deliveries and additional fork lift hire.
- (i) Any deliveries for orders of four pallets/packs or less will incur a minimum delivery fee.

- (j) In the event that deliveries are made on pallets, those pallets remain the property of ABC and/or the Manufacturer, and will be collected upon completion of the project. The Customer agrees to maintain all pallets in a reasonable condition, and to notify ABC from time to time when pallets are ready for collection.
- (k) ABC shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the Premises.

**29. Delay:** ABC shall not be liable for any failure to deliver or for any delay in delivery of Products or provision of services occasioned by any cause whatsoever, whether or not beyond the control of ABC.

**30. Claims:**

- (a) The Customer must inspect all Products delivered to the Customer or its nominated agent within 2 days (or such other time period as notified by ABC from time to time) of delivery to the Premises (“**Inspection Period**”) in order to ensure that Products delivered are as ordered by the Customer and are not delivered in a damaged state. The Customer must notify ABC within the Inspection Period if Products are found to be other than as ordered by the Customer or have been delivered in a damaged state.
- (b) Subject to clause 32 (e), if the Customer has not notified ABC within the Inspection Period that Products delivered were not as ordered by the Customer, or that Products were delivered in a damaged state, then the Products will be deemed to have been delivered in good condition and as ordered by the Customer.
- (c) Notwithstanding any claim made by the Customer under this section, the Customer must make payment in accordance with clause 1 without deduction, retention or set-off of any kind for any reason.

**31. Liability:**

- (a) The Products are deemed to be defective if any Products:
  - (i) are not of merchantable quality;
  - (ii) are not fit for any purpose for which they are acquired by Customer;
  - (iii) do not conform to any sample, specification or other description given to ABC by the Customer in relation to the Products;
  - (iv) being in the nature of services, are not of a reasonable standard, quality, value or grade; or
  - (v) do not comply with any consumer guarantee or implied warranty applicable to the supply of the Products which cannot be excluded (including pursuant to the Competition and Consumer Act 2010 (“**CCA**”)).
- (b) Where Products are defective (as defined in clause 32(a)) ABC may, at its discretion, elect to:
  - (i) replace the Products; or
  - (ii) repair the Products or reimburse the Customer for the cost of repairing the

- (iii) Products; or
  - (iv) in the case of Products being in the nature of services, re-supply the services; or
  - (v) if payment of the purchase price for the Products has not been made by the Customer - release the Customer from any obligation to pay the purchase price; or
  - (vi) if payment of the purchase price for the Products has been made by the Customer - refund the purchase price to the Customer, subject to the Customer, where applicable, first restoring the unencumbered ownership of the Products to ABC; and
  - (vii) in any case, reimburse to the Customer any cost incurred by the Customer in transporting the Products to the Customer from ABC.
- (c) To the extent permitted by law, ABC will not accept the return of Products unless:
- (i) prior authorisation has been given (which will not be unreasonably withheld);
  - (ii) the claim is supported by the relevant invoice;
  - (iii) the Products are in the same condition as at the date of supply;
  - (iv) the Products are returned via ABC's nominated carrier and at ABC's designated rates; and
  - (v) in the case of Products delivered in a damaged state or Products delivered other than in accordance with the Customer's order, ABC was given notice in accordance with clause 31(a).
- (d) The Customer agrees and acknowledges that no employee or other representative of ABC is authorized to provide advice, recommendation, information or representation in relation to any Products or services supplied.
- (e) The Customer agrees and acknowledges that no warranty or guarantee has been expressly or impliedly given by ABC, its agents or its employees in respect of colour, quality, durability or breakages of the Products, and that no refund or credit will be issued to the Customer arising out of or in connection with such matters.
- (f) Other than any remedies the Customer may have under the CCA, the sole remedies of the Customer under or in relation to this Agreement whether in contract, in tort, under statute or otherwise are only as specified in this Agreement and are subject to the limitations set out in clause 32(g) and the following limitations:
- (a) ABC, and ABC's officers, employees and agents, will not have any liability or other obligation to any person or other entity, including the Customer, arising out of, or in any way directly or indirectly connected with, the matters referred to in clause 32(a) except to comply with its obligations (subject to the other provisions and limitations in this clause 32) under clause 32(b);
  - (b) all conditions, warranties and other terms pertaining to the condition or quality of Products are excluded to the extent permitted by law (including the CCA);
- (c) the Customer warrants and represents that it is relying upon its own skill and judgment in relation to the quality of Products, and their fitness for any purpose that may be required, and not upon any conduct or representation of ABC, or any of ABC's officers, employees or agents; and
- (d) the Customer must not make any claim or demand, or take any action or other proceeding against ABC, or any of ABC's officers, employees or agents, for any loss of profits, loss of revenue, loss of anticipated savings, loss or corruption of data, loss of contract or opportunity, loss of goodwill OR any indirect, special or consequential loss of whatever nature including of any loss of a type described in this sub-clause, whether or not reasonably foreseeable, reasonably contemplatable or actually contemplated by the parties at the time of execution of this Agreement, arising out of, or in any way directly or indirectly relating to this Agreement including in relation to any of the matters referred to in clause 32(a).
- (g) Subject to the remainder of this clause, the Customer:
- (i) releases and forever discharges ABC, and each of ABC's officers, employees and agents, from all claims under or in relation to this Agreement; and
  - (ii) indemnifies ABC and each of ABC's officers, employees and agents in respect of all loss, damages and expenses relating to, or arising out of, any claim.
- (h) To the extent permitted by law, ABC's total liability for any claim under or in relation to this Agreement is limited to the price paid by the Customer for the Products or services the subject of the claim.

