



Application for Credit

WHITEHORSE TRUCK CENTRE
 ABN 13 116 473 702
 (a subsidiary of AP Eagers Limited ABN 87 009 680 013)
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APPLICANT applies to APE for credit and submits the following confidential information for this purpose only. (In this application, 'APE' means AP Eagers Limited ABN 87 009 680 013 as agent for each of its subsidiaries listed from time to time on the website www.apeagers.com.au ("the Subsidiaries") and each of their successors and assigns.)

Requested Credit Limit: \$ _____ Parts or Service account: _____ Order Number Requested: Yes/No

Applicant is a: (tick box) Corporation Sole Trader Partnership

If Applicant is a trustee, please tick this box and advise the ABN of the trust: Trustee and its ABN: _____

Applicant's Trading Name: _____ ABN: _____

Full legal entity name: _____ ACN: _____

Trading Address: _____

Postal Address: _____

Phone: _____ Fax: _____ E-mail: _____

Type of business: _____ How long has it been established: _____ No. of employees: _____

Applicant's Premises are: (tick box) Owned Leased Rented How long until lease/rental expires _____

If leased/rented, who is agent: _____ Agent's phone: _____

If Applicant is a Corporation:

Directors: _____

Address: _____

Phone: _____

If Applicant is a Partnership/Sole Trader:

Name/s: _____

Address: _____

Phone: _____ Date _____

of Birth: _____ Driver _____

Licence No: _____

(provide copy) _____

List four companies with whom Applicant currently conducts a monthly account:

1) _____ Phone: _____ Email: _____ Av Per Month\$: _____

2) _____ Phone: _____ Email: _____ Av Per Month\$: _____

3) _____ Phone: _____ Email: _____ Av Per Month\$: _____

4) _____ Phone: _____ Email: _____ Av Per Month\$: _____

Φ APE may approve a credit limit that is higher or lower than the requested limit. APE may, in its discretion, increase or reduce the approved limit or cancel credit at any time without notice to the Applicant. The approved limit as advised to the Applicant from time to time must not be exceeded.

Φ APE's trading terms are 30 days (or such other period as notified by APE or the Subsidiaries) and payment must be made within that period without notice or demand. APE or any Subsidiary may, in its discretion, vary those trading terms at any time for orders received after the Applicant is given notice of the variation.

Φ The Applicant confirms it has read and understood the Terms and Conditions of Sale as set out on the following pages, including without limitation the security clauses which provide that, amongst other things, AP Eagers Limited (as trustee for the Subsidiaries) retains legal title to goods supplied on credit until all moneys are paid and the Applicant charges its property to secure the obligations set out.

Φ By signing this application, the Applicant offers to enter into an agreement on the above terms and conditions with APE, acknowledges and accepts the Privacy Note on the following page, consents to the use of information in accordance with the Privacy Note, warrants that it has obtained the consent of any person whose personal information appears herein (if any) to the use of information in accordance with the Privacy Note, gives the acknowledgements, consents, authorisations, agreements, representations and warranties set out on the following pages, and (if signing this application on behalf of a company or partnership) warrants that it has authority to do so.

Φ APE may accept the Applicant's offer by giving written notice, or supplying goods and/or services on credit, to the Applicant.

APPLICANT'S SIGNATURE: _____ WITNESS SIGNATURE: _____ NAME

OF PERSON SIGNING (print): _____ NAME OF WITNESS (print): _____ POSITION

IN APPLICANT: _____ DATE OF SIGNING: _____

NOTE:- APPLICATION MAY NOT BE CONSIDERED UNLESS ALL RELEVANT QUESTIONS ARE ANSWERED.

CREDIT DEPARTMENT USE ONLY

Credit is **APPROVED / DECLINED** Chief Financial Officer / Credit Manager Date Version: 30/01/17

GUARANTEE

Version: 19/12/14

To: APE. (In this Guarantee, 'APE' means AP Eagers Limited ABN 87 009 680 013 as agent for each of its subsidiaries listed from time to time on the website www.apeagers.com.au ("the Subsidiaries") and each of their successors and assigns.)

