

Conditions of Purchase

The conditions of purchase set out below ("**Conditions**"), as amended from time to time, apply to all goods and services ("**goods**") supplied by any company, person or other party ("**Supplier**") to Tradelink Pty Limited ("**Purchaser**"). The Conditions together with the Trading Agreement and any Purchase Order for the order of goods constitute the terms on which the goods are supplied by the Supplier to the Purchaser.

The Purchaser is not bound by the Supplier's terms of sale or any other conditions the Supplier seeks to impose on, or that purport to apply to, the supply of the goods by the Supplier to the Purchaser. The Supplier agrees that by supplying the goods to the Purchaser, the Supplier accepts these Conditions, the Trading Agreement and any Purchase Order for the order of goods as being the only conditions applicable to a particular supply of goods. The parties must not amend these Conditions unless recorded in writing and signed by the Purchaser's General Manager Strategy & Commercial.

1. PURCHASE ORDERS

- 1.1 All goods required by the Purchaser will be ordered by way of an official purchase order issued by a branch or office of the Purchaser ("**Purchase Order**"). Verbal and/or hand-written Purchase Orders or variations are not to be accepted by the Supplier and do not constitute an official order under any circumstances.
- 1.2 A written quotation or price list, given by the Supplier to the Purchaser shall constitute an offer to sell the goods described in that document. Any Purchase Order placed by the Purchaser in response to a quotation shall constitute acceptance of the offer on the terms of these Conditions, the Trading Agreement and the particular Purchase Order. Terms and conditions deviating from or inconsistent with these Conditions, the Trading Agreement and any relevant Purchase Order for the supply of goods are expressly rejected by, and will not bind, the Purchaser.
- 1.3 The Supplier will not vary a Purchase Order without first obtaining a modified Purchase Order from the Purchaser.
- 1.4 Suppliers are to ensure delivery is made to the correct delivery address identified on the Purchaser Order.
- 1.5 Where a Blanket Purchase Order has been issued, no deliveries are to be made on the Blanket Purchase Order. Draw Down Purchase Orders will be issued referencing the Blanket Purchase Order number to facilitate deliveries.
- 1.6 Delivery Dockets and Tax Invoices issued by the Supplier must reference the Purchaser Order number or the Draw Down Purchase Order number (as the case may be) and not the Blanket Purchase Order number.
- 1.7 The Supplier agrees to implement an Electronic Data Interchange ("**EDI**") as required by the Purchaser. The Purchaser may at any time issue Purchase Orders to the Supplier through the EDI or by email in accordance with the Supplier's details set out in the Trading Agreement or as otherwise notified by the Supplier to the Purchaser.
- 1.8 Unless otherwise agreed by the Purchaser, the Supplier must provide the Purchaser with a quote for an order of goods in Microsoft Excel (xls) spreadsheet format within 24 hours of receiving the Purchaser's request for a quote.
- 1.9 The Purchaser is under no obligation to issue any Purchase Orders to the Supplier for the supply of any goods and there is no guarantee of minimum quantity.

2. PRICING – SPECIAL ORDERS

- 2.1 Where goods ordered are the subject of special negotiated prices instead of the agreed purchaser/buying file prices, the Supplier will provide the Purchaser with a written price variance authority,

which shall be known as the Supplier Quotation Number ("**SQN**"), for such goods. The Purchaser will itemise the quoted prices for each product line on the Purchase Order, quoting the Supplier's SQN. The SQN must also be reflected on the Tax Invoice issued by the Supplier in respect of such goods.

- 2.2 The prices agreed to in clause 2.1 as evidenced by the Supplier's written SQN and a Purchase Order will apply regardless of any other purchase price previously agreed between the Supplier and the Purchaser.
- 2.3 The Supplier must validate the SQN and item cost shown on a Purchase Order prior to despatch. If a discrepancy exists, an order amendment must be requested and obtained from the branch that issued the Purchase Order. If an order amendment is not obtained, the Purchaser will not be liable for any amounts in excess of the original Purchase Order cost.
- 2.4 Any change to the expiry date contained in the original SQN must be confirmed in writing by the Supplier prior to the expiry date and agreed to by the Purchaser in writing.

3. PRODUCT RANGING

- 3.1 It is agreed and understood that the Purchaser is under no obligation to stock the Supplier's complete range of products, and that the Supplier must seek and gain pre-approval from the Purchaser's General Manager Strategy & Commercial or relevant National Product Manager before approaching the Purchaser's branches or other employees to promote or implement any new products or product lines. If the Supplier delivers product to any of the Purchaser's branches in breach of this condition, the Purchaser reserves the right to return such product to the Supplier at the Supplier's expense, and the Supplier further agrees to refund to the Purchaser the full cost of such product including GST.
- 3.2 All goods must have an approved barcode that is capable of being scanned on the Purchaser's point of sale systems.
- 3.3 Where a Supplier's range of merchandise is added to a new or newly acquired branch of the Supplier, a further minimum discount of 10% will apply to the initial order for that branch.

