

flexicommercial Pty Ltd ABN 17 644 644 860

of Level 1, 121 Harrington Street, The Rocks, Sydney NSW 2000, Australia (Financier)

On the Acceptance Date, Financier accepts Customer's offer to borrow the Amount Financed from Financier on the terms and conditions of this Specific Security Agreement. The offer is irrevocable and made pursuant to the Terms and Conditions. Financier may accept or reject the offer in its discretion and may impose any conditions it deems appropriate on acceptance.

SPECIFIC SECURITY SCHEDULE**Financier's Contract Details** (for Financier's completion only)Introducer Name SWOOP FINANCE PTY LTD

Application Number (if applicable) _____

CUSTOMER				
Legal Name				
Trading Name (if applicable)				
Contact Name		ABN		ACN
Address				
Suburb/Town		State/Territory	NSW	Post Code
Contact Phone		Email		
Where Customer is a trustee of a Trust (clause 13.9)	Name of Trust		Trust ABN	
Where Customer is a Partnership (clause 13.10)	Name of Partnership		Partnership ABN	

APPROVED PURPOSE	
Approved Purpose (clause 3.6(a))	For acquisition of Goods and/or part of Goods (as the case may be)

TERM		
Term	60 months from the Commencement Date	Commencement Date

IMPORTANT NOTE:

- **Term:** The scheduled contracted term of this Specific Security Agreement, starting from the Commencement Date up to and including the Expiry Date (clause 2.1).
- **Commencement Date:** If the Commencement Date in the Specific Security Schedule is blank / incomplete, the Commencement Date will be the Acceptance Date.

AMOUNT FINANCED	
Amount Financed	

INSTALMENT PAYMENTS			
First Instalment Payment Date		Number of Instalment Payments	
Instalment Payment Number From	Instalment Payment Number To	Instalment Payment	Instalment Payment Intervals
			Monthly
			Monthly

IMPORTANT NOTE: Instalment Payments are due to Financier on each Instalment Payment Date. The first Instalment Payment is due on the First Instalment Payment Date. Subsequent Instalment Payments are due on each subsequent Instalment Payment Date (or as Financier agrees in writing) (clause 3.2).

GOODS			
Brand & Model	Quantity	Serial Number	Details, Accessories & Comments
Heavy trucks > 3.5 tonnes			
Services / Soft Costs			

SPECIFIC SECURITY SCHEDULE

GUARANTOR(S) (leave blank if not applicable)				
Guarantor 1				
Legal Name				
Contact Name		ABN		ACN
Address				
Suburb/Town		State/Territory		Post Code
Contact Phone		Email		
Guarantee Limit for Guarantor 1 (clause 11.6)			<input type="checkbox"/> N/A	or \$
Is the Guarantee and Indemnity granted by Guarantor 1 secured? (clause 11.18)			<input type="checkbox"/> Yes	<input type="checkbox"/> No
Where Guarantor 1 is a trustee of a Trust (clause 11.12)	Name of Trust		Trust ABN	
Where Guarantor 1 is a Partnership (clause 11.13)	Name of Partnership		Partnership ABN	

IMPORTANT NOTE:

- **Guarantee and Indemnity:** Guarantor is liable to Financier under the Guarantee and Indemnity (clause 11).
- **No Guarantor:** If there is no Guarantor specified in the Specific Security Schedule, the Guarantee and Indemnity will automatically remain dormant and inactive.
- **Independent legal and financial advice:** Financier recommends that Guarantor obtain independent legal and financial advice in relation to this Specific Security Agreement (including clause 11).
- **Guarantee Limit:** Unless there is a Guarantee Limit, Guarantor's liability to Financier under the Guarantee and Indemnity is unlimited. For each Guarantor that has a Guarantee Limit, the amount payable by Guarantor is limited to that Guarantee Limit plus any costs and expenses (clause 11.6).
- **Variations and replacement:** This Specific Security Agreement may be varied or replaced from time to time as agreed to in writing by Customer and Financier. The guarantee under clause 11.2 and the indemnity under clause 11.3 include any obligations under this Specific Security Agreement as varied or replaced unless the effect of the variation or replacement increases the Amount Financed or the aggregate amount of the Instalment Payments (clause 11.5).
- **Guarantee and Indemnity remains unaffected:** Guarantor's liability under this Guarantee and Indemnity is not affected by any increase or variation in the amount payable under the Guarantee and Indemnity or this Specific Security Agreement for any reason unless the effect of the increase or variation increases the Amount Financed or the aggregate amount of the Instalment Payments (clause 11.17(c)) or any transfer of this Specific Security Agreement, or any right or liability of any person under this Specific Security Agreement (clause 11.17(d)).
- **Secured Guarantee and Indemnity:** If the Guarantee and Indemnity is expressed to be secured in the Specific Security Schedule, Guarantor grants a Security Interest over all of its real property and Financier may register a mortgage or lodge a caveat over any real estate owned by Guarantor as security for its obligations under the Guarantee and Indemnity. If Guarantor fails to comply with the terms of the Guarantee and Indemnity, Financier may exercise rights in respect of the mortgage, including the sale of the relevant real property, to recover any money owing by Guarantor to Financier (clause 11.19).