In consideration of APE, at the request of the Applicant named on the Application for Credit on the previous page, agreeing to supply the Applicant with goods and/or services on credit on the terms specified in the Application for Credit ("the Agreement"), each person signing below as a guarantor ("Guarantor") agrees with APE as follows:

Guarantee:

1. To guarantee to APE the punctual performance of all obligations of the Applicant pursuant to the Agreement including payment of all moneys due.
2. To indemnify APE for all moneys due and owing to APE pursuant to the Agreement as a primary liability.
3. Guarantor's liability shall not be affected or discharged by:
 - (a) APE granting time to or compromising with or releasing or granting any indulgence to the Applicant in respect of the payment of money or any other obligation to which the Applicant is bound;
 - (b) The cancellation by APE of the Agreement;
 - (c) Any amendment made to the Agreement, with or without the consent of one or more Guarantors;
 - (d) Any variation made to the credit limit under the Agreement, with or without the consent of one or more Guarantors;
 - (e) Any disclaimer of the Agreement by the Applicant for any reason whatsoever and the Guarantor shall indemnify and hold APE harmless against any loss which may result to APE from any such disclaimer;
 - (f) The Applicant or any one or more Guarantors becoming bankrupt, being wound up, appointing a voluntary administrator, being subject to any form of external administration whatsoever or entering into an arrangement with its creditors, or the appointment of a liquidator, administrator, receiver, receiver and/or manager, or controller ("Controller") in respect of any assets or undertaking of the Applicant or any one or more Guarantors;
 - (g) The death of one or more Guarantors or by notice of such death;
 - (h) Any payment of money received by APE which is subsequently void or voidable; or
 - (i) Any failure by APE or AP Eagers Limited (as trustee for the Subsidiaries) to properly attach, perfect or continuously perfect any security interest against any collateral of the Applicant and/ or any one or more of the Guarantors (if more than one) or any other person.

Charge:

4. Each Guarantor agrees to secure the payment by the due date of all monies owing under the Agreement and the performance of the terms of the Agreement by the Applicant, by:
 - (a) hereby charging in favour of AP Eagers Limited (as trustee for the Subsidiaries), all of the Guarantor's rights, title and interests in real property owned by the Guarantor, beneficially or otherwise, from time to time;
 - (b) consenting to a caveat or other registerable interest, such as a mortgage, being lodged to register such a charge over the real property with the relevant government department and providing all reasonable assistance to enable AP Eagers Limited (as trustee for the Subsidiaries) to protect its security interest at the request of AP Eagers Limited (as trustee for the Subsidiaries); and
 - (c) authorising AP Eagers Limited (as trustee for the Subsidiaries) or its solicitors to execute any consent form or other security document as its attorney for the purpose of registering the caveat or such other registerable interest over real property referred to in the preceding paragraphs.
5. (a) The Guarantor/s agree (where they are not holders of an ABN) to grant a charge, and (where they are holders of an ABN) do hereby grant a charge, to AP Eagers Limited (as trustee for the Subsidiaries) over all and any of their present and after acquired property ("APAAP") under the *Personal Property Securities Act 2009 (Cth) (PPSA)* as security for their indebtedness and obligations under this Guarantee.
 - (b) Each Guarantor consents to a financing statement in respect of the personal property charge being registered with the Personal Property Securities register.
 - (c) Each Guarantor authorises AP Eagers Limited (as trustee for the Subsidiaries) or its solicitors to execute any document as its attorney for the purpose of registering the security interests over the assets and undertaking of the Guarantor.
6. Each Guarantor acknowledges and agrees that the Terms and Conditions of Sale as set out on the following pages are incorporated into this Guarantee as if the Guarantor was named in such terms in place of the Applicant.
7. If AP Eagers Limited (as trustee for the subsidiaries) registers a security interest over a Guarantor's real or personal property and money is payable under the Agreement, the Guarantor agrees that AP Eagers Limited (as trustee for the Subsidiaries) or the Subsidiary may by itself, or through its agent, enter the Guarantor's property or premises at any time to remove the secured collateral and AP Eagers Limited (as trustee for the Subsidiaries) or the Subsidiaries may by itself, or through its agent, sell that collateral to recover the moneys secured in any manner AP Eagers Limited (as trustee for the Subsidiaries) and/ or the Subsidiaries considers reasonably necessary and account to the Guarantor for the proceeds.

