

Terms + Conditions of Sale

1. THE OUTLINE

1.1 Currency: These Terms + Conditions apply to the supply of all Goods by us to you from the date that you accept these Terms + Conditions.

1.2 Acceptance: You accept these Terms + Conditions when:

- 1.2.1 you submit an Order;
- 1.2.2 you accept Delivery of, or any part of, the Goods pursuant to an Order; or
- 1.2.3 you make Payment, or partial Payment, for any Goods supplied by us,

whichever occurs first.

2. QUOTES + ORDERS

2.1 Requesting a Quote: You may request a Quote from us relating to the potential supply of Goods.

2.2 Providing a Quote: We may provide to you a Quote relating to the potential supply of Goods, which may include the price and quantity of the Goods proposed to be supplied by us and other relevant details as necessary.

2.3 Validity of Quote: A Quote is valid for 20 Business Days only. We reserve the right to withdraw a Quote at any time before you place an Order.

2.4 Placing an Order: If our Quote is acceptable to you, you may place an Order for each supply of Goods. An Order is not binding until we have provided you, in our absolute discretion, our written acceptance or confirmation of the Order.

2.5 Additional conditions: These Terms + Conditions prevail over any contrary terms, and we will not be bound by any variation, modification or waiver of any provision of this document, a Quote or other relevant document and nor will we be bound by any contrary terms (express or implied) unless such a variation, modification, waiver or contrary terms are expressly stated in a relevant Order and expressed to apply pursuant to this clause 2.5. The purpose and intent of this clause is to provide a mechanism for the parties to agree contrary terms if they so agree and avoid any doubt as to commercial intent.

2.6 Specified Order quantity: We may at our discretion determine a specified order quantity, being a minimum order value or minimum order quantity for each Order.

3. PRICE

3.1 Price: Unless otherwise agreed to in writing by us or by our authorised representative, subject to clause 3.2, the price charged and payable for the Goods shall be the price in Australian dollars at the date we accept the Order and, together with any applicable taxes, charges, levies, tariffs and delivery costs in relation to the Goods.

3.2 Variation of price: Prices contained in any Quote for the supply of Goods are based on the cost prevailing and the specification supplied at the time of the Quote. Subject to your rights under law including the ACL, we reserve the right to vary the price if:

3.2.1 there is any movement in the cost of supplying the Goods specified in your Order, including any Charges, increases to transportation costs, exchange rates, freight charges, insurance, supplier's prices and/or any other charges affecting the costs of production;

3.2.2 the Goods specified in your Order are varied from the Goods specified in our Quote; or

3.2.3 otherwise provided in these Terms + Conditions,

and we provide you reasonable notice of any such variation of price.

3.3 Imported goods: Prices for imported goods charged to you shall be:

3.3.1 the Price of those goods; plus

3.3.2 all additional costs charged to us (including any relevant Charges, transportation, freight and insurance costs) either converted into Australian dollars based on the rate set out by the Reserve Bank of Australia on the date that such goods are paid for by us or in US dollars, from time to time, as the case may be.

4. PAYMENT

4.1 Invoice on Delivery: Unless otherwise agreed in writing, we will issue you an Invoice once Goods arrive at a port in Australia, or on dispatch of the Goods.

4.2 Payment terms: All Payments, except for payments for an FCL Order, shall be made in full within 30 days from the date of the Invoice. Payments for an FCL Order shall be made in full at the time of Delivery to the relevant port in Australia.

If you have a credit account with us, Payment shall be made in full within the time period set in the Credit Application.

4.3 Payment method: All Payments are to be made to us in cash, by direct credit to the bank account nominated by us, by credit card (plus a surcharge of 1.5%) or by cheque or as otherwise indicated by us in writing.

4.4 Payment in instalments: We may at our discretion as agreed in writing accept Payments in instalments upon such terms as we see fit.

4.5 Deposit for FCL Orders: Unless otherwise agreed by us in writing and subject to any contrary law, a non-refundable deposit is payable on all FCL Orders for Goods to be provided by us from an external factory. On acceptance of the FCL Order, the deposit will be applied towards final Payment.

5. PAYMENT DEFAULT

5.1 Default Interest: We may at our discretion in the event of your failure to make a Payment in accordance with clause 4 (Payment) or any other payments due to us, charge Default Interest in addition to the cash rate from time to time set by the Reserve Bank of Australia plus 4% per annum (compounded daily).

5.2 Payment of Default Interest: Default Interest pursuant to clause 5.1 shall be:

5.2.1 payable on demand; and

5.2.2 calculated daily from the date Payment was due to the actual date that the Payment is made in full.