4. AUSTRALIAN CONSUMER LAW

- 4.1 It is an essential term of these Conditions that the Supplier complies with the provisions of the Australian Consumer Law. Without limiting that obligation in any way, the Supplier must comply (and ensure that any manufacturer or other supplier complies) with Section 102 of Schedule 2 of the Competition and Consumer

Act 2010 (Cth) and Regulation 90 of the Competition and Consumer Regulations 2010 (Cth), in relation to any warranty provided by the Supplier, any third party supplier, or the manufacturer of the goods. To the extent permitted by law, the Supplier indemnifies, and keeps the Purchaser indemnified against any loss, cost, penalty or claim made against the Purchaser that arises out of or relates to a breach of this clause 4.1 by the Supplier.

5. DELIVERIES AND INVOICES

5.1 Unless otherwise agreed with the Purchaser, the Supplier must deliver the goods to the address specified in the Purchase Order by the date stated in the Purchase Order. If no delivery date is specified in a Purchase Order, the Supplier agrees to complete delivery within forty-eight (48) hours from the issue date of a Purchase Order, unless otherwise agreed by the Purchaser.

5.2 All deliveries are to be clearly labelled with the full address of the receiving location as shown on the relevant Purchase Order. A Delivery Docket must accompany delivery of the goods so ordered. The Supplier must package all goods in compliance with any applicable laws and in a safe and secure manner to ensure reasonable protection against theft or damage during transit and delivery.

5.3 Where the Supplier becomes aware that it will not be able to comply with a specified delivery date as shown on a Purchase Order, the Supplier will immediately notify the Purchaser's representative who issued the Purchase Order and obtain approval for any change to the original delivery date. If approval is not obtained, the Supplier will use, and be responsible for, any express freight that may be required to guarantee that the product is delivered into the branch to meet the required delivery date or the agreed lead-time. In the event that delivery is delayed by more than twenty-four (24) hours, the Purchaser will be entitled to cancel the order or reject the delivery without any liability whatsoever.

5.4 The Purchaser will be entitled to recover from the Supplier as a debt due and payable by the Supplier to the Purchaser, any reasonable, direct and documented costs and expenses suffered by the Purchaser as a result of the Supplier failing to satisfactorily complete delivery within the agreed timeframe.

5.5 Where, at the Purchaser's direction, goods are collected from the Supplier's warehouse by a party other than the Purchaser or delivered to an address other than a site occupied by the Purchaser, the Supplier must forward a copy of the Delivery Docket to the branch from which the Purchase Order was issued within twenty-four (24) hours after the time the goods are collected or delivered. Any reasonable, direct and documented costs and expenses resulting from the Supplier delivering the wrong type or amount of goods, delivering to the wrong address or failing to deliver within the agreed timeframe will be borne by the Supplier.

5.6 Where goods ordered are unavailable for delivery by the specified date and time, the Supplier will not make substitutions or place the goods on backorder unless agreed to by the Purchaser in writing. If any Purchase Order is unfillable, the Supplier agrees to advise the branch that issued the Purchase Order immediately upon receipt of the Purchase Order.

5.7 The Supplier's Delivery Docket is to be numbered and include the following details:

- (a) the Supplier's details including name, address, phone number and email address;

- (b) the Purchaser's details including name, address and phone number of the originator of the order;
- (c) the Purchase Order number;
- (d) the Supplier's Delivery Docket and Tax Invoice number;
- (e) a full description of the goods including the Supplier's part number if applicable;
- (f) the quantities of each item ordered, supplied and back ordered;
- (g) total quantity and unit of measure of packs, bags etc for each item; and
- (h) method of transport and carrier consignment note number.

5.8 The Supplier will issue a separate Tax Invoice for every Delivery Docket and where possible will ensure that Delivery Docket numbers and the corresponding Tax Invoice numbers are the same.

5.9 The Supplier acknowledges and agrees the Purchaser will not be liable to pay for goods unless Delivery Dockets have a legible and identifiable signature of an authorised representative of the Purchaser together with a valid Purchase Order number and the relevant Purchaser's branch's signature stamp recorded on the Supplier's delivery paperwork. Further, the Purchaser will not be liable for payment if the Supplier's Tax Invoices do not quote the Purchase Order number.

5.10 The Supplier's Tax Invoices must quote the Purchase Order number of the Purchase Order applicable to the goods being invoiced. If a Purchase Order does not specify a Purchase Order number, it is the Supplier's responsibility to ensure that Purchase Order numbers are obtained prior to delivery. The Purchaser will not be obliged to accept goods unless a valid Purchase Order number is quoted on the Supplier's Delivery Docket.

5.11 If the Supplier is registered for GST, the Supplier must issue to the Purchaser complying Tax Invoices and Adjustment Notes (accounts) in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and as periodically amended or updated by GST Rulings and Determinations made by the Australian Taxation Office ("**ATO**"). The Purchaser's billing name for accounts is "Tradelink Pty Limited" and the billing addresses for the relevant States are as shown in the table below.