### **32. Orders Generally**

- (a) The Customer agrees and acknowledges that it will refer and adhere to any Manufacturer's guidelines/instructions, safety guidelines/instructions and/or Australian Standards (as they may be published or provided by the relevant entities from time to time) before commencement of any project and in the use of any Products.
- (b) In receiving Products from any Manufacturer, the Customer agrees and acknowledges that it:
  - (i) releases and forever discharges ABC, and each of ABC's officers, employees and agents, from all claims under or in relation to Products ordered and/or delivered and any failure or refusal to refer and adhere to any Manufacturer's guidelines/instructions, safety guidelines/instructions and/or Australian Standards from time to time.; and
  - (ii) indemnifies ABC and each of ABC's officers, employees and agents in respect of all loss, damages and expenses relating

to, or arising out of, any claim.

- (c) The Customer agrees and acknowledges that owing to the nature of the Products supplied by ABC, colour variations commonly occur. Upon request, ABC can supply a sample of the Product(s) to assist the Customer. Notwithstanding the provision of any sample, the Customer agrees and acknowledges that colour variations may occur from time to time and from batch to batch, and that all orders which are required to be colour specific must be placed in specific job lots and notified in writing to ABC ahead of each order.
- (d) The Customer acknowledges that it has been advised by ABC that due to the nature of the Product, breakages are common, and that it is recommended that pursuant to industry standards, the Customer should allow an additional 5% of Product on each order to cover any breakages, damaged items or incorrect measurements.
- 33. Special Orders** All Products manufactured to the Customer's special order and not sold ordinarily by ABC as stock Products shall not be returnable to ABC, nor shall the Customer be entitled to any rebate, reduction, refund, credit, discount or set-off in respect of such Products.
- 34. Seconds Stock** The Customer agrees and acknowledges that any seconds stock (such as reject stock, run of kilns or commercial stock) is not covered whatsoever by ABC and/or any manufacturer's warranty. The Customer acknowledges that ABC does not give any guarantee or warranty in respect of seconds stock whatsoever.
- 35. Return on Ordinary Stock Items:**
- (a) Products ordinarily sold by ABC as stock Products will not be returnable (other than in accordance with clause 32(b)) to ABC for credit to the customer's account after the Inspection Period has elapsed unless Notice has been given in accordance with clause 29.
- (b) For the avoidance of doubt, ABC shall not be required to accept the return of Products under any circumstances and will only, at its election, accept the return of Products which are undamaged and in a good and saleable condition, and which are not special orders referred to in clause 31.
- (c) ABC will not accept the return of (or, for the avoidance of doubt apply any credit in respect of) any Product which has been laid or otherwise used or altered.
- (d) ABC may, in its discretion, accept the return of Products in which instance the Customer agrees and acknowledges that a restocking fee of not less than 30% of the price of those Products (or the amount of \$160.00 + GST, whichever is greater) will be administered on the price of those Products to cover the restocking, repacking and other related charges. In addition, ABC is entitled to charge a pick up fee associated with the collection of any Products from the Customer or at the Customer's request. The Customer agrees and acknowledges that the restocking fee(s) and the pick up fee(s) are genuine pre-estimates of ABC of the loss, costs and expenses

that will be incurred by ABC in connection clause 32(b)(i).

- 36. Definitions & interpretation:** In these Trading Terms unless the context requires otherwise:
- (a) **"Trading Terms"** means these Terms and Conditions of Trade.
- (b) **"Credit-related information"** includes "credit information", "credit reporting information", "credit eligibility information" and/or "regulated information" (as the context permits) within the meaning of those terms in the Privacy Act.
- (c) **"Customer"** means the customer whose details appear in the Application for a Commercial Trading Account and the Customer's subsidiaries, holding companies and other related entities;
- (d) **"Event of Default"** means any of the following events:
- (i) the Customer fails to pay for any Products and Services and/or the Customer breaches these Trading Terms;
- (ii) the Customer ceases or threatens to cease carrying on business;
- (iii) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer, or the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator is appointed, or the Customer goes into liquidation or makes an assignment or an arrangement or composition with the Customer's creditor, or the Customer stops payment or is deemed unable to pay the Customer's debts within the meaning of the Corporations Act 2001 (Cth); if the Customer is a natural person: an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs, or an order is applied for or made to place the assets and affairs of the Customer under administration;
- (e) **"Manufacturer"** means the person or company which makes, develops and/or distributes the Products, whether to ABC directly or to some other agent or person, and who may, from time to time develop and issue documents, guidelines, instructions and/or procedures to follow in the proper and/or safe use of any Products
- (f) **"Officer"** means each director, secretary, credit manager and authorised representative of ABC; and
- (g) **"Privacy Act"** means the *Privacy Act 1988 (Cth)* as amended from time to time.
- (h) **"Products"** includes all Products and Services supplied by ABC to the Customer.
- 37. Interpretation:**
- (a) In these Trading Terms, unless the context requires otherwise, all references to a party include the party's successors and permitted assigns.
- (b) No provision of these Trading Terms will be construed adversely against a party solely because the party was responsible for drafting the provision.