Privacy:

8. Each Guarantor acknowledges and accepts the Privacy Note below and consents to the use of information in accordance with the Privacy

Note. General:

9. Each Guarantor acknowledges that it understands the full force and effect of these terms and has had a reasonable opportunity to obtain legal or other advice in respect of them or has waived that right.

Full name of Guarantor: _____

Address: _____

Date of Birth: _____

Driver Licence No.: _____

Guarantor's signature: _____

Witness's signature: _____

Full name of witness: _____

PRIVACY NOTE

For APE's full Privacy Policy please see www.apeagers.com.au or a hard copy will be made available at no cost on request.

The kind of personal information APE ("we"/"our") holds is the information detailed in this Credit Application or otherwise provided by you. When we collect hold, use and disclose personal information we do so only for certain purposes set out in our Privacy Policy, including to facilitate delivery of goods and services; to meet requirements of regulators and third party suppliers (including in relation to the provision of goods, insurance, registration, warranty and other services, and information about new products and services that become available from time to time); to communicate with you, by way of direct marketing, information about any goods and services; and in accordance with our Privacy Policy.

Your personal and sensitive information may be transmitted to recipients, including service providers, manufacturers and suppliers of goods and services, some of whom are overseas, such as in Singapore and Hong Kong.

We will also collect, store and pass on consumer credit information and commercial credit information. Details of the kinds of consumer credit information and commercial credit information we collect, how we use it and with whom we share it are also set out in our Privacy Policy.

Any query or access to your personal information should be referred to our Privacy Officer at privacy@apeagers.com.au.

You authorize and consent to us collecting, using, storing and disclosing your personal information within and outside Australia in accordance with our Privacy Policy.

PRIVACY ACT NOTIFICATION AND CONSENTS BY APPLICANT FOR CREDIT AND GUARANTORS

Privacy Act 1988 (Cth).

By signing this Credit Application and/or Guarantee, the Applicant and Guarantors (collectively called “You”/“Your”) acknowledge consenting to and authorizing APE to give a credit reporting agency and others any information about this Credit Application as set out below (but only limited kinds of information permitted under the *Privacy Act* or as required or permitted at law such as to verify Your identity for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* in connection with this Credit Application).

This includes (without limitation):

- (a) to obtain any information about any of Your consumer or commercial credit or business history or Your commercial activities or commercial credit worthiness from Your bank or any trade referee disclosed in this Credit Application and any other credit provider or credit reporting agency for the purposes of assessing the application for credit, or in connection with any guarantee and to disclose such information to a credit reporting agency;
- (b) to give to a person who is currently a guarantor, or whom You have indicated is considering becoming a guarantor, a credit report containing information about You for the purpose of the Guarantor deciding whether to act as guarantor, or to keep the Guarantor informed about the guarantee. You understand that the information disclosed can include anything about Your credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the *Privacy Act 1988*, and includes a credit report; and
- (c) unless otherwise prevented by law to collect from, store, use, disclose to or exchange with any of the parties named in paragraph (a) above or any Guarantors or other credit providers named in this Credit Application or named in a consumer credit report issued by a credit reporting agency, third party providers, solicitors, mercantile agents, insolvency administrators, trade insurers and insurance brokers, persons involved with the collection of trade bills or the factoring of trade debt, information about Your personal or commercial credit worthiness or business history in order to assess the Credit Application (including whether to accept as Guarantor any person signing), monitor the credit worthiness or withdraw credit facilities, notify of Your default, issue trade bills, insure risk, process any payment instructions, direct debit facilities and or credit facilities requested by You and or Guarantor/s to enable the daily operation of Your Credit Account and collect overdue accounts;