General Mail: Locked Bag 71 Virginia BC Qld 4014	A/P Vic/Tas: Locked Bag 107 Virginia BC Qld 4014
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A/P Qld: Locked Bag 233 Virginia BC Qld 4014	A/P SA: Locked Bag 231 Virginia BC Qld 4014
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A/P NSW: Locked Bag 232 Virginia BC Qld 4014	A/P WA: Locked Bag 230 Virginia BC Qld 4014
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5.12 Statements of account and Tax Invoices must never be forwarded directly to the Purchaser's branches or be forwarded with the goods being delivered.

5.13 The Supplier must submit a Tax Invoice, issued in accordance with this clause 5, to the Purchaser within five (5) working days following delivery of goods to ensure timely payment.

6. FREIGHT

6.1 Where a Purchase Order specifies, or the Purchaser otherwise directs that goods are to be delivered free into store (FIS), the Supplier agrees to deliver all the goods ordered, at its expense, directly to the specified Purchaser's branch.

6.2 Where a Purchase Order specifies, or the Purchaser

otherwise directs, that goods are supplied Ex works (EXW) at the Supplier's warehouse or Free carrier (FCA), as these terms are defined in the Incoterms®, the Supplier acknowledges that the goods will be collected from the Supplier's warehouse or the carrier's depot by the Purchaser or its nominee (as the case may be) at the Purchaser's expense.

- 6.3 The Purchaser reserves the right (acting reasonably) to refuse any carrier to be utilised by the Purchaser for the supply of goods under these Conditions, including where the Purchaser has reasonable grounds to believe the carrier may be, or it puts the Purchaser at risk of being, in breach of CoR Laws or WHS Laws.
- 6.4 Where the Supplier utilises its own delivery vehicles to deliver goods, and a Purchase Order provides that the Purchaser is responsible for freight costs which were included in the Supplier's quote for the goods, the Supplier agrees to itemise the freight charge as a separate line item on the Tax Invoice. If there are no freight charges listed on the Tax Invoice, it is taken that the Supplier accepts responsibility for all freight charges.
- 6.5 In the instances where the Purchaser requires goods to be delivered by the Supplier directly to the Purchaser's customer or customer's job site (direct delivery) and it has been expressly agreed that freight is payable by the Purchaser, the negotiated freight amount must be confirmed on the Purchase Order issued by the Purchaser to the Supplier. If the agreed freight charge has been omitted from the Purchase Order the Supplier agrees to contact the Purchaser's originating Branch and request an amended Purchase Order incorporating the freight charge. If the direct delivery is completed and there is no freight charge listed on the Purchaser's Purchase Order, the Supplier is deemed to have accepted all freight charges.
- 6.6 Where freight is to be charged, the Supplier also agrees to show the freight charge as a separate line item on the Tax Invoice issued to the Purchaser.

7. BACKORDERS

- 7.1 The Supplier agrees to contact the Purchaser's branch Regional Inventory Controllers on a weekly basis and provide updated lead times for all Purchase Orders issued where the Purchaser has accepted a backorder delivery date under clause 5.6.
- 7.2 Prior to delivery of backorders, the Supplier agrees to contact the Purchaser's branch Inventory Controllers and confirm that the goods are still required.

8. RECEIVING GOODS

- 8.1 The Purchaser reserves the right to make claims upon the Supplier for any goods which are at the time of delivery, damaged, defective, short delivered and/or incomplete.
- 8.2 The Supplier accepts that the contents of Supplier factory packaged goods may not be checked by the Purchaser at time of receipt, but will be checked at time of installation. Claims for damaged and/or defective goods, items short delivered and/or incomplete goods may be made at that time.
- 8.3 The Supplier also accepts that claims may be made by the Purchaser for defects at any time within a reasonable period of the Purchaser becoming aware of such defects.
- 8.4 The Purchaser will only receive goods into its branch network between the hours of 9.00 am to 12 noon and 1.30 pm to 3.00 pm Monday to Friday but excluding gazetted public holidays in the State or Territory where the goods are to be received. Any exceptions

will be by prior arrangement only.

9. GOODS & SERVICES TAX (GST)

- 9.1 In these Conditions, the expressions "GST", "Adjustment Note", "input tax credit", "Tax Invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System, (Goods and Services Tax) Act 1999 (Cth).
- 9.2 With the exception of any amount payable under this clause 9, unless otherwise expressly stated, all amounts stated to be payable in these Conditions are exclusive of GST.
- 9.3 If GST is imposed on any supply made under or in accordance with these Conditions, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with these Conditions, subject to the provision of a tax invoice.
- 9.4 If the Supplier is registered for GST it must raise and provide to the Purchaser GST compliant Tax Invoices and Adjustment Notes (accounts) in accordance with A New Tax System (Goods and Services Tax) Act 1999 (Cth) and as interpreted by GST Rulings and Determinations made by the ATO.
- 9.5 If the Supplier is not registered for GST, it agrees to include its ABN on all invoices and credit notes. Failure by the Supplier to quote its ABN on its invoice may result in the Purchaser withholding part payment at the top marginal tax rate (plus Medicare Levy) of the total invoice value and remitting this to the ATO as per legislated taxation requirements (PAYG system).