SPECIAL CONDITIONS (leave blank if not applicable)

- IMPORTANT NOTE:** If there is any inconsistency between the Special Conditions and the Terms and Conditions, the Special Conditions will prevail to the extent of the inconsistency (clause 1.2(k)).
- Not Applicable

SIGNATURE PAGE FOR SPECIFIC SECURITY AGREEMENT

Execution information

Executed by Financier and Customer as an agreement effective on the Acceptance Date. Executed by Guarantor as a deed effective on the Acceptance Date. Financier, Customer and Guarantor may sign this Specific Security Agreement by handwritten or electronic signature(s). If electronic signature(s) are used, then clause 13.22 applies. There may be consequences if Customer (see clauses 13.9 and 13.10) and/or Guarantor (see clauses 11.12 and 11.13) enter into this Specific Security Agreement as a trustee of a trust and/or as a partnership.

Important notice

This Specific Security Agreement consists of multiple documents, including the Specific Security Schedule, Signature Page(s), Terms and Conditions and where applicable, Special Conditions, Privacy and Credit Reporting Policy, Statement of Notifiable Matters, Privacy Statement, Direct Debit Request and any other documents referred to in such documents.

Privacy information for any individual signing this Specific Security Agreement

Financier will collect, use, disclose, hold and manage any Personal Information provided to Financier in the Specific Security Agreement (or in any other dealings with Financier) consistently with the Privacy and Credit Reporting Policy, Statement of Notifiable Matters and Privacy Statement, which is available at www.flexicommercial.com/au/privacy-policy. Financier may do this in its own right or as agent for a principal (whether disclosed or not). The Privacy and Credit Reporting Policy, Statement of Notifiable Matters and Privacy Statement provide more details about how Financier manages Personal Information including credit information and credit eligibility information. For more information, see clauses 8.2 – 8.7.

Consent to receive documents electronically

Financier may give to Customer and Guarantor documents in relation to the Specific Security Agreement by electronic communication to the nominated email address provided by Customer and Guarantor to Financier including making it available for a reasonable period on Financier's information system for retrieval by electronic communication by Customer and Guarantor. If Customer and Guarantor consent to Financier doing so, paper documents may no longer be given and Customer and Guarantor must check electronic communications regularly for documents from Financier. Customer or Guarantor may withdraw this consent to receive documents by electronic communication at any time by written notice to Financier.

FINANCIER'S ACCEPTANCE

Signed on behalf of Financier and accepted by: _____

Signature

Name

Financier's Execution Date

CUSTOMER'S ACCEPTANCE

Customer acknowledges and confirms that: (1) it has read, understood and agrees to be bound by the Specific Security Agreement; (2) it is entitled to negotiate the Specific Security Schedule and Terms and Conditions; (3) it has read and understood the Privacy and Credit Reporting Policy, Statement of Notifiable Matters, Privacy Statement and the privacy provisions set out in this Specific Security Agreement (clause 8) and consents to Financier (in its own right or as agent for a principal) collecting, using, disclosing and holding Customer's Personal Information (where applicable) in accordance with such documents and provisions; (4) agrees that to the extent a PPS Security Interest arises under the Specific Security Agreement, the PPS Act provisions set out in this Specific Security Agreement apply; (5) it has effected and maintains (at its own cost) the Insurance (clause 5); and (6) all information provided by Customer to Financier as at the Acceptance Date is true and correct.

EXECUTED BY CUSTOMER AS AN AGREEMENT

NOTE: Please select and sign ONLY one (1) execution block. If signed by an Authorised Representative, please provide supporting documentation for execution authority. Financier will, in its discretion, determine if such documentation and authority is adequate and acceptable.

Individual: Individual Customer for Commercial Use

Signed by: _____

Customer's full name and ABN

Individual sign & print name

Date

Witness sign & print name

Date

Authorised Representative of Customer

Signed by: _____

Customer's full name and ABN

Authorised Representative sign & print name

Date

DIRECT DEBIT REQUEST

flexicommercial Pty Ltd
 ABN 17 644 644 860
 Locked Bag 5005, Royal Exchange Sydney NSW 1225
 Phone: 1300 340 447

PAYMENT DATE: Unless otherwise arranged with flexicommercial Pty Ltd, your payment date will be the date we settle your Agreement (when we pay the retailer's invoice). Usually this will occur within a few days of you receiving the Goods. If two (2) payment methods are given below, upfront payment will be taken from the credit card.

NOT ACCEPTABLE METHODS OF PAYMENT: Money Order, Cash, Bank Cheque or Cheques from anyone other than the approved applicant; and credit cards.

DIRECT DEBIT REQUEST ("DDR")				
Please complete the details below for your preferred payment method				
IMPORTANT: Before completing this section, you should review the Direct Debit Request Service Agreement which details your rights and our obligations to you under this Direct Debit Request.				
Name				
Address				
Suburb/Town		State/Territory		Post Code
Name of Financial Institution				
Account Name				
BSB Number		Account Number		

REQUEST AND AUTHORITY TO DEBIT

You request and authorise flexicommercial Pty Ltd (user ID No. 621556) to arrange, through its own financial institution, a debit to your nominated account above any amount flexicommercial Pty Ltd has deemed payable by you. This debit or charge will be made through the Bulk Electronic Clearing System ("BECS") from your account held at the financial institution you have nominated above and will be subject to the terms and conditions of the Direct Debit Request Service Agreement.

ACKNOWLEDGEMENT

By signing and/or providing us with a valid instruction in respect to your Direct Debit Request, you have understood and agreed to the terms and conditions governing the debit arrangements between you and flexicommercial Pty Ltd as set out in this Direct Debit Request and in the Direct Debit Request Service Agreement.

Date	Signature (1)	Signature (2)
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If debiting from a joint account requiring two signatures, both signatures are required.