The information about this Credit Application that APE may give a credit reporting agency and others, includes (without limitation):

- (d) identity particulars - this may include name, sex, date of birth, current known address, two immediately previous addresses, current or last known employer and driver's licence number;
- (e) the fact that You have applied for credit or provided a guarantee and the amount;
- (f) payments which have become overdue for more than 60 days and for which collection action has commenced and subsequent advice that payments are no longer overdue;
- (g) cheques drawn by You which have been dishonored more than once;
- (h) in specified circumstances, the opinion of APE that You have committed a serious credit infringement; and
- (i) that credit provided to the Applicant has been paid or otherwise discharged.

APE agrees that, in dealing with such information disclosed to APE by You pursuant to the above consent and authority, APE will deal with that information in accordance with this Credit Application (including the Guarantee and Terms and Conditions of Sale), APE's Privacy Policy, the Australian Privacy Principles and the Privacy Act 1988.

ACKNOWLEDGEMENT OF STATEMENTS AND CONSENTS BY APPLICANT AND GUARANTORS

You also acknowledge that before signing this Credit Application, you have read the above consent and authority and the following 3 statements.

1. Type of Credit for the purposes of National Consumer Credit Code and other legislation

You acknowledge for the purposes of section 13 *National Credit Code* (“Code”), as having made this declaration before entering into the Agreement and Guarantee, and that the credit (if any) which is to be provided under the Agreement (if entered into) is not to be applied wholly or predominantly for personal, domestic or household purposes.

You understand that APE has relied upon these representations and warranties in agreeing to provide the Applicant with credit and that APE may suffer loss and damage and liability if these representations and warranties are not true and correct and You will indemnify APE for such loss, damage and liability.

You acknowledge and agree that APE may (in its sole discretion) do any or all of the following: set a credit limit for its credit account;; notify the Applicant of this limit; increase or decrease this credit limit from time to time without giving notice to the Applicant or the Guarantor; and terminate this credit agreement at any time.

2. Consent to Use and Storage

Unless otherwise prevented by law, You consent to any personal information provided being used and/or stored for the following purposes and any other purposes as shall be agreed between us or stated in APE's Privacy Policy (as amended from time to time), including:

- (a) to manage APE's business relationship with You;
- (b) to administer and manage APE's services and systems;
- (c) to enforce APE's legal rights;
- (d) to enter into contracts with You or third parties, and
- (e) to market to and maintain a client relationship with You

3. Privacy Consent

You acknowledge that You have been provided with access to a copy of the Privacy Policy for APE and that You have read and understood the Privacy Policy at www.apeagers.com.au.

You authorize APE to collect, use, store and disclose Your Personal Information within and outside Australia in accordance with APE's Privacy Policy.

TERMS AND CONDITIONS OF SALE

Unless otherwise stated in a written quote provided by the Suppliers to the Applicant, acceptance of the Applicant's order is subject to these Terms

1. Settlement/Terms of Payment

- (a) Subject to the following Terms, trading terms are strictly thirty days of the end of the month in which the Goods are delivered or such other period as APE or the Suppliers may notify the Applicant from time to time.
- (b) If prior lease, hire purchase or credit account arrangements are made, payment is to be as per the Suppliers' quote and if the terms of payment are not set out in the quote, by cash within thirty days of the end of the month in which the Goods are delivered or such other period as APE or the Supplier may notify the applicants.
- (c) Failure to comply with paragraph (a) or (b) will constitute a breach of contract and the Suppliers may treat the whole Agreement as repudiated and act accordingly.
- (d) The Suppliers may refuse, without prejudice to any other rights it may have, to supply or deliver further Goods to the Applicant pursuant to the quote or otherwise until such time as the Applicant has remedied any default under the Agreement.
- (e) Reasonable interest may be charged by the Suppliers on any amount overdue from time to time at such rate as shall be charged from time to time to one or more of the Suppliers by their bankers for overdraft accommodation on such amount as notified to the Applicant.
- (f) From time to time APE or the Suppliers may notify the Applicant that these Terms do not apply to particular Goods or a class of Goods, in which case the trading terms for same will be strictly cash before delivery.