10. FEES & CHARGES

- 10.1 Unless otherwise agreed in writing by the Purchaser, the Purchaser will not be liable for and will not pay fees for packaging and handling, restocking or any other fee or penalty of any kind in connection with the goods under any circumstances.

11. RETURNS/DISPUTES/ADJUSTMENTS

- 11.1 Except in the case of Supplier packaged factory goods which are dealt with in clause 8.2, where there is a discrepancy between goods received and those described on the Supplier's Delivery Docket, or if goods are rejected by the Purchaser upon delivery for any reason, the Purchaser will advise the Supplier as soon as reasonably practicable after receipt of the goods.
- 11.2 Unless otherwise specified in the Trading Agreement, the Supplier will, at its cost, collect rejected goods or other goods returned from the Purchaser within fourteen (14) days of notice of the goods return being given by the Purchaser and must prior to collection issue the Purchaser with a written Return Authority ("RA") number. If the Supplier fails to collect the rejected goods within the fourteen (14) day period, the Purchaser will return the goods to the Supplier and any costs and expenses incurred by the Purchaser in doing so will be a debt due and payable by the Supplier to the Purchaser.
- 11.3 Where a delivery error is caused by the Supplier, the Supplier agrees to immediately issue the Purchaser with a RA number and, if required by the Purchaser, immediately replace and/or arrange for the return of the good at the Supplier's cost.
- 11.4 Once the RA has been provided and the subject stock returned, the Supplier must issue the relevant Adjustment Note and credit any moneys owing to the Purchaser's account within five (5) working days.

- 11.5 For any adjustments, the Supplier's Adjustment Note is to be numbered and, without limiting the requirements otherwise contained in these Conditions, must include the following details:
- the Supplier's details including name, ABN address, phone number and email address;
 - the Purchaser's details including name, address of the claim originator;
 - the Purchaser's credit claim number to which the Adjustment Note relates (if applicable); and
 - the original Tax Invoice number or Purchase Order number to which the Adjustment Note relates.
- 11.6 The Supplier is to provide formal notification of any claims that are rejected. Notice of rejection of claims should contain the following details:
- the Supplier's details including name, address, phone number and email address;
 - the details of the relevant branch of the Purchaser issuing the notification including name and address;
 - the Purchaser's credit claim number to which the rejection relates; and
 - the reason for the rejection.
- 11.7 The Supplier undertakes and acknowledges that it is the Supplier's responsibility to resolve and finalise all claims or disputes within three (3) months from date of claim. The Purchaser will provide all reasonable assistance to the Supplier in resolving claims made by the Supplier against the Purchaser.
- 11.8 The Supplier acknowledges and agrees that any claim or dispute not resolved within the required three (3) months will (unless the Supplier immediately notifies the Purchaser in writing that it elects to utilise the dispute resolution process set out in clause 11.9) be deemed to be accepted by the Supplier and the Supplier will immediately issue to the Purchaser an Adjustment Note for the full value of the outstanding claim or dispute and credit any moneys owing to the Purchaser to the Purchaser's account.
- 11.9 If pursuant to clause 11.8 the Supplier elects to utilise the dispute resolution process, then the claim or dispute is to be referred for mediation in accordance with the mediation guidelines published by the Resolution Institute to a mediator agreed on by the parties. The role of any mediator is to assist in negotiating a resolution of the dispute, and must seek to resolve the dispute within 40 working days of their appointment. A mediator may not make a decision that is binding on a party. Any information or documents disclosed by a party under this clause must be kept confidential and may not be used for any purpose except to attempt to resolve the dispute. Each party must bear its own costs of complying with this clause and the parties must bear equally the costs of the mediator.

12. PAYMENT TERMS

- 12.1 Payment terms will be the number of days set out in Section B of the Trading Agreement. The calculations of payment terms will be from the end of month in which the goods are received.
- 12.2 If no Trading Agreement exists, or for any reason payment terms are omitted from the Trading Agreement, the agreed terms will be strictly sixty (60) days from the end of the month in which the goods are received.

13. ACCOUNT PAYMENT

- 13.1 The Supplier agrees that if payment is to be made by Electronic Funds Transfer ("**EFT**"), the payment will be made by the Purchaser on the first working day

following the due date for payment as determined by the payment terms. It shall be deemed that payment in these circumstances has been made within agreed terms and the Supplier will not impose any costs or expenses on the Purchaser whatsoever.

- 13.2 If the Supplier does not accept payment by EFT, then payment will be made by the Purchaser posting a cheque to the Supplier on the last working day of the month in which the account is due for payment. The Purchaser will not be held responsible for any postal delays and it shall be deemed that payment in these circumstances has been made within agreed terms and the Supplier will not impose any penalties whatsoever.
- 13.3 The Accounts Payable Department of Tradelink Pty Limited is to be the Supplier's first point of contact for payment queries. The Supplier acknowledges and agrees that it will never contact the ordering branch of the Purchaser for payment or account queries.

14. SETTLEMENT DISCOUNT

- 14.1 The Supplier will allow a settlement discount at the rate (if any) set out and agreed in Section B of the Trading Agreement and such discount will be calculated by the Purchaser and deducted from any payments due by the Purchaser to the Supplier.