DIRECT DEBIT REQUEST SERVICE AGREEMENT

1. DEBITING YOUR ACCOUNT

- (a) By signing the Direct Debit Request, you authorise us to debit funds from your nominated account for any amount payable under any agreement between you and us. You should refer to this Direct Debit Request Service Agreement and the Direct Debit Request for the terms of the arrangement between you and us.
- (b) We will only arrange for funds to be debited from your account as authorised in the Direct Debit Request.
- (c) If any payment falls due on a non-business day, it will be debited from your nominated account on the following business day. If you are unsure about which day your account has or will be debited you should ask your financial institution.

2. CHANGES BY US

We may vary details of this Direct Debit Request Service Agreement or the Direct Debit Request at any time by giving you at least fourteen (14) days' written notice.

3. CHANGES BY YOU

You may change, stop or defer a payment, or terminate this Direct Debit Request Service Agreement by providing us with at least fourteen (14) days' notification by:

- (a) writing to flexicommercial Pty Ltd, Locked Bag 5005, Royal Exchange Sydney NSW 1225;
- (b) telephoning us on 1300 340 447 during business hours; or
- (c) arranging it through your own financial institution which is required to act promptly on your instructions. Your financial institution may 'change' your debit payment only to the extent of advising us of your new account details.

4. YOUR OBLIGATIONS

- (a) It is your responsibility to ensure that there are sufficient funds in your account to allow a payment to be made in accordance with the Direct Debit Request.
- (b) If there are insufficient clear funds in your account to meet a payment:
 - (i) you may be charged a fee and/or interest by your financial institution;
 - (ii) you may also incur fees and charges imposed or incurred by us in accordance with this Direct Debit Request Service Agreement; and
 - (iii) you must arrange for the payment to be made by another method or arrange for sufficient clear funds to be in your account by an agreed time so we can process the payment.
- (c) You should check your account statement to verify that the amounts debited from your account statement are correct.

5. DISPUTES

- (a) If you believe that there has been an error in debiting your account, you should contact us directly on 1300 340 447 and confirm in writing with us as soon as possible

so that we can resolve your query more quickly. Alternatively, you can take it up directly with your financial institution.

- (b) If we conclude as a result of our investigations that your account has been incorrectly debited, we will respond to your query by arranging for your financial institution to adjust your account (including interest and charges) accordingly. We will also notify you in writing of the amount by which your account has been adjusted.
- (c) If we conclude as a result of our investigations that your account has not been incorrectly debited, we will respond to your query by providing you with reasons and any evidence for this finding in writing.

6. ACCOUNTS

You should check:

- (a) with your financial institution whether direct debiting is available for your account as direct debiting, through BECS, is not available on all accounts offered by financial institutions;
- (b) your account details which you have provided us are correct by checking them against a recent account statement; and
- (c) with your financial institution before completing the Direct Debit Request if you have any queries about how to complete the Direct Debit Request.

7. CONFIDENTIALITY

- (a) We will keep any information (including your account details) in your Direct Debit Request confidential. We will make reasonable efforts to keep any such information that we have about you secure and to ensure that any of our employees or agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of that information.
- (b) We will only discuss information about you:
 - (i) to the extent specifically required by law; or
 - (ii) for the purposes of this Direct Debit Request Service Agreement (including disclosing information in connection with any query or claim).

8. NOTICE

- (a) If you wish to notify us in writing about anything relating to this Direct Debit Request Service Agreement, you should write to flexicommercial Pty Ltd, Locked Bag 5005, Royal Exchange Sydney NSW 1225.
- (b) We will notify you by sending a notice in the ordinary post to the address you have given us on the Direct Debit Request.
- (c) Any notice will be deemed to have been received on the third business day after posting

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. In this Specific Security Agreement, unless the context otherwise requires:

Acceptance Date means the earlier of the:

- (a) Financier's Execution Date; and
- (b) date Financier provides finance for Approved Purpose.

Affected Goods has the meaning given in clause 7.1.

Affected Individual has the meaning given in clause 8.1.

AML Act means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

AML/CTF Laws means any law in relation to the prevention of money laundering and terrorist financing including the AML Act and any rules, regulations or guidance notes made in connection with the AML Act.

Amount Financed means the amount financed by Financier to Customer under this Specific Security Agreement, namely:

- (a) "Amount Financed" specified in the Specific Security Schedule; and
- (b) any part of the Amount Financed that remains outstanding from time to time.

APP means the Australian Privacy Principles prescribed in the Privacy Act.

Application Form means (if any) the application form (however described) that Financier requires Customer to duly complete and lodge with Financier for Customer to become a customer of Financier.

Approved Purpose means the "Approved Purpose" specified in the Specific Security Schedule.

Arrears means the arrears of the Instalment Payments.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

Attorney has the meaning given in clause 10.5.

Australian Consumer Law means Schedule 2 of the CC Act.

Authorised Officer means any director, secretary or other nominated officer or employee.

Break Costs means any reasonable costs, loss or expense actually arising by reason of the cancellation, termination or alteration of any funding arrangements entered into by Financier in order to fund this Specific Security Agreement, but only to the extent that such cost, loss or expense is not recovered or recoverable by Financier as part of the Present Value Amount or in consequence of a liability to pay the Present Value Amount.

Business Day means a day on which Financier is open for business in New South Wales and, where applicable, in the jurisdiction of Customer.

CC Act means Competition and Consumer Act 2010 (Cth).

Commencement Date means the earlier of the:

- (a) (if any) "Commencement Date" specified in the Specific Security Schedule; and
- (b) Acceptance Date.

Customer means "Customer" specified in the Specific Security Schedule.

Direct Debit Request means the "Direct Debit Request" authorising Financier to debit Customer's nominated financial institution account and which incorporates the Direct Debit Request Service Agreement.