5.3 Costs of enforcement: We may recover from you any costs we incur in the collection of Payment of any Invoice.

5.4 No set off: You may not set off against any Payment any claims which you may have against us.

5.5 Default Interest amount credited first: Any Payment you make to us shall first be credited against any Default Interest accrued pursuant to this clause 5 to the actual date of Payment.

5.6 Revocation of credit: We reserve the right to revoke at any time any credit extended to you because of your failure to make any Payment when due or for any other reason.

6. DELIVERY, RISK + INSURANCE

6.1 Delivery: Delivery of the Goods shall take place FOB Origin, upon pick up by or Delivery of the Goods to you, your agent or nominee, or to a carrier commissioned on your behalf as applicable at the place specified by you, or as otherwise agreed (whichever occurs first). If Goods are delivered to a carrier commissioned on your behalf, Goods will be deemed to have been Delivered on Delivery to the carrier commissioned on your behalf. You agree to accept Delivery of the Goods at any time between 9:00am and 5:00pm on a Business Day. If not already provided in your Order, you shall provide to us any forwarding instructions at least 30 days before the date set for Delivery of the Goods.

6.2 Cost of Delivery: We may charge you the cost of delivering the Goods to you, which will be included in the Payment to be made in relation to the Goods. Any transportation costs incurred after the Goods have been Delivered or unforeseen costs arising from the Delivery which were unknown at the time of the Quote (such as, but not limited to, hand unloads, time slot bookings, fuel levies, redeliveries, storage charges, returns to us due to refusal, obstruction to Delivery or incorrect address, international freight charges changes for FCL Orders and any other duties and charges) will be paid by you.

6.3 Instalments: We reserve the right to allocate our supplies and stocks in our absolute discretion. We reserve the right to make deliveries in instalments and these Terms + Conditions shall be severable as to such instalments, in which case Payment for each instalment is a condition precedent to the Delivery of subsequent instalments.

6.4 Risk passes on Delivery: The risk in the Goods shall pass to you upon the Delivery of the Goods in accordance with clause 6.1.

6.5 Insurance over Goods: If requested by us, you shall from the Delivery date until we have received Payment for all Goods in full, insure the Goods for

their full replacement value and provide to us upon our request evidence of such insurance.

6.6 **No liability for delay:** We will use reasonable efforts to deliver the Goods to you by the date and to the place specified by you. Without limiting clause 11 (*Exclusions + Limitations*), if the Delivery of the Goods is delayed:

- 6.6.1 we shall not be liable for late Delivery or delay in Delivery;
- 6.6.2 the delay does not give you the right to cancel an Order or terminate these Terms + Conditions.

7. SUSPENSION + CANCELLATION

7.1 **Suspension of Order:** If as a consequence of an instruction from you, we delay or suspend (but not cancel) an Order or any part of an Order for a period of 7 days or more, we may:

- 7.1.1 request the Payment in full for all work in progress relating to the relevant Order at the time of suspension; and/or
- 7.1.2 vary the price for the uncompleted portion of the relevant Order.

7.2 **Cancellation by you:** You may not cancel an Order, or any part of it, unless:

- 7.2.1 we give our written consent; and
- 7.2.2 subject to applicable laws and clause 7.3, you pay to us a non-refundable restocking fee of 20% of the Goods value and all costs incurred by us in relation to the cancelled Order or the cancelled part of the Order to the date of cancellation, which includes all freight and delivery fees incurred by us.

7.3 **Cancellation or suspension by us:** We may in writing cancel or suspend an Order or Delivery of an Order without liability to you (save as required by relevant laws) if:

- 7.3.1 we reasonably form the opinion that you are insolvent or at material risk of insolvency;
- 7.3.2 you fail to pay any amount for the Goods on the due date;
- 7.3.3 we reasonably form the opinion that supplying Goods to you may have a negative impact upon our business or commercial reputation or image;
- 7.3.4 we reasonably form the opinion that supplying Goods may cause injury or damage in any form; or
- 7.3.5 we reasonably form the opinion that supplying Goods may infringe on intellectual property rights.

7.4 **Rejection of Delivery:** If you do not accept Delivery of Goods for any reason and we were prepared to Deliver such Goods:

- 7.4.1 the Goods will be deemed to have been delivered on the date we were prepared to deliver such Goods; and
- 7.4.2 you will be responsible for all costs in returning such Goods, including a Storage Fee

and any applicable warehouse administration related costs.