15. STOCK CONTROL

- 15.1 The Supplier agrees to exchange any slow moving or discontinued stock, in resaleable condition, with other saleable stock items of equal value as required by the Purchaser.
- 15.2 Upon request by the Purchaser, the Supplier agrees to:
- exchange stock for which no sales have been recorded at a Purchaser's Branch within the prior twelve (12) months and exchange it for current saleable stock of an equal value or other stock of equal value as nominated by the Purchaser; and
 - accept the return of any unsold promotional stock ordered by the Purchaser which remains unsold after ninety (90) days from the end of the promotion period and credit the Purchaser's account for any promotional stock returned in accordance with the process set out in clause 11.
- 15.3 The Purchaser will endeavour to redistribute stock within its own Branch network prior to requesting the exchange of non-selling or discontinued products.
- 15.4 Where the Supplier intends to remove a product from its range or modify it in any way for whatever reason, the Supplier undertakes to provide the Purchaser's relevant National Product Manager or General Manager Strategy & Commercial with written notice at least one hundred and twenty (120) days prior to the effective date of the removal or modification of such product.
- 15.5 Any stock of goods modified or removed from the Supplier's range which remains unsold at the Purchaser's branches at the end of the one hundred and twenty (120) days' notice period as outlined at clause 15.4 will be exchanged by the Supplier for current saleable stock of an equal value or other stock of equal value as nominated by the Purchaser, or for a full credit or refund, at the Purchaser's option.
- 15.6 The Supplier further agrees that if less than one hundred and twenty (120) days' notice of product removal or modification is given, the Supplier will accept the return of all such stock which remains unsold at the Purchaser's Branches for full credit or refund without adjustment upon the Purchaser returning the goods. The Supplier further agrees to immediately issue an Adjustment Note to the

Purchaser for the full value of the goods that have been returned. The cost of returning such stock shall be borne by the Supplier.

- 15.7 Showroom items and internal use items are to be supplied to the Purchaser free of charge.

16. PRICE CHANGES

- 16.1 The Supplier will provide written notification of general cost price changes to the Purchaser's National Product Manager no less than ninety (90) days prior to the proposed effective date of such cost price changes and must honour the price quoted for all Purchase Orders not yet fulfilled. The effective date for these changes must always be the 1st day of a given month. The Purchaser reserves the right to negotiate any proposed price revision and to seek justification from the Supplier substantiating any cost price increases.
- 16.2 Without limiting clause 16.1, the Supplier will provide new price lists incorporating details of any proposed cost price changes by email to the Purchaser's National Product Manager at cost.file@tradelink.com.au in the required format as shown in Appendix 1 at least seventy five (75) days prior to the proposed effective date of the cost price changes.
- 16.3 If the Supplier fails to provide such notifications and price lists in the required timeframes, the Purchaser reserves the right to reject or defer the cost price revisions until the 1st day of the following month after the required timeframe has elapsed.
- 16.4 The revised Supplier price lists are also to be distributed by the Supplier direct to the Purchaser's branch network and State Support Offices, a minimum of five (5) working days prior to the effective date.
- 16.5 The Supplier will give the Purchaser fourteen (14) days written notification of the continuance of the Supplier periodical specials or promotional pricing beyond the originally advised expiry date for such specials.

17. WARRANTIES AND INSURANCE

- 17.1 Without limiting any warranties or guarantees implied or imposed by law or by statute (including the Australian Consumer Law), the Supplier warrants that all goods supplied are of merchantable quality, unencumbered, are new on delivery, in accordance with any specification given to the Supplier by or on behalf of the Purchaser, are free from defects in materials and workmanship, correspond with their description and any samples provided to the Purchaser, are fit for the stated purpose, are safe and not a risk to health, and comply with all applicable Australian Standards and laws, regulations, industry requirements and by-laws.
- 17.2 All goods which are classified by Standards Australia must be accredited to the relevant standard and carry the current Standards Australia mark or watermark and license number. Goods must also be marked with Supplier identification.
- 17.3 Any suspension or cancellation of any Standards Australia accreditation is to be immediately notified to the Purchaser's National Product Manager or General Manager Strategy & Commercial, and the Purchaser reserves the right to return any stock no longer covered by Standards Australia accreditation for a full credit or refund (at the Purchaser's option) without adjustment by the Supplier.
- 17.4 The Supplier hereby indemnifies the Purchaser for any loss, costs, damages, expenses and injury to property or persons (including but not limited to legal expenses) resulting from, arising out of or in

connection with a breach by the Supplier of any of these Conditions or the negligence of the Supplier, and the Supplier's liability will be reduced to the extent any loss or damage arises from any negligent act or omission of the Purchaser. In the event that a claim requires the Purchaser or a customer of the Purchaser to repair, replace or reinstall product, the Supplier agrees that all reasonable costs relating to or arising out of the required work or replacement will be at the Supplier's expense. Despite any other provision of these Conditions, neither party is liable to the other for any indirect, special or consequential loss or damage which includes loss of profit, loss of revenue, loss of use, loss of business, loss of opportunity, loss of goodwill, loss of production or business interruption or any kind of indirect, special or consequential loss or damage.