Direct Debit Request Service Agreement means the agreement setting out the terms and conditions governing the Direct Debit Request.

Discount Rate means the rate reasonably determined by Financier, having regard to prevailing interest rates as appropriate to calculate the net present value of the remaining Instalment Payments.

Early Termination Amount means the sum of:

- (a) Present Value Amount; and
- (b) Break Costs.

Expiry Date means the scheduled expiration of the Term (calculated with reference to the Commencement Date).

Fees and Charges means any fees and charges that Financier may reasonably request or incur, including:

- (a) for the provision of information to or by Financier in connection with or pursuant to this Specific Security Agreement;
- (b) for acting on any assignment or variation of this Specific Security Agreement at the request of Customer;
- (c) to recover registration and other related fees; and
- (d) other reasonable administrative and procedural matters as notified by Financier.

Financier means the "Financier" specified on the first page of this Specific Security Agreement.

Financier's Authorised Officer means any:

- (a) Authorised Officer of Financier; and
- (b) person(s) or class of person(s) nominated and/or employed by Financier or Related Entity of Financier (including, if applicable, any Receiver, Attorney, employee or agent of Financier) for the purposes of this Specific Security Agreement.

Financier's Execution Date means the date this Specific Security Agreement is duly signed and accepted on Financier's behalf by Financier's Authorised Officer, namely the "Financier's Execution Date" in the "Financier's Acceptance" execution block on the Signature Page(s).

First Instalment Payment Date means the date the first Instalment Payment is due to Financier by Customer, namely:

- (a) the "First Instalment Payment Date" specified in the Specific Security Schedule; or
- (b) if no date is specified in the Specific Security Schedule or otherwise notified by Financier in writing, the Commencement Date.

Goods means the goods described in the Specific Security Schedule and includes any other items, in the reasonable opinion of Financier, deemed to be part of the "Goods" under this Specific Security Agreement and where applicable includes:

- (a) any document entered into by Customer with a person (other than Financier) in connection with Goods and all of Customer's rights, title and interest in, under or in connection with any such document;
- (b) all licences, registration documents and approvals, or other approval or thing obtained by Customer required by Customer to lawfully operate or use Goods; and
- (c) all Related Rights.

GST means goods and services tax levied under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related laws.

Guarantee and Indemnity means the guarantee and indemnity granted by Guarantor to Financier as specified in clause 11.

Guarantee Limit (see clause 11.6) means (if any) the "Guarantee Limit" specified in the Specific Security Schedule. The Guarantee Limit is the corresponding Guarantor's maximum amount payable to Financier under the Guarantee and Indemnity, plus any costs and expenses payable under clause 11.7 and interest under clause 11.8. For clarity, if no amount is specified in the Guarantee Limit, the Guarantee Limit is unlimited.

Guarantor means (if any) "Guarantor(s)" specified in the Specific Security Schedule.

Insolvency Event means a person enters into, or any steps or reasonably genuine threats are taken to have the person enter into, liquidation, provisional liquidation, official

management, receivership, receivership and management, administration, bankruptcy or any arrangement, reconstruction or composition with the person's creditors or any of them or the person fails to pay their debts as they fall due or otherwise become insolvent.

Insurance means insurance(s) with a reputable and solvent insurer reasonably satisfactory to Financier:

- (a) in respect of Goods for their full insurable value against all loss or damage of any kind whatever and however caused;
- (b) for such amount of cover as is reasonably required by Financier (or if not specifically required by Financier, for such amount as a prudent owner of Goods would obtain cover) having regard to the nature and intended use of Goods, against any loss, damage or injury of any kind whatever and however caused to any person or property arising out of Goods or their use, under a policy covering all such risks, including claims by third parties; and
- (c) against any other loss, damage, injury or risk which Financier may reasonably require from time to time.

Instalment Payments means the "Instalment Payments" specified in the Specific Security Schedule.

Instalment Payment Date means the ongoing date the Instalment Payments are due to Financier by Customer during the Term. The Instalment Payment Date is the same day of the month as the First Instalment Payment Date at each Instalment Payment Interval (or as Financier agrees in writing).

Instalment Payment Intervals means the "Instalment Payment Intervals" specified in the Specific Security Schedule. The Instalment Payment Interval is the scheduled period between when the Instalment Payments are due to Financier by Customer (e.g. weekly, fortnightly, monthly, quarterly or semi-annually). Financier will advise the Instalment Payment Intervals if not specified in the Specific Security Schedule.

An event has a **Material Impact** if:

- (a) the event by its nature is material; or
- (b) Financier reasonably considers that the event has had, or is likely to have a material impact on:
 - (i) the ability of Customer or Guarantor to comply with its financial obligations under or in connection with this Specific Security Agreement;
 - (ii) Financier's credit or security position (including the Goods or the value of the Goods); or
 - (iii) Financier's ability to assess either of the things described above; or
- (c) (in relation to a Termination Event described in paragraphs (b) or (d) of the definition of Termination Event) Financier reasonably considers that the event has given rise to, or is likely to give rise to, a material risk that Financier might not comply with law or a material risk to Financier's reputation.

Moneys Owing means all moneys, liabilities, debts or obligations due or payable from or by Customer to Financier at any time and from time to time under or in relation to or in connection with this Specific Security Agreement or any other agreement created at any time between Customer and Financier under or in relation to or in connection with this Specific Security Agreement including:

- (a) by way of principal, interest, cost, indemnity, tax, damages or monetary judicial order under, in relation to, in connection with or as a result of any breach of or default under this Specific Security Agreement or that other agreement; and
- (b) whether payable:
 - (i) presently or in the future;
 - (ii) actually, prospectively or contingently; or
 - (iii) alone or jointly with another person, and irrespective of whether any amount payable is ascertained or unascertainable or arises from the transfer to Financier of the liability, debt or obligation.