7.5 **Rejection of Delivery of FCL Orders of Goods which are part of our current stock:** If you do not accept Delivery of Goods of an FCL Order for any reason and we were prepared to Deliver such Goods and such Goods were part of our current stock:

- 7.5.1 the Goods will be deemed to have been delivered on the date we were prepared to deliver such Goods;
- 7.5.2 you will be responsible for all costs in returning such Goods; and
- 7.5.3 at our full discretion, we may charge you a Container Destuffing Fee and Stocking Fee.

7.6 **Rejection of Delivery of FCL Orders of Goods which are not part of our current stock:** If you do not accept Delivery of Goods of an FCL Order for any reason and we were prepared to Deliver such Goods and such Goods were not part of our current stock:

- 7.6.1 the Goods will be deemed to have been delivered on the date we were prepared to deliver such Goods;
- 7.6.2 you will be responsible for all costs in returning such Goods;
- 7.6.3 at our full discretion, we may charge you a Container Destuffing Fee and Stocking Fee; and
- 7.6.4 you will be responsible for payment of the full price payable for the Goods which we will hold in escrow pending a Different Customer ordering said Goods, at which time, and on receipt of full payment from the Different Customer, the full value of the said Goods will be returned to you, less all Container Destuffing and Stocking Fees and all costs related to return of the Goods. If within one year a Different Customer does not place an order for said Goods, the full value of the Goods will be forfeited.

8. DEFECTS + RETURN OF GOODS

8.1 This clause 8 is subject to clause 11 (*Exclusions + Limitations*), clause 10 (*Statutory Rights*) and any other statutory or legal right whether under these Terms + Conditions or otherwise.

8.2 **Returns:** You should inspect the Goods immediately once they are delivered and may only return the Goods if:

- 8.2.1 they do not materially comply with the Order;
 - 8.2.2 if permitted by law, including the ACL; or
 - 8.2.3 if agreed otherwise by us,
- we will not accept change of mind returns.

8.3 **Notification:** If you wish to return any Goods delivered to you, you must give to us:

- 8.3.1 notice within a reasonable time of your receipt of the Goods; and

8.3.2 the original Invoice details or other reasonable acceptable evidence of purchase.

For the avoidance of doubt, Goods delivered more than 6 months ago cannot be returned.

8.4 **Replacement or credit:** If we accept the return of Goods from you, we will at our option either:

- 8.4.1 replace the returned Goods; or
 - 8.4.2 give a credit or a refund for such Goods.
- subject to applicable laws.

8.5 **Costs to return Goods:** You shall bear any expense of transportation of Goods returned to us, unless you have a statutory or other legal right that permits otherwise.

8.6 **Payment for other Goods:** You may not withhold any payment due to us in respect of any other Goods pending the resolution of a claim for a defect.

8.7 **Goods damaged or lost in transit:** If the Goods are damaged or lost in the course of being delivered to you by a carrier commissioned on your behalf or on our behalf:

- 8.7.1 you must notify us of any claim for Goods damaged or lost in transit within 10 Business Days of Delivery, or expected Delivery; and
- 8.7.2 subject to our acceptance of your claim under this clause 8, we will replace the relevant Goods at no extra charge to you.

8.8 **Alteration of packaging and labelling:** If Goods are supplied to you in our packaging and labelling, you must not sell, supply or otherwise deal with the Goods unless all packaging and labelling remains intact and in the same condition and form that the Goods were delivered to you. If the packaging or labelling has been altered, removed, concealed or tampered in any shape or form, you will be responsible for the warranty and performance of the Goods in full and we shall not be held liability in any way.

9. EXPRESS WARRANTY

9.1 **Provider details:** The warranty against defects (**Warranty**) contained in this clause 9 is provided by:

Shelta Australia
Phillips & House Pty Ltd
4/1 Foundation Place, Pemulwuy NSW 2145
Email: admin@shelta.com.au
Phone: 1300 137 763

9.2 **Warranty:** We warrant that the Goods are supplied free from defects in material and workmanship except such defects as normally being regarded as being commercially acceptable.

9.3 **Warranty Period:** The Goods shall be covered by this Warranty for a period of 12 months from Delivery unless otherwise stated in writing (**Warranty Period**).

9.4 **Exclusions:** We will not be liable for:

- 9.4.1 loss or damage caused by factors beyond our control;

- 9.4.2 any Goods that have not been installed or maintained according to maintenance or care instructions;
- 9.4.3 any alterations or repairs to the Goods not performed by us or with our prior written consent;
- 9.4.4 damage or defects caused to the Goods due to unusual, non-recommended or negligent use of the Goods;
- 9.4.5 damage or defects caused to the Goods due to unusual, non-recommended or negligent storage or transportation;
- 9.4.6 if the Goods were sold as clearance, damaged or discounted stock by us;
- 9.4.7 damage or defects caused by environmental factors such as rusting caused by the Goods being placed in proximity to a body of water, such as the ocean or a chlorine, salt or bromide pool;
- 9.4.8 damage or defects caused by environmental factors such as weathering, wind, humidity;
- 9.4.9 damage to property, whether belonging to you or to a third-party; or
- 9.4.10 damage to persons caused by Goods blowing away.