2. Price

- (a) All prices quoted are ex Suppliers' warehouse. Delivery, packaging, freight, insurance etc, are extras.
- (b) All prices quoted are current at the date of the quote, but are subject to change on 14 days notice if considered by the Suppliers to be reasonably necessary.
- (c) All prices quoted are exclusive of Goods and Services Tax.

3. Delivery

- (a) Any times or dates quoted for dispatch or delivery, whether quoted before or after the Suppliers' acceptance of the Applicant's order, are based on receipt by the Suppliers of full and final instructions enabling the Suppliers to proceed uninterrupted with the supply of Goods. The Suppliers cannot accept responsibility for any delays due to causes outside its control. Whilst delivery times and dates are estimated as accurately as possible, they cannot be guaranteed nor is any such estimation of essence to or a condition of supply.
- (b) The Suppliers are not responsible for loss, damage or delay from any cause outside the Suppliers' control. The Applicant is not entitled to any compensation from the Suppliers of any nature for such loss, damage or delay.
- (c) All Goods are at the Applicant's risk during transit. The Suppliers' liability for the Goods ceases on delivery to any authorised third party carrier, agent or representative of the Applicant.
- (d) Visible damage to Goods must be reported to the Suppliers within twenty-four (24) hours of receipt of the Goods.

4. Return of Goods

Except to the extent required by law, the Applicant will not be entitled to return any Goods and the Suppliers will not be obliged to accept the return of any Goods whatsoever.

5. Title

- (a) Until all monies owing by the Applicant to the Suppliers from time to time have been paid in full, the relevant Suppliers shall retain beneficial title in all Goods supplied and the legal title to such Goods and their proceeds automatically vests in AP Eagers Limited (as trustees for the Subsidiaries) upon the commencement of this agreement and such security interest (being a ROT security interest) granted by the Applicant shall automatically vest in AP Eagers Limited (as trustees for the Subsidiaries). (See also amendment of Existing Agreements at clause 19 below.)
- (b) If Goods to which legal title has not passed to the Applicant are in the possession of the Applicant, the Applicant is under an obligation to:
- (i) retain them in a good and merchantable condition until they are either paid for or collected by APE; and
 - (ii) allow APE and/or its servants or agents on to the premises where they are stored for the purpose of inspecting and collecting the Goods.

6. Creation of Charge

As further security for the obligations owing to the Suppliers from time to time the Applicant hereby grants a charge in favour of AP Eagers Limited (as trustee for the Subsidiaries) over all of its rights title and interest in all of its present and acquired property, including real property owned by the Applicant beneficially or otherwise from time to time, and consents to a caveat or other registrable interest being lodged with the relevant government department in respect of such charge. For the purposes of section 20(1) and (2) PPSA, the Applicant states that the charge is in all of the Applicant's present and after acquired property (whether owned beneficially or otherwise) from time to time. (See also amendment of Existing Agreements at clause 19 below.)

7. Limits of Offer

When the Suppliers supply Goods to the Applicant, the Suppliers' quote covers only the Goods listed in the basic specification of Goods offered. All descriptive material, drawings, particulars of weights and dimensions submitted with the Suppliers' quotation are approximate. Certified information for installation purposes can be supplied on request.

8. Performance

Any performance figures given by the Suppliers in any quote of Goods are based upon normal design experience and are such as the Suppliers expect to obtain on test. The Suppliers will, however, accept on liability if these figures are not obtained, unless they are specifically guaranteed in writing in which case they would be subject to recognised and also reasonable tolerance and rejection limits applicable to such figures.