Payments means the payments paid or payable by Customer to Financier under this Specific Security Agreement including:

- (a) Instalment Payments;
- (b) Early Termination Amount;
- (c) Present Value Amount;
- (d) Fees and Charges; and
- (e) all other amounts payable by Customer under this Specific Security Agreement.

Personal Information has the same meaning as in the Privacy Act.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

PPS Security Interest means a security interest under the PPS Act.

Present Value Amount means the Instalment Payments which, but for the termination of this Specific Security Agreement, would have been payable by Customer under this Specific Security Agreement as from the Termination Date up to and including the Expiry Date (inclusive of any unamortised brokerage or commission comprising part of any Instalment Payments), reduced to a present value as at the Termination Date by applying the Discount Rate to such Instalment Payments.

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy and Credit Reporting Policy means Financier's "Privacy and Credit Reporting Policy" which is available at www.flexicommercial.com/au/privacy-policy. The Privacy and Credit Reporting Policy provides more details about how Financier manages Personal Information, including credit information and credit eligibility information.

Privacy Statement means (if any) the document titled "Privacy Statement, Acknowledgements & Consent".

Receiver means a receiver, manager or receiver and manager, and when two (2) or more persons are appointed as receivers, managers or receivers and managers refers to each person separately as well as any two or more of them jointly.

Related Entity has the meaning given in the *Corporations Act 2001* (Cth).

Related Rights means all rights which Customer has by virtue of its interest in property described in the definition of Goods, including all warranties and other rights of recourse against the manufacturer of Goods.

Security Document means this Specific Security Agreement and any present or future agreement or document created in favour of Financier by Customer or any other person as security for payment of the Moneys Owning.

Security Interest means:

- (a) a PPS Security Interest;
- (b) any other mortgage, pledge, lien, charge, hypothecation, trust arrangement, title retention arrangement, set-off arrangement; and
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Signature Page(s) means "Signature Page(s)" of this Specific Security Agreement.

Special Conditions means the "Special Conditions" specified in the Specific Security Schedule.

Specific Security Agreement means this document being the agreement between Financier, Customer and Guarantor comprising the:

- (a) Specific Security Schedule;
 - (b) Signature Page(s); and
 - (c) Terms and Conditions;
- and where applicable any:
- (d) Special Conditions;
 - (e) Privacy and Credit Reporting Policy;
 - (f) Statement of Notifiable Matters;
 - (g) Privacy Statement; and
 - (h) Direct Debit Request.

Specific Security Schedule means the "Specific Security Schedule" appearing on the first page of this Specific Security Agreement.

Statement of Notifiable Matters means Financier's "Statement of Notifiable Matters" which is available at www.flexicommercial.com/au/privacy-policy.

Supplier means the supplier of Goods or other goods or services, the subject of this Specific Security Agreement.

Term (see clause 2.1) means the "Term" specified in the Specific Security Schedule. Term is the scheduled contracted term of this Specific Security Agreement starting from the Commencement Date up to and including the Expiry Date.

Termination Date means the date of effective termination of this Specific Security Agreement. Termination Date may or may not be the Expiry Date.

Termination Event occurs if:

- (a) **Failure to pay:** Customer fails to pay any Payment within five (5) Business Days of the due date;
- (b) **Misrepresentation:** Customer or Guarantor gives Financier incorrect, incomplete or misleading information and that has a Material Impact;
- (c) **Goods:** Customer breaches any provision in clause 4 and that has a Material Impact;
- (d) **Unlawful behaviour:** Customer or Guarantor does not comply with the law or any requirement of statutory authority and that has a Material Impact;
- (e) **Insolvency:** an Insolvency Event occurs in respect of Customer or Guarantor;
- (f) **Unapproved use of the Financed Amount:** the Financed Amount is used for a purpose that is not the Approved Purpose and that has a Material Impact;
- (g) **Insurance:** Customer fails to maintain any Insurance required to be maintained under this Specific Security Agreement and that has a Material Impact; or
- (h) **Change in status, capacity or composition:** the status, capacity or composition of Customer or Guarantor changes without Financier's consent (e.g. if Customer or Guarantor is a partnership and it is dissolved or there is a change in partners, if Customer or Guarantor is a trustee and there is a change in trustee or the trust ends).

Terms and Conditions means these "Terms and Conditions".

Title Document means any certificate or other document or agreement evidencing the legal right, title and interest of any person in and to that item of Goods.

Trust has the meaning given in clause 13.9.

1.2 **Interpretation.** In this Specific Security Agreement, unless the context otherwise requires:

- (a) a reference to any party (including Financier, Customer or Guarantor) includes that party's successors, personal legal representatives and permitted assigns;
- (b) if any party is comprised of more than one (1) person, those persons' obligations are joint and separate and a reference to that party is reference each of them separately and every 2 or more of them jointly;
- (c) the singular includes the plural and vice versa;
- (d) the word "including" is not limiting;
- (e) a reference to a person includes a company, trust, partnership or any other type of legal entity;
- (f) a reference to a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) all monetary amounts are in Australian dollars, unless otherwise stated;
- (h) headings are for convenience only and do not affect the interpretation, or form part of, this Specific Security Agreement;
- (i) a clause, party, schedule or annexure is a reference to a clause, party, schedule or annexure of this Specific Security Agreement;
- (j) where a payment or amount due from Customer or Guarantor is payable "on demand", the payment or amount must be paid within two (2) Business Days of receipt of a demand for payment from Financier; and
- (k) if there is any inconsistency between the Special Conditions and the Terms and Conditions, the Special Conditions will prevail to the extent of the inconsistency.