9.5 **Making a claim:** You may make a claim under this Warranty by providing us with notice, within 10 Business Days of when you are aware of the defect, in writing to our address specified in clause 9 containing reasonable description of the defect in the Good(s).

9.6 **Repair and replacement:** We will during the Warranty Period and subject to clause 9.8, repair or replace at our option, any component or part of the Goods which our examination shows to be defective. If we choose to provide you with a refund, we may require you to destroy or return to us the Goods.

9.7 **Limitation:** Our obligations under this Warranty are limited to repairing or furnishing a replacement part to replace any part which has proven to have been defective. No Warranty is given and we will not be liable for:

- 9.7.1 alterations to Goods for which we are not responsible;
- 9.7.2 defects or depreciation caused by wear and tear, accidents, corrosion, dampness or other abnormal conditions or effects;
- 9.7.3 damage or failure caused by unusual or non-recommended use, misuse or application of the Goods; or
- 9.7.4 loss caused by any factors beyond our control.

9.8 **Transport charges:** Subject to clause 10 (*Statutory Rights*), you will be liable for all transport charges incurred in returning defective components or parts for repair or replacement together with the cost of returning them to you. An invoice for such transport charges will be provided upon returning the relevant Good(s) to you which will be payable in accordance with these Terms + Conditions.

9.9 **Replacement part Warranty:** A replacement part supplied by us during the Warranty Period shall be covered by the Warranty for the unexpired portion of the Warranty Period which covered the original Goods.

9.10 **In addition to rights:** The benefits to you given by this Warranty are in addition to your other rights and remedies under the ACL or the relevant laws.

Regulation 90 (Competition and Consumer Regulations 2010 (Cth): This Warranty against defects is provided in addition to other rights and remedies you may have at law. If you are a consumer for the purposes of the ACL, the following statement applies

to you. *Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are 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.*

9.11 **Rights personal to you:** The benefit of this Warranty under this clause 9 is given to the Customer personally and cannot be assigned.

10. STATUTORY RIGHTS

10.1 **Statutory rights:** In circumstances where you are acquiring Goods from us as a 'consumer' for the purposes of (and as defined in section 3 of Schedule 2 of) the ACL or as a 'buyer' for the purposes of the SGA, we acknowledge and agree that certain statutory guarantees and rights shall apply to you as provided by relevant laws, but subject to these Terms + Conditions, as applicable, and where permitted by relevant laws.

10.2 **No restriction:** Nothing in these Terms + Conditions excludes, restricts or modifies any condition, Warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL, the SGA and any relevant State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the purchasers of goods in various circumstances.

10.3 **Unfair contract:** If section 23 of the ACL applies to any provisions in these Terms + Conditions, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

10.4 **Sections 47(A) and 47(B) of the Fair Trading Act 1987 (NSW):** we disclose the following Terms + Conditions which may substantially prejudice your interests: Clauses 3.2, 6.2, 6.6, 9.7, 11.2, 11.3 and 11.5.

11. EXCLUSIONS + LIMITATIONS

11.1 **ACL exception:** The exclusions and limitations in this clause 11 are subject to clause 10 (*Statutory Rights*).

11.2 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms + Conditions, that are not contained in it, are excluded to the fullest extent permitted by law.

11.3 **Total liability:** Our total liability for breach of these Terms + Conditions or breach of our contractual obligations or duties at law or in equity (however arising) is limited (to the extent lawful) at our option to:

In the case of Goods

- 11.3.1 the replacement of the Goods or the supply of equivalent goods;
- 11.3.2 the repair or rectification of the Goods;
- 11.3.3 the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- 11.3.4 the payment of the cost of the repair or rectification of the Goods.

11.4 **No reliance:** You acknowledge and agree that:

- 11.4.1 you have and will make your own assessment of the fitness for purpose and suitability of any Goods supplied to you; and
- 11.4.2 you do not and will not rely on our skill or judgment nor that of any person by whom any prior negotiations or arrangements in relation to the acquisition of any Goods were conducted or have been or will be made.

11.5 **Indirect loss:** We will not be liable for any Consequential Loss or damage suffered by you or any other person resulting from any act or omission by us (including breach, termination or non-observance of the terms of an Order or agreement which incorporates these Terms + Conditions).