- 17.5 In the event of a warranty claim by the Purchaser or a customer of the Purchaser, the Supplier agrees, where possible, to inspect the site of the installation within twenty-four (24) hours of the Supplier being notified of the warranty claim. The Supplier also agrees to respond with a written report to the customer and the Purchaser within five (5) working days of the warranty claim notifying the Purchaser and the customer of the Supplier's decision in relation to the warranty claim.
- 17.6 The Purchaser may, at its option or if requested by the Supplier, inspect the site of the installation of the goods that are the subject of a warranty claim. The Supplier agrees to reimburse the Purchaser for the Purchaser's costs for conducting such inspection.
- 17.7 The Supplier warrants that it holds and will maintain public and products liability insurance in relation to all supplies to the Purchaser with a reputable insurer for an amount not less than \$10,000,000 in respect of any one claim.
- 17.8 The Supplier agrees to provide copies of current certificates of currency for the public and products liability insurance referred to in clause 17.7 promptly when requested by the Purchaser, detailing the policy number and the amount of insurance cover.
- 17.9 The Supplier is to have in place a quality assurance policy as per Australian Standard 3902/ISO 9002 and to comply with such quality assurance policies as directed by the Purchaser.

18. GOVERNING LAW

- 18.1 The Supplier acknowledges and agrees that these Conditions shall be construed according to the laws of the state or territory specified in the Purchase Order. Where the state is not specified, the applicable law shall be the state in which the Purchase Order was issued. The parties submit to the exclusive jurisdiction of the courts in the state or territory so specified or as determined.

19. PRODUCT KNOWLEDGE TRAINING

- 19.1 The Supplier agrees, at its cost, to provide sales support and product knowledge training, which complies with the requirements of any and all legislation, state and Commonwealth, and any requirements of the Purchaser. If requested by the Purchaser, the Supplier must provide product knowledge training to new employees, including in relation to features, benefits and unique selling propositions for the goods, by no later than four (4) weeks from the date the training is requested by the Purchaser.
- 19.2 The Supplier must provide training to the Purchaser if there are any changes to the goods or the launch of a

new product.

- 19.3 Detailed and specialised product knowledge training is also to be provided to select product specialists/stores as directed by the Purchaser.
- 19.4 The Supplier agrees to arrange any product training required by the Purchaser with the Purchaser's National Learning & Development Manager. Any such training will be at the Supplier's expense.

20. MARKETING INITIATIVES

- 20.1 The Supplier will pay the marketing (MKT1) rebate set out and agreed in the Trading Agreement. The marketing rebate is to be used by the Purchaser for nationally coordinated Tradelink advertising and promotional activities focused on increasing customer visits and purchases through the Purchaser's network of branches. The Supplier agrees that it must not undertake any direct supplier related promotional activity involving the Purchaser's branch network, unless all details of such promotions are provided to the Purchaser's National Category Manager or Head of Marketing, and their written approval is obtained prior to any release of information to the Purchaser's branches, in accordance with Appendix 2.

21. PERSONAL PROPERTY SECURITIES ACT 2009

- 21.1 Nothing in these Conditions creates a security interest in the goods for the Supplier.
- 21.2 The Supplier shall not, in any circumstance, register or seek to register an interest in the goods under the Personal Property Securities Act 2009 (Cth).

22. REBATES AND PAYMENTS

- 22.1 The Supplier will pay the purchase rebates and any other incentives as set out and agreed in Section B of the Trading Agreement or as otherwise agreed in writing between the Purchaser and the Supplier.
- 22.2 Where there are no specific written conditions in the Trading Agreement as provided by clause 22.1 or no Trading Agreement exists, the Supplier agrees to pay the Purchaser a general rebate equal to 7.0% of the Purchaser's total monthly purchases.
- 22.3 The rebate method of payment is either as specified in the Trading Agreement or otherwise by deducting the amount payable to the Purchaser from any payment due to the Supplier.
- 22.4 Where the sum of all purchase rebates, marketing incentives and any other incentives including a general rebate, as provided by clauses 20.1 and 22.1, can be expressed as a flat % and applies to total purchases, e.g. total rebate payable by Supplier is 17.5% of total purchases, representing 15% purchase rebate plus 2.5% marketing incentive, the Supplier agrees to allow the Purchaser to calculate and deduct the appropriate % from monthly payments made by the Purchaser to the Supplier.
- 22.5 The Purchaser's remittance advice sent to the Supplier will show details of the rebate calculation for validation purposes by the Supplier.
- 22.6 In all other instances the Supplier agrees to calculate the monthly rebate owing to the Purchaser, notify the Purchaser of the amount and pay such purchase rebates, marketing incentives and any other incentives including general rebate, as provided by clauses 20.1 and 22.1 as a liquidated debt due and payable. Payment is to be in accordance with the payment terms as explained in clause 12 and the acceptable methods of payment are EFT, Cheque or Adjustment Note.
- 22.7 In either case, as rebates represent an adjustment to

the original purchase price, the Supplier must calculate rebate on the gross invoice value including GST and issue a corresponding Adjustment Note equal to the amount of the remittance to the Purchaser so that GST can be correctly attributed.