9. Limitation of Liability

- (a) Except to the extent by law, all Goods are purchased by the Applicant 'as is' and the Suppliers will not be responsible for any damage or defect to the Goods.
- (b) Any stipulations, terms or conditions contained in the Applicant's order form which conflict with any of these Terms, are not accepted by the Suppliers unless agreed upon in writing and signed by APE prior to delivery of the Goods.
- (c) Subject to any conditions and warranties mandatorily implied by law and to any conditions and warranties expressly contained herein, all conditions, warranties and representations on the part of the Suppliers, whether express or implied, are hereby excluded.
- (d) The Suppliers shall be under no liability to the Applicant for any loss or damage to any person or property or for death or injury caused by an act or omission by the Suppliers, its employees, agents or contractors.
- (e) Should the Suppliers be liable for breach of a condition of warranty mandatorily implied by law, its liability for such breach shall be limited to one of the following as determined by the Suppliers namely, the

replacement of Goods, or the payment of the cost of having the Goods repaired or Services re-supplied.

- (f) Subject to any legislation or express agreement to the contrary, the Applicant acknowledges that it does not rely on the skill and judgement of the Suppliers, its employees, agents or contractors in determining whether the Goods to be supplied are fit for any particular purpose the Applicant further acknowledges that any advice furnished by the Suppliers with respect to the use of Goods is given on the basis that the Suppliers assume no obligation or liability for advice given or results obtained, all such advice being given and accepted by the Applicant is at the Applicant's risk.
- (g) To the extent permitted by law, the Applicant has responsibility for ensuring that the Goods are not used for any purpose for which they are not suitable and the Applicant warrants and represents that it has had adequate opportunity to inspect the Goods and to obtain independent expert advice if required. To the extent that any warranty as to purpose or merchantable quality is implied by law, the parties, agree that the and exclusive remedy of the Applicant will be to return the Goods and obtain a refund or the Suppliers' election for the Suppliers to repair or replace the Goods as soon as reasonably practical.
- (h) To the extent permitted by law, under no circumstances shall the Suppliers be liable for any direct or indirect loss (including without limitation loss of profit) or damage whether special or consequential however arising (including as a result of negligence) except for any loss or damage (excluding loss of profit and special or consequential damage) suffered by the Applicant as a direct result of a failure by the Suppliers to perform their contractual obligations.
- (i) No claim or action shall be maintainable against the Suppliers unless it shall first have been notified thereof in writing and furnished with fully supporting documentary evidence in relation to the cause and quantum of such claim or action.

10. Acceptance

Signing of these Terms or placing an order after receipt of this document (whichever is the earlier) is deemed to be acceptance by the Applicant of these terms.

11. Relevant Law

All contracts made hereunder are deemed to be made in the Governing State and except to the extent that the laws of the Commonwealth of Australia apply, the interpretation thereof and all disputes arising therefrom or connected therewith shall be governed in all respects by the laws of that State and all such disputes shall be referred to a Court of competent jurisdiction in that State or such other Court nominated by the Suppliers which would otherwise have jurisdiction.

12. Alterations

These conditions may be altered only by APE's management. Such alterations must be in writing and either given or signed by the duly authorised management of APE and on another employee of APE. The alterations will only take effect for orders received after the Applicant is given notice of the alterations. However, the Suppliers may at their discretion cancel credit or change the credit limit at any time and without notice to the Applicant.

13. Verification of Amount Outstanding

A statement signed by any Manager of Accountant of the Suppliers or APE of the monies or other obligations owing hereunder in respect of the account of the Applicant as at a specified date shall be prima facie evidence that such amount or other obligation is owing.

14. Contracting out

Where these Terms are inconsistent with the PPSA's *Australian Competition and Consumers Act 2009 (Cth)* or any other legislation, to the extent permitted by law the parties are deemed to have expressly excluded and replaced those statutory provisions.