11.6 **Third party work:** If we obtain goods or services from a third party in order to carry out your instructions or complete an Order:

- 11.6.1 we will not be liable for any breach of these Terms + Conditions if that breach is as a result of or is connected with the supply by a third party of such goods;
- 11.6.2 we acquire such goods or services as agent for you not as principal and will have no liability to you in relation to the supply of these goods;
- 11.6.3 any claim by you in relation to the supply of such goods must be made directly against that third party; and
- 11.6.4 you must pay for such goods from the third party plus the cost of or relevant fee for us performing such services as agent for you (whether separately identified or not). You do not require us to account to you for any commissions or benefits we may receive from such a third party supplier in connection with the supply of such goods to you and authorise us to contract on your behalf as we think fit.

11.7 We give no warranty in respect of any goods that are supplied or carried out or provided to you by a third party even where forming part of an Order. Any warranties, statutory guarantees or other rights will be governed by the terms of supply by that provider to you and relevant laws.

12. TITLE

12.1 **Subject to the PPSA:** The provisions of this clause 12 are subject to the provisions of the PPSA and clause 13 (*Security Interest*).

12.2 **Possession as bailee:** After Delivery of the Goods, until the full Payment has been made you shall possess the Goods as bailee only.

12.3 **Title:** We will retain absolute title over the Goods until:

12.3.1 we have received Payment in full in respect of the Goods; or

12.3.2 the Goods are disposed of in the manner prescribed under clause 13.12.

12.4 **Identification:** Until full title in the Goods has passed to you, you will ensure that:

12.4.1 any identifying plate, mark or packaging number on any of the Goods is not removed, defaced or obliterated; and

12.4.2 the Goods are identifiable and distinguishable from any other goods that may be in your possession and as to each particular Invoice of Goods and are to be stored in such a way.

12.5 **Default:** In the event that you possess the Goods as bailee only and have defaulted in any way under the Quote or these Terms + Conditions:

12.5.1 we are entitled, without providing you with notice, to enter your premises to seize Goods delivered pursuant to an Order and retain such Goods in our possession as we see fit; and

12.5.2 if any Goods are wholly or partially attached to other fittings, fixtures products in the premises, we are entitled to detach our Goods to retain possession.

12.6 **Exclusion of Liability:** We will not be liable in any way for exercising our rights under clause 0.

12.7 **Costs and expenses:** All costs and expenses incurred by us in exercising our rights under clause 0 must be reimbursed by you. Any default or delays in payments will be subject to clause 5 of these Terms + Conditions.

13. SECURITY INTEREST

13.1 **Security Agreement:** This clause 13 sets out the Security Agreement between you (**Grantor**) and us (**Secured Party**).

13.2 **Creation of Security Interest:** The Grantor grants to the Secured Party a Security Interest in the Goods supplied by us to you, including all related proceeds (**Collateral**), as security for all or part of the Payment of any amount relating to the Goods in accordance with these Terms + Conditions or otherwise. For the avoidance of doubt, this Security

Interest is also a Purchase Money Security Interest (**PMSI**) in the Collateral.

13.3 **Ranking:** Subject to the priority rules set out in the PPSA, this Security Interest ranks in priority ahead of all other security interests in the Collateral.

13.4 **Continuing obligation:** This Security Interest is a continuing security and the Grantor's obligations under this Security Agreement continue until it has been terminated in accordance with this Security Agreement.

13.5 **Attachment:** The Security Interest attaches to the Collateral by virtue of the Grantor's possession of the Goods as bailee under clause 12.2.

13.6 **Perfection:** The Grantor irrevocably gives authority to the Secured Party to register a financing statement with respect to the Security Interest on the PPSR. Despite this provision, the Secured Party may perfect this Security Interest by any other means in accordance with the PPSA.

13.7 **Information:** The Grantor shall provide the Secured Party with any information required for the Secured Party to register a financing statement or a financing change statement with respect to this Security Interest on the PPSR.

13.8 **Identification:** Until this Security Interest in the Collateral has been extinguished, the Grantor will ensure that, as far as is reasonably practicable:

13.8.1 any identifying plate, mark or packaging number on any of the Collateral (including Goods) is not removed, defaced or obliterated; and

13.8.2 the Collateral is identifiable and distinguishable from any other goods or products that may be in the Grantor's possession and as to each particular Invoice of Goods comprising the Collateral.

13.9 **Accessions:** The Grantor acknowledges that this Security Interest continues to apply to Collateral that becomes an accession to other goods.