- 22.8 Where the Supplier pays by cheque or Adjustment Note, the payment is to be forwarded to:

National Rebates Accountant
Finance Department
Tradelink Pty Limited
Locked Bag 71
VIRGINIA BUSINESS CENTRE QLD 4014

- 22.9 The Supplier shall prepare a rebate summary / Adjustment Note for the Purchaser in accordance with this clause 22 and Appendix 2. This is to be completed by the Supplier showing purchases by state and the rebate and/or incentive payable to the Purchaser calculated in accordance with the Trading Agreement rebate structure and these Conditions and shall include the current GST.
- 22.10 The Supplier will forward the rebate summary / Adjustment Note by email to the Purchaser's Finance Department at rebate@tradelink.com.au on the same day the rebate and/or incentive is paid by EFT.
- 22.11 The Supplier acknowledges that rebate and incentive payments and the liability for them is not dependent upon prompt payment for purchases and that rebate and incentive payments are expressly separate agreements to payment/settlement terms for purchases.
- 22.12 Rebates or credits due to the Purchaser under this clause 22 are recoverable from the Supplier as a debt due and payable. No:
- (a) delay;
 - (b) failure to seek or adjust payments to account for the rebate;
 - (c) failure to require the Supplier to comply with its obligations under this clause 22; or
 - (d) payment of the full supply amount to the Supplier, on the part of the Purchaser, will prejudice the Purchaser's rights to recover the amounts and rebates due under this clause 22.

23. ACCOUNT SET OFF

- 23.1 Subject to clause 22.7, the Supplier acknowledges and agrees that the Purchaser may, at its option, set-off any amounts owed to the Supplier against amounts owed by the Supplier to the Purchaser.

24. NATIONAL TRADING AGREEMENTS

- 24.1 The Supplier agrees to immediately communicate the detail of the Trading Agreement to its state managers, all of its agents and associated/ subsidiary companies as appropriate. The Supplier will ensure that these parties comply with all of the obligations/commitments contained in these Conditions and the Supplier will indemnify the Purchaser in respect of any breach of these Conditions by any such party.

25. TITLE AND RISK

- 25.1 Risk in the goods shall pass to the Purchaser on delivery.
- 25.2 Ownership of and unencumbered title in the goods will pass to the Purchaser on delivery.

26. NOTICE

- 26.1 Notice given by the Supplier to the Purchaser may be delivered personally, posted or emailed to the General Manager Strategy & Commercial of the Purchaser at:

Post: General Manager Commercial
Tradelink Pty Limited
Locked Bag 71
VIRGINIA BUSINESS CENTRE QLD
4014

Email: import@tradelink.com.au

- 26.2 If the notice is posted, it shall be taken as delivered on the fifth working day following posting or if the notice is sent by email, it will be deemed delivered when successfully transmitted.
- 26.3 Any changes to the Supplier's contact details including national, state or regional office address, phone, email, postal address, bank details, agents or distributors details are to be communicated in writing to the Purchaser's National Product Manager, no less than two weeks in advance of such changes.

27. CONFIDENTIALITY

- 27.1 Under no circumstance is the Supplier to respond in telephone communications to cost price or Trading Agreement detail enquiries, such as rebate structures, from the Purchaser's branch network.
- 27.2 Branch network enquiries regarding these Conditions, the Trading Agreement and any Purchase Order are to be referred to the Purchaser's National Product Manager or General Manager Commercial.
- 27.3 Invoice cost price enquiries should be responded to by email to the enquiring branch and followed up by Supplier Sales Representative to ensure Supplier price lists and other product invoice cost information is available at the branch.
- 27.4 For the purposes of this clause, the term **Confidential Information** means all information which relates to the agreed trading terms including rebate structures and the Purchaser's business and undertaking, including know-how, trade secrets, intellectual property, proprietary information, business, operational, product pricing and any other information to which the Supplier obtains access.
- 27.5 The Supplier and Purchaser will treat any Confidential Information disclosed to it by the other party as confidential and to this end (but without limiting the generality of the obligation hereunder) the parties must:
- (a) initiate a system for the safe custody of the Confidential Information and for the control of the making of copies of it and their safe custody; and
 - (b) instruct each and every employee who will be required to use the Confidential Information to the effect that it is to be treated as confidential, must not be disclosed to third parties and must be kept in safe custody.
- 27.6 The obligation of confidentiality under this clause shall not apply to any part of the Confidential Information which:
- (a) is or becomes available to the public through no fault of the recipient;
 - (b) is already in the possession of the recipient prior to disclosure by the disclosing party;
 - (c) is received by the recipient from a third party who is not under any obligation of confidence; or
 - (d) is required to be disclosed by law.
- 27.7 The obligation of confidentiality under this clause will continue unless and until such Confidential Information is in the public domain other than by virtue of a breach of this clause or it is agreed by the disclosing party that such Confidential Information is otherwise sufficiently public as to negate this obligation or a date which is five (5) years from expiry or termination of the Trading Agreement, whichever is

earlier.