15. Exclusion of specific PPSA Provisions

- (a) The Applicant, APE and AP Eagers Limited (as trustee for the Subsidiaries) contract out of the provisions of sections 95, 96, 117, 118, 121(4), 130(3)(g), 132(4), 142 and 143 of the PPSA and nothing in those provisions will apply to this Agreement.
- (b) The Applicant, APE and AP Eagers Limited (as trustee for the Subsidiaries) acknowledge that the Applicant is grantor and AP Eagers Limited (as trustee for the Subsidiaries) is or will become the holder of Purchase Money Security Interest (PMSI) by virtue of this Agreement and/or the PPSA.

16. Appointment

The Applicant appoints and authorises AP Eagers Limited (as trustee for the Subsidiaries) and any director, officer or solicitor of APE of the Suppliers from time to time as its attorney to execute and deliver in its name:

- (a) such form of security interest, charge or mortgage as AP Eagers Limited (as trustee for the Subsidiaries), APE or the Suppliers may reasonably require to better secure any charge granted under these conditions; and
- (b) any financing statement, consent form, security document or other document whatsoever for the purpose of:
- (i) registering any caveat or other registrable interest in respect of the charge or any security interest whatsoever granted under these conditions; or
 - (ii) otherwise perfecting and enforcing the security interest.

17. Further Steps

The Applicant consents to registration of the security interests arising in favour of AP Eagers Limited (as trustee for the Subsidiaries) as a result of these conditions and lodgement of a financing statement in respect of security interests with Personal Property Securities Register, and must do everything (including obtaining consents, signing and producing documents or procuring that they are completed, and supplying information) which AP Eagers Limited (as trustee for the Subsidiaries) considers necessary or desirable for the purpose of the PPSA including, without limitation:

- (a) ensuring that the security interests are registered, enforceable, continuously perfected and otherwise effective in accordance with the PPSA;
- (b) enabling AP Eagers Limited (as trustee for the Subsidiaries) to apply of any registration, or give any notification, in connection with the security interests; and
- (c) enabling AP Eagers Limited (as Subsidiaries) to exercise rights in connection with the security interests in accordance with the PPSA.

18. Set-off

APE, AP Eagers Limited (as trustee for the Subsidiaries) and/or the Suppliers may, without notice, set-off any amount or obligation owing (whether actual or contingent) by the Applicant to the Suppliers under any agreement or otherwise against any amount owing by APE, AP Eagers Limited (as trustee for the Subsidiaries) and/or the Suppliers to the Applicant (whether actual or contingent).

19. Existing Agreements, Applicants and security interests - Transitional and Non transitional PPSA security interests

Where the Applicant has previously entered into an agreement with one or more of the Suppliers for the supply of Good on credit (**Existing Agreement**):

- (a) Upon any order being made by the Applicant for the supply of Goods after the first provision of this document to the Applicant:
- (i) These Terms shall apply to such supply and any subsequent supply of Goods;
 - (ii) any security interest (including any ROS security interest) granted by the Applicant under an Existing Agreement shall immediately vest in AP Eagers Limited (as trustee for the Subsidiaries).
- (b) Any order made by the Applicant shall not constitute a security agreement as between the parties, but only further performance of these Terms unless expressly excluded in writing signed by APE.
- (c) This Agreement will not act as a merger of their rights but that the terms contained under such Existing Agreement will be amended by the terms contained herein to the extent of any inconsistency.