2. TERM

2.1 **Term.** This Specific Security Agreement commences on the Commencement Date and ends on the Expiry Date.

3. PAYMENT OBLIGATIONS

3.1 **Payments.** Customer must pay Financier the Payments in accordance with the Terms and Conditions.

3.2 **Instalment Payments.** Customer must pay the Instalment Payments in the following way:

- (a) **First Instalment Payment:** first Instalment Payment on the First Instalment Payment Date; and
- (b) **Subsequent Instalment Payments:** each subsequent Instalment Payment on each subsequent Instalment Payment Date.

3.3 **Payments to be made in advance.** Unless otherwise specified in this Specific Security Agreement, Payments are due in advance.

3.4 **Date for Payment.** Payments must be paid on demand or as provided for in the Specific Security Schedule in funds that are immediately available. If a date to make a Payment:

- (a) is not a Business Day, the Payment must be made on the preceding Business Day;
- (b) falls on a day not contained in a month, the Payment must be made on the last day of that month.

3.5 **Method of Payment.** Customer must make Payments by way of direct debit or in such other manner as Financier may direct in writing.

3.6 **Use of Amount Financed.**

- (a) Customer must only use the Amount Financed in connection with the Approved Purpose.
- (b) Customer irrevocably authorises Financier (at the election of Financier), to pay the proceeds of the Amount Financed (less any fees, charges or duties) directly to Supplier and any election by Financier will prevail over any contrary instruction, direction or authorisation Customer gives Financier.
- (c) If the Amount Financed has not been utilised in accordance with clause 3.6(a) within

one (1) month of the Acceptance Date (or such later date as Financier may agree in writing), then at Financier's option, this Specific Security Agreement will terminate.

- (d) Customer agrees that Financier is not obliged to utilise the Amount Financed in accordance with clause 3.6(b) if Financier has notice of another Security Interest in Goods and that Security Interest will not be discharged upon the proceeds of the Amount Financed being paid to the Supplier.

3.7 **Amount of Instalment Payment.** The Instalment Payment has been calculated on the basis:

- (a) interest has been calculated in accordance with Financier's usual practices for transactions of this nature;
- (b) that all Instalment Payments will be paid when due;
- (c) of the interest rate adopted by Financier for the purposes of this Specific Security Agreement; and
- (d) of the estimated amount of stamp duty and other fees and expenses payable at the time of disbursement.

3.8 **Adjustment of Instalment Payment.** Financier may adjust the amount of each Instalment Payment as a result of any variation of any estimated amount or otherwise in accordance with this Specific Security Agreement by giving written notice to Customer at least ten (10) days prior to the adjusted Instalment Payment becoming payable.

3.9 **Fees and Charges.** Customer must pay to Financier the Fees and Charges. A full list of the Fees and Charges is available upon request by Customer. Customer acknowledges these Fees and Charges may change from time to time where such change is applied generally to other customers of Financier. Financier will provide Customer with reasonable written notice of any such change not being less than notice of one (1) Instalment Payment Interval. Any change to the Fees and Charges will only be made to the extent applied to other like customers of Financier.

3.10 **Payments are absolute and unconditional.** Customer's obligation to pay the Payments is absolute and unconditional.

3.11 **No right of set-off.** Customer and Guarantor must make all payments to Financier in full and without any set-off, counterclaim or deduction. If Customer or Guarantor is required by law to deduct an amount from any payment to Financier (such as withholding tax), it must increase the payment by the amount deducted. If Customer or Guarantor claims Financier owes it money, it may bring a claim for this amount against Financier but may not exercise any set-off, counterclaim or deduction.

3.12 **Prepayment.** Customer agrees that unless it is repaying the Amount Financed in full (along with the Early Termination Amount), that if Customer makes an early repayment and it is accepted by Financier, any such prepayment will not be credited to Customer's account until it is due.

4. USE AND CARE OF GOODS

4.1 **Use and care of Goods.** Customer:

- (a) **Use of Goods:** must ensure that Goods are used only in Customer's general business operations and only for the purposes for which they were designed, by qualified personnel complying at all times with all laws relating to Goods and their use and with all instructions and recommendations issued by the supplier or manufacturer of Goods and, if the law requires Goods to be registered, Customer must attend to this and ensure they remain registered at all times;
- (b) **Maintenance of Goods:** must at its own cost ensure Goods are maintained by qualified personnel in accordance with all instructions and recommendations issued by the supplier or manufacturer of Goods and repaired where necessary by qualified personnel, so as to keep valid any applicable warranty;
- (c) **Replacement, alteration or addition to Goods:** agrees that any replacement of, alteration or addition to Goods, any accessories, tools or other goods supplied with, installed in, or attached to, Goods (including during the Term) will become Financier's property and will be considered part of Goods. Customer must ensure that they are free of any Security Interests (other than PPS Security Interests in Financier's favour) before they are installed on or attached to Goods;
- (d) **Fixture, fitting and commingling:** must not permit Goods to:
 - (i) become a fixture or an accession to; or
 - (ii) be manufactured, processed, assembled or commingled with, anything that Financier does not own or is not subject to a perfected PPS Security Interest in favour of Financier, and even then only if the priority of that PPS Security Interest is no less favourable than the priority of Financier's PPS Security Interest in those Goods;
- (e) **No pledge:** agrees to notify in advance any person who is to repair or maintain Goods that Customer has no authority to pledge Financier's credit or create a Security Interest or right in, or over, Goods to or in favour of any person other than Financier; and
- (f) **Negative covenant:** must not sell, hire, dispose, sublet, or part with possession of, or create or permit to subsist any Security Interest that is not in Financier's favour in, Goods or any interest in Goods, or agree or attempt to do so or authorise any person to do so, without Financier's prior written consent.