28. CONTINUOUS IMPROVEMENTS

- 28.1 The Supplier must use its best efforts to identify strategies and processes to:
- (a) reduce the input costs to the Supplier of manufacturing, sourcing and supplying the goods to the Purchaser;
 - (b) achieve efficiencies in manufacturing, handling and delivering the goods to the Purchaser; and
 - (c) achieve efficiencies in the Purchaser's demand for and usage of the goods, including, without limitation, by advising the Purchaser on and making suggestions in relation to changes to the product specifications, consolidating the range of goods purchased, development of new products and adapting the Purchaser's manufacturing, ordering handling or storage processes, to the greatest extent possible having regard to the Purchaser's commercial requirements and priorities.
- 28.2 The parties acknowledge that the implementation of the process described in clause 28.1 may result either in a reduction in the unit cost of the goods offered by Supplier to the Purchaser, or in a reduction in the Purchaser's total spend on goods.

29. SAFETY- CHAIN OF RESPONSIBILITY AND WHS

- 29.1 Notwithstanding the Supplier may not load or unload the goods, the Supplier must comply, and ensure that all of its employees, agents or subcontractors comply with all legislative requirements that apply to the transport of goods by road including but not limited to mass, loading, dimension, fatigue management requirements and speed compliance requirements of the CoR Laws.
- 29.2 The Supplier must establish, implement and maintain for the term of the Trading Agreement (or otherwise for so long as goods are supplied to the Purchaser under these Conditions) appropriate policies, procedures and business practices to ensure its business practices comply with the requirements of the CoR Laws and WHS Laws and authorises the Purchaser (or its authorised agent) to carry out occasional or periodic audits of the Supplier's business practices.
- 29.3 Without limiting the above or any other requirement in these Conditions, the Supplier will, in respect of each delivery of the goods requested by the Purchaser in accordance with these Conditions:
- (a) ensure that the Goods loaded are correctly and securely loaded, and safely unloaded and that the CoR Laws have been complied with; and
 - (b) if requested by the Purchaser, provide to the Purchaser, once the loading has been completed, written notice that the loading has been completed in compliance with the CoR Laws and other applicable legislative requirements.
- 29.4 The Supplier must obtain and maintain, and ensure that its subcontractors obtain and maintain, all licences required by legislative requirements.
- 29.5 The Supplier shall ensure that all vehicles have all required current licences, permits and certificates as required by legislative requirements.
- 29.6 The Supplier is solely responsible for any fines or infringement fees incurred and must notify the Purchaser of any CoR Laws offences committed by the Supplier in connection with these Conditions.
- 29.7 The Supplier must decline to carry a consignment in one load if in the Supplier's opinion it may exceed the mass, loading or dimension requirements under

legislative requirements including but not limited to the CoR Laws.

- 29.8 Without limiting any other provision of these Conditions including clause 5, the Supplier warrants that it will not do, require or refrain from doing anything which would directly or indirectly cause or encourage any person to breach any CoR Laws or WHS Law.

30. TERMINATION

- 30.1 A breach by the Supplier or Purchaser of any of the terms of these Conditions will constitute an event of default. On the occurrence of an event of default, or if a party is insolvent, the non-defaulting party may (without prejudice to any other remedy available to it) in its absolute discretion by written notice immediately terminate the Trading Agreement (including any unfilled Purchase Orders).

31. DEFINITIONS AND INTERPRETATION

- 31.1 The following terms have the following meanings in these Conditions unless the context requires otherwise:

"Blanket Purchase Order" means a Purchase Order issued by the Purchaser that provides advance notice of stock requirements;

"CoR Laws" means any laws in relation to safety concerning the carriage of goods by road, including as to mass, dimension, load restraint, speed, fatigue and vehicle standards, roadworthiness and maintenance and including the *Heavy Vehicle National Law* and Regulations and *Road Traffic (Vehicles) Act 2012* (WA).

"Delivery Docket" means a document issued by the Supplier that must accompany every delivery of goods to the Purchaser and must contain the details specified in clause 5.7.

"Draw Down Purchase Order" means a Purchase Order issued by the Purchaser which specifies the delivery of goods set out in a Blanket Purchase Order;

"Trading Agreement" means the document titled "Trading Agreement" to which these Conditions are attached.

"WHS Law" means the *Work Health and Safety Act 2011* (NSW), the *Work Health and Safety Act 2011* (Qld), the *Occupational Health and Safety Act 2004* (Vic) and any other comparable legislation in other states or territories where the goods are provided (including the model work health and safety laws).

"working day" means a day (other than Saturday or Sunday) on which registered banks are open for business in both Banyo, QLD and the state or territory in which the Purchase Order was issued, but excludes any day in the period from 24 December in any year to 5 January (both inclusive) in the following year.

- 31.2 If there is any conflict, inconsistency or discrepancy between these Conditions, the Trading Agreement and any Purchase Order, the following order of precedence applies: (1) Trading Agreement, (2) Purchase Order and (3) these Conditions.

- 31.3 Headings are for convenience only and do not affect the interpretation of this document.