20. General

- (a) By these Terms, the Suppliers provide credit to the Applicant in relation to all moneys payable from time to time for Goods supplied. These Terms shall govern all transactions between the parties as a single Security Agreement for the purposes of the PPSA.
- (b) If any provision of these Terms will be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- (c) All Goods are subject to the laws of the Governing State and the Suppliers take no responsibility for changes in the law which affect the Goods supplied.
- (d) APE and the Suppliers will be under no liability whatsoever to the Applicant for any indirect loss and/or expense (including loss of profit) suffered by the Applicant arising out of a breach by APE or the Suppliers of these Terms.
- (e) The Applicant waives the right to receive a copy of the verification statement confirming registration of a financing statement, financing change statement or notice of assignment relating to the security interests under this agreement.
- (f) The Applicant and the Suppliers agree that the terms of this Agreement may be altered unilaterally by the Suppliers giving 14 days' written notice to the Applicant. Clerical errors are subject to correction without notification.
- (g) Subject to clause 20 (f) and any law the operation of which cannot be excluded, unless consented to in writing by the Suppliers, the Applicant, APE, AP Eagers Limited (as trustee for the Subsidiaries) and the Suppliers acknowledge that these Terms constitute the entire agreement between them and the only enforceable obligations and liabilities of the Applicant, AP Eagers Limited (as trustee for the Subsidiaries) and the Suppliers in relation to its subject matter.
- (h) The Applicant hereby consent to and appoints APE, AP Eagers Limited (as trustee for the Subsidiaries) and the Suppliers to be an interested person and their authorized representatives for the purposes of section 275 (9) PPSA.
- (i) The Applicant agrees to reimburse APE and AP Eagers Limited (as trustee for the Subsidiaries) for all costs and/or expenses incurred or payable by APE and/or AP Eagers Limited (as trustee for the Subsidiaries) in relation to registering or maintaining any financing statement, or releasing in whole or in part, the PPSA and/or other security interests under this agreement.
- (j) The Applicant hereby agrees:
- (i) Any notice by APE, AP Eagers Limited (as trustee for the Subsidiaries) or the Suppliers to the Applicant will be sufficiently served if served personally or by facsimile transmission or if posted by prepaid post to the party to be served at the registered office of such party or its last known place of business and will be deemed to have been received within 2 days of the date of posting if served by post and immediately upon transmission if served by facsimile transmission;
 - (ii) that in addition to any other means permitted by law, any documents, notifications or court proceedings may be given or served upon the Applicant, its successors and permitted assignees in the same manner as any notice or document may be given under Part 8.5 of the PPSA and will be deemed so given or served; and
 - (iii) that the benefit of this credit contract and the security interest created hereunder may be assigned by APE, AP Eagers Limited (as trustee for the Subsidiaries) and/or the Suppliers, but not by the Applicant

21. Interpretation

- (a) "APE" means AP Eagers Limited ABN 87 009 680 013 as agent for each of the Subsidiaries and each of their successors and assigns.
- (b) "Applicant" is a reference to the Applicants names in the attached credit application.
- (c) "Goods" means goods (as that term is defined under the PPSA) supplied by the Suppliers to the Applicant (and where the context so permits includes Services), but excludes any goods sold by the Suppliers on consignment unless the Applicant is notified otherwise in writing by Suppliers.
- (d) "Governing State" means the State of Queensland.
- (e) "includes" in any form is not a word of limitation
- (f) "order" includes any offer or request.
- (g) "PPSA" means the Personal Property Securities Act 2009 (Cth).
- (h) "quote" includes a bid.
- (i) "ROT security interest" means a retention of title security interest under a "conditional contract" as defined under the PPSA.
- (j) "Services" means all services supplied by the Suppliers to the Applicant and includes any advice or recommendations, intellectual or intangible property under the PPSA (and where the context so permits includes any supply of Goods).
- (k) "Subsidiaries" means the subsidiaries of AP Eagers Limited listed from time to time on the website www.apecagers.com.au.
- (l) "Supplied" means the sale, hiring out, consigning out, leasing out and/or providing bailment of Goods by the Suppliers to or at the request of the Applicant in the ordinary course of the Supplier's business.
- (m) "Suppliers" means the Subsidiaries supplying Goods from time to time to the Applicant.
- (n) "Terms" means these terms and conditions of sale.
- (o) If a party consists of more than one person, the party's obligations bind each such person, jointly and severally.
- (p) A reference to any legislation includes that legislation as amended from time to time.
- (q) Headings are for convenience and do not affect interpretation.