4.2 **Protection of Goods.** Customer must:

- (a) promptly do everything necessary to protect Financier's title to Goods and Financier's PPS Security Interest in Goods;
- (b) promptly refrain from doing anything which could give rise to any claim adverse to Financier's PPS Security Interest in Goods. Customer must notify Financier immediately if a third party makes any such claim;
- (c) promptly provide Financier with all information Financier needs in order to ensure that any registration of any PPS Security Interest provided for by this Specific Security Agreement is, and remains, fully effective and with the priority required by Financier;
- (d) immediately notify Financier if Goods are lost, stolen or damaged; and
- (e) maintain sole possession and control of Goods during the Term.

Licence to premises. Customer irrevocably authorises, and must use its best endeavours to have others authorise (including any landlord or mortgagee) Financier to enter upon any land or premises where Financier has given reasonable notice to Customer and reasonably believes Goods are located:

- (a) examine state of repair and operation of Goods;
- (b) take possession of Goods; and
- (c) any other reason reasonably required by Financier to protect its interest in Goods.

5. INSURANCE

5.1 **Customer must maintain Insurance.** Customer must (at its own cost) effect and maintain the Insurance during the Term.

5.2 **Financier may effect Insurance.** Where Financier reasonably believes that Customer has not complied with clause 5.1 or there is in the reasonable opinion of Financier a valid reason (including an opportunity to minimise Financier and/or Customer's loss), Financier may effect the Insurance in its own name and on its own behalf, in this case:

- (a) Financier may include that cost in the acquisition cost of Goods for the purposes of