13.10 **Remedies:** Until this Security Interest in the Collateral has been extinguished, if:

13.10.1 a Default Event occurs in respect of the Grantor; or

13.10.2 the Grantor is in breach of these Terms + Conditions,

the Secured Party may as it sees fit and without notice to the Grantor, seize, retain or redeem the Collateral, or seek any and all remedies provided under Chapter 4 of the PPSA or any other remedies provided at law or in equity, including those set out in clause 13.11.

13.11 **Right of entry:** In addition to any rights given to the Secured Party under Chapter 4 of the PPSA, the Grantor irrevocably:

13.11.1 grants the Secured Party the right to:

A demand the immediate return of the Goods to the Secured Party;

B enter the Grantor's premises to search for and seize the Goods

without notice or liability to the Grantor; and

C retain, sell or otherwise dispose of those Goods in any manner it sees fit; and

13.11.2 indemnifies, and keeps indemnified, the Secured Party against any claim (including in negligence) in respect of any damage to the property of, or the premises occupied by, the Grantor or any Consequential Loss caused by another party arising relating to searching for and seizing any Goods in accordance with this clause 13.11.

13.12 **Permitted use and sale:** The Grantor may only sell or deal with any of the Collateral (including accessions) in respect of which full Payment has not been received if:

13.12.1 the Secured Party has not exercised a remedy under clause 13.10;

13.12.2 the proposed transaction is a *bona fide* transaction to a third party at market value conducted in the ordinary course of business of the Grantor;

13.12.3 the proposed transaction does not create a security interest in the Collateral that ranks above this Security Interest;

13.12.4 all proceeds of the proposed transaction is:

A immediately paid to the Secured Party; or

B held on trust for the Secured Party in a separate account, payable to the Secured Party on demand; and

13.10.2 unless otherwise obligated by law, the Grantor does not disclose to a third party that the proposed transaction is subject to this Security Agreement or that the proceeds will be immediately paid to the Secured Party or held on trust for the Secured Party.

13.11 **Costs:** The Grantor shall pay all costs incurred by the Secured Party (including costs on a solicitor-client basis and debt collector's costs) arising out of this Security Agreement, including costs in relation to:

13.11.1 registration of a financing statement or a financing change statement;

13.11.2 seizure, retention, redemption or any other remedy exercised pursuant to clause 13.10; and

13.11.3 the enforcement of its rights under this Security Agreement (including matters incidental to it).

13.12 **Extinguishment:** The Security Interest is extinguished only if:

13.12.1 one of the following applies:

A all amounts payable in relation to the Collateral have been paid in full;

B the Secured Party has exercised a remedy under this Security Agreement;

- C the Collateral has been dealt with by the Grantor pursuant to clause 13.12; or
- D a third party has taken free of this Security Interest as provided by the PPSA; and

13.12.2 all obligations under this Security Agreement have been satisfied by the Grantor, including the obligation to pay costs as set out in clause 13.13.

13.13 **Removal:** The Secured Party acknowledges its obligation to lodge a financing change statement to remove this Security Interest from the PPSR upon the extinguishment of this Security Interest in accordance with clause 13.14.

13.14 **Waiver:** Sections 95, 96 118, 121(4), 125, 127, 130, 132, 134(2), 135 136(3), 136(4), 136(5), 137, 142 and 143 of the PPSA shall not apply to the extent that they impose obligations on the Secured Party.

13.15 **14(6) of the PPSA:** For the purposes of section 14(6) of the PPSA, payments shall be applied in accordance with any method of application to which we deem fit, in our absolute discretion.

13.16 **Waiver of receipt of statements:** The Grantor irrevocably waives its right to receive from the Secured Party a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to this Security Agreement.

13.17 **Change of name:** The Grantor shall immediately notify the Secured Party in writing of any change of name of the Grantor.

13.18 **Acknowledgement:** The Grantor acknowledges due notice of this Security Agreement with acceptance of these Terms + Conditions.

14. INTELLECTUAL PROPERTY

14.10 **Your intellectual property:** If you provide us with Material to be used in the supply of the:

- 14.10.1 you warrant and represent to us that any Goods supplied to you based on the Material you provide to us will not infringe the Intellectual Property Rights of any third party; and
- 14.10.2 you indemnify and will keep us indemnified from and against any and all claims, liabilities, obligations, expenses or damages which we may suffer or incur as a result or in connection with the representation or warranty in clause 14.1.1 being untrue or breached.

14.11 **Licence over Materials:** You grant to us a non-exclusive royalty-free license throughout the universe to use all Intellectual Property Rights in all Materials for so long as necessary or convenient for the production of the Goods and the matters contemplated in relation to the Delivery of the relevant Goods.

14.12 **Our intellectual property:** All of our Intellectual Property Rights in and relating to the

production, development and supply of the, including but not limited to any material supplied by us for advertising and display purposes, drawing, illustrations, specifications, and all other literature (excluding Materials licensed to us pursuant to clause 14.2) remains our property and shall not be transferred, assigned, licensed, reproduced, disclosed or otherwise given to any other person by you without our prior written consent.

14.13 **Confidentiality:** You shall keep confidential and shall not use any confidential information communicated by us to you without our prior written consent.

15. CONTAINERS + PALLETS

15.10 **Return of containers and pallets:** Unless otherwise agreed, all containers and pallets used for the Delivery, storage or display of the Goods (including any Chep and Loscan containers and pallets) do not form part of the Quote nor do they form part of the Goods provided and shall remain the property of the owner of such containers and pallets. You agree and understand that you are fully responsible and liable for the return of all containers and pallets, which are to be promptly returned on the day of Delivery, and you understand and agree you are responsible for all hire charges associated with the containers and pallets.

15.11 **Lost or damaged containers and pallets:** You are responsible for all charges and fees associated with lost or damaged containers and pallets. If we pay any charges or fees on your behalf, we do so as your agent and are to be reimbursed in full. Any late payments will be subject to our Default provisions set out in clause 5 of these Terms + Conditions.

15.12 **Deposit:** We may, in our absolute discretion, request a deposit for the usage of containers and pallets. The deposit will be returned to you in full if the containers and/ or pallets are returned in the same condition that they were provided to you, and returned within 3 months of Delivery, unless agreed otherwise.

16. GST

16.10 **Prices exclusive of GST:** Unless otherwise agreed, prices with respect to any taxable supply are exclusive of GST.

16.11 **GST payable in addition:** You must pay to us all GST in addition to any other amounts payable by you to us in respect of a taxable supply, which will be payable by you when required to pay for the Goods.

16.12 **Issue of tax invoice:** We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.

16.13 **Third party supplies:** If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.

17. GENERAL

17.10 **Indemnity:** You agree to indemnify and keep us and all our related bodies corporate, officers, employees, consultants and agents indemnified in respect of all damages, losses, costs and expenses

(including legal costs), whether direct or indirect and for all Consequential Loss, that we or our related bodies corporate, officers, employees, consultants and agents may incur as a result of:

- 17.10.1 your breach or alleged breach of these Terms + Conditions by you or your Personnel;
- 17.10.2 any exposure of our Personnel to hazardous materials while on your premises or work site;
- 17.10.3 the injury or death of any person as a result of your actions, omissions, negligence or misconduct;
- 17.10.4 damage to property resulting from the operation of your equipment; and
- 17.10.5 your actions, omissions, negligence or misconduct in connection with these Terms.

17.11 **Termination:** If a Default Event occurs:

- 17.11.1 we may, without limiting any other right we have under these Terms + Conditions, terminate any outstanding Order and any contract for the supply of Goods to you; and
- 17.11.2 all Payments and any other money under these Terms + Conditions becomes immediately payable.

17.12 **Dispute resolution:** The parties agree that any dispute arising out of these Terms + Conditions shall be determined in accordance with the provisions of the *Commercial Arbitration Act 2010* (NSW).

17.13 **Lawful purpose:** You shall ensure that the Goods and Services are used only for lawful purposes and in accordance with any applicable laws.

17.14 **Binding:** These Terms + Conditions shall bind our successors, administrators and permitted assigns and your executors and permitted assigns, or, being a company, its successors, administrators and permitted assigns.

17.15 **Assignment:** We may without notice to you assign, transfer and/or sub-contract our rights and/or obligations (in whole or in part) under these Terms + Conditions. You may not assign, transfer, hold on trust or otherwise delegate any of your rights or obligations under these Terms + Conditions without our prior written consent.

17.16 **New Terms + Conditions:** If we adopt new terms and conditions for the sale of Goods:

- 17.16.1 you will be given written notice (if you are a Customer at the relevant time); and
- 17.16.2 unless otherwise agreed, they will apply to the supply of Goods and Services only after you accept such new terms and conditions.

17.17 **Force Majeure:** If a Force Majeure Event occurs, we may:

- 17.17.1 totally or partially suspend any Order, any part of an Order or any deliveries relating to an Order during any period in which we may be prevented or hindered from delivering by our normal means of supply or delivery due to that Force Majeure Event; and

17.17.2 elect to extend at our discretion the period for performance of an obligation under these Terms + Conditions as is reasonable in all the circumstances.

17.18 **Severability:** Each clause in these Terms + Conditions is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

17.19 **Waiver:** No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.

17.20 **Governing law:** These Terms + Conditions shall be governed by the laws of the State of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales.

18. INTERPRETATION + DEFINITIONS

18.10 **Personal pronouns:** Except where the context otherwise provides or requires:

18.10.1 the terms **we**, **us** or **our** refers to the Company; and

18.10.2 the terms **you** or **your** refers to the Customer.

18.11 **Defined terms:** In these Terms + Conditions, unless otherwise provided, the following terms shall have their meaning as specified:

ACL means the Australian Consumer Law under the *Consumer and Competition Act 2010* (Cth) as amended.

Business Day means Monday to Friday excluding a public holiday in New South Wales, Australia.

Charges means any sales tax, excise duties, customs duty, transfer duty, GST or any other taxes, duties or charges applicable in respect of the provision of the Goods.

Collateral means property that is subject of a security interest.

Company means Phillips and House Pty Ltd trading as Shelta Australia (ABN 12 602 964 278).

Consequential Loss means any losses suffered by a party that cannot reasonably be considered to arise naturally, or in the ordinary course of things, from any act or omission (including a breach of contract) in connection with the relevant agreement, even if the other party has been advised of the possibility or likelihood of such damage, cost or loss.

Container Destuffing and Stocking Fee means fees payable by you to us for the cost of unpacking containers charged at an hourly rate, as applicable.

Customer means any person or entity that places an Order with us and agrees by conduct or by virtue of notice or otherwise to be bound by these Terms + Conditions.

Default Event means any one of the following events:

- (a) you fail to make any payment when due, whether for the Goods and Services or otherwise;
- (b) Winding Up commences against you;

(c) a receiver is appointed to you;

(d) you become insolvent, bankrupt or commit an act of bankruptcy;

(e) proceedings are commenced or an application is made for the appointment of any persons listed in items (b) to (e) above; or

(f) a mortgagee or their agent enters into possession of your assets.

Default Interest means as defined in clause 5, or any other rate determined at our discretion.

Delivery means the delivery of the Goods and Services in accordance with clause 6.1.

Different Customer means a person or entity that places an Order with us who/ which is not you.

FCL Order means a full container load. An FCL Order is an order placed for Goods to be drop shipped from the factory directly to you, either at one of our factories or at a factory where we manage the freight of Goods.

FIS (Free Into Store) means consignment costs and cubed charges (including GST) associated with Delivery of the Goods from us to you paid for by us in advance, but excludes any duties, levies and other associated charges paid by us as a result of the Delivery.

FOB Origin means the International Incoterms® "Free on Board" as defined in the International Chamber of Commerce Incoterms® Rules 2020.

Force Majeure Event means circumstances beyond our reasonable control, which shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, epidemic, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, loss or damage to Goods in transit or instructions or lack of instructions from you.

Goods means goods sold and services supplied by the Company from time to time, including spare parts and repairs.

Grantor means the person who has the interest in property to which a security interest is attached.

GST and GST Law have the meaning as set out in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trade marks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights and all extensions and renewals thereof anywhere in the world which currently exist and/or are recognised in the future.

Invoice unless otherwise agreed means the invoice issued upon the Delivery of the Goods and Services specified in your Order.

Material means any material in which you have Intellectual Property Rights provided by you for use by

us in the production, development and supply of the Goods and Services to you.

Order means an order for Goods and Services received by us whether in writing or otherwise.

Payment means payment of any amount relating to Goods in accordance with these Terms + Conditions.

Personnel means, in relation to a person, that person's officers, employees, agents, nominees, authorised representatives, carriers, delegates and sub-contractors.

PMSI means a purchase money security interest as defined by section 14 of the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended, including any regulations made pursuant to it.

PPSR means the Personal Property Securities Register.

Quote means a quotation by us for the supply of particular Goods and Services containing details as specified in clause 2.2.

Storage Fee means a storage fee payable by you to us from the date which is 2 weeks' from the date of expected Delivery, payable weekly up until Delivery of the Goods and as set out below:

- Weekly pallet storage
- Standard in and out handling
- Wrapping
- Strapping
- Removal of perishables
- Removal of recyclables

Secured Party means a person who holds the benefit of a security interest.

Security Agreement means the security agreement set out in clause 13 (*Security Interest*).

Security Interest means the security interest created in clause 13 (*Security Interest*).

SGA means the *Sale of Goods Act 1923* (NSW) as amended.

Winding Up means commencing to be wound up, or suffering a provisional liquidator, liquidator, official manager or any other administrator of the affairs of insolvent companies to be appointed.