- calculating the total amount payable; or
- (b) Customer must reimburse Financier on demand for that cost.
- 5.3 **Financier to receive moneys under Insurance.** Financier is entitled to receive all moneys payable under the Insurance or by any other person in respect of damage to, or loss of, Goods.
- 5.4 **Appointment of Financier.** Customer irrevocably appoints Financier and each of Financier's Authorised Officers, as attorney of Customer to recover or compromise in Financier's respective name any claim for loss or damage the Insurance and to give effectual releases and receipts on behalf of Customer.
- 5.5 **Financier may appropriate Insurance or other moneys.** Customer irrevocably authorises Financier to appropriate any Insurance or other moneys received (less any GST) in respect of any loss of, or damage to, Goods towards any debt or liability, present or future, actual or contingent, of Customer to Financier or, in Financier's discretion, to repairing such damage or replacing Goods. If those Insurance moneys are insufficient to effect such repairs, Customer must pay the shortfall from its own moneys for this purpose.
- 5.6 **Insurance proceeds.** If Financier receives any Insurance proceeds in respect of the Affected Goods, where:
- (a) Customer has replaced Goods in accordance with clause 7.1(a), such proceeds (net of GST) will be credited to Customer; and
- (b) clause 7.1(b) applies, such proceeds (net of GST) will be credited to Customer to the extent of the Payment received from Customer under clause 7.1(b)(ii).
6. **INDEMNITIES**
- 6.1 **Customer indemnities.** Customer indemnifies Financier and Financier's agents, contractors and employees against all direct loss (including loss of bargain or profit), damage, liabilities, taxes, duties, charges and reasonable costs and expenses (including reasonable solicitors' fees and disbursements and collection fees) of whatever kind or nature, in connection with:
- (a) Customer not paying Financier in the way Financier requires, including under clause 3;
- (b) any breach of this Specific Security Agreement by Customer and/or arising from the early termination;
- (c) any steps taken by Financier to administer, exercise, enforce or preserve any of Financier's rights under or in connection with this Specific Security Agreement (including under or in relation to the PPS Act); and
- (d) any amount actually incurred by Financier in rectifying any breach of this Specific Security Agreement by Customer.
- Customer must pay these amounts within two (2) Business Days after Financier requests.
- 6.2 **Limitation of indemnities.** The indemnities given by Customer under clause 6.1 does not extend to loss (including loss of bargain or profit), damage, liabilities, costs, taxes, duties, charges and expenses suffered or incurred by Financier as a result of the fraud, negligence or wilful misconduct of Financier or Financier's agents, contractors or employees, or a Receiver appointed by Financier.
- 6.3 **Calculation for indemnities.** Upon written request from Customer, Financier will provide Customer in reasonable detail the calculation of any amount claimed and payable by Customer under the indemnities given by Customer under clause 6.1. Relevantly, see clause 13.16.
7. **LOSS OR DAMAGE**
- 7.1 **Loss or damage to Goods.** During the Term, if Goods or any part or component items of Goods are lost, stolen or damaged such that repair of Goods is impractical or uneconomic (**Affected Goods**), Customer must immediately notify Financier and within five (5) Business Days of such notification (or any longer period agreed with Financier), Customer must either:
- (a) replace the Affected Goods at the cost of Customer with goods approved by Financier being at least equivalent in type, functionality and value; or
- (b) pay to Financier by way of indemnity, the sum of:
- (i) amount which Financier notifies Customer is the amount of the Payments then due and payable by Customer to Financier in respect of the Affected Goods; and
- (ii) Early Termination Amount referable to the Affected Goods, calculated as at the date of Financier's notice under clause 7.1(b)(i).
- 7.2 **Replacement Goods.** If Customer replaces the Affected Goods in accordance with clause 7.1(a), then Customer must ensure that Financier obtains clear title to the replacement goods. The replacement goods will be taken to be Goods (or the relevant item or items of Goods as the case may be).
- 7.3 **Pay Financier for Affected Goods.** If clause 7.1(b) applies, then, upon receipt by Financier of the amounts payable by Customer under clause 7.1(b) in respect of the Affected Goods:
- (a) this Specific Security Agreement will terminate in relation to the Affected Goods;
- (b) this Specific Security Agreement will continue with respect to any remaining item or items of Goods, with new Payments applying as from the next due date for a Payment, being the Payments otherwise payable less the proportion of the Payments which Financier calculates was payable in respect of the Affected Goods; and
- (c) Financier will make a pro rata adjustment (where applicable) to any Payments already paid in respect of the Affected Goods for the period from receipt of the payments referred to in clause 7.1(b) to the next date on which a Payment falls due.
8. **PRIVACY**
- 8.1 **Privacy.** Customer agrees that if it provides Personal Information to Financier in relation to any third party who is an individual (**Affected Individual**) (for example, as applicable, any director, employee or other staff member, employer, accountant or guarantor) when dealing with Financier, Customer acknowledges and agrees to:
- (a) make any Affected Individual aware that:
- (i) their Personal Information has been collected, and may be used and disclosed, by Financier for the purposes of Customer dealings with Financier (including, as relevant, to assess Customer applications for credit and to provide Customer with Financier's products and services);
- (ii) Customer may not be able to obtain relevant products or services from Financier if Customer or Affected Individual's Personal Information is not provided to Financier;
- (iii) their Personal Information will be held, used and disclosed consistently with the Privacy and Credit Reporting Policy; and
- (iv) they have various rights relating to their Personal Information held by Financier (such as to request access to it) which they can exercise by contacting Financier using the details in the Privacy and Credit Reporting Policy;
- (b) provide each Affected Individual with a copy of the Privacy and Credit Reporting Policy and the Statement of Notifiable Matters; and
- (c) take reasonable steps to comply with any reasonable request from Financier to provide each Affected Individual with a copy of any other privacy related notification that Financier may provide Customer from time to time.
- 8.2 **Privacy – where Customer and/or Guarantor is an individual.**
- (a) Clauses 8.2 – 8.7 apply where Customer and/or Guarantor is an individual and set out:
- (i) consents that Customer and Guarantor give Financier in relation their Personal Information by applying for credit from Financier or applying to be a guarantor in relation to credit; and
- (ii) important information about Financier's collection, use, disclosure and management of Customer and Guarantor's personal information.
- (b) The Privacy and Credit Reporting Policy provides more details about how Financier manages Customer and Guarantor's Personal Information, including credit information and credit eligibility information.
- (c) When collecting, using, disclosing and managing Customer's Personal Information, Financier complies with the Privacy Act as well as the Credit Reporting Privacy Code.
- 8.3 **Collection, use and disclosure of Customer and/or Guarantor's Personal Information.**
- (a) Financier ordinarily collects Personal Information about Customer and Guarantor for the following purposes and, to the extent not already authorised by law, Customer and Guarantor jointly and separately acknowledge and agree to Financier using and disclosing that information for these purposes:
- (i) assessing and processing existing or future application(s) for consumer or commercial credit and, where applicable, insurance or extended warranty products, managing Customer and Guarantor's account or other products, responding to Customer and Guarantor's questions and performing Financier's obligations in relation to credit and insurance and extended warranty products provided to Customer and Guarantor;
- (ii) either Financier, any relevant insurer, the supplier or manufacturer of Goods or any other service provider appointed by Financier contacting Customer and Guarantor (as applicable) about any end of term options, any upgrade options or other special offers or promotions;
- (iii) protecting Financier and its assets (including against fraud) and selling Financier's assets (including by assigning any debts);
- (iv) enforcing Financier's rights (including undertaking debt collection) in connection with any credit provided to Customer;
- (v) obtaining, administering and enforcing any guarantee given or to be given by Customer or any guarantee given by Guarantor (including the Guarantee and Indemnity), and assessing whether to accept Guarantor as a guarantor;
- (vi) managing, changing and improving Financier's systems and processes; and
- (vii) complying with laws. Various Australian laws may require Financier to collect Customer and Guarantor's Personal Information, or Financier may need to do so to be able to comply with other obligations under those laws. These laws include:
- A. AML/CTF Laws (e.g. for identity verification);
- B. NCCP Act (e.g. for responsible lending);
- C. PPS Act (e.g. for search and registration purposes);
- D. *Financial Sector (Collection of Data) Act 2001* (Cth);
- E. Corporations Act; and
- F. any other regulatory legislation (e.g. requiring Financier to maintain client and transaction records, to provide information relating to loans to APRA and to make reports and provide other information to regulators such as ASIC) and the *Taxation Administration Act 1953* (Cth), *Income Tax Assessment Act 1997* (Cth) and other taxation laws (e.g. to comply with information requests issued by the Commissioner of Taxation).
- (b) Financier collects Customer and Guarantor's personal information primarily from Customer and Guarantor. However, sometimes Financier may collect Personal Information about Customer and Guarantor from third parties for the purposes described above where it is unreasonable or impracticable to collect it directly from Customer or Guarantor. These third parties include:
- (i) the supplier or manufacturer of Goods;
- (ii) other credit providers;
- (iii) insurers (such as insurers who provide insurance in relation to Customer and Guarantor's credit);
- (iv) any of Customer and Guarantor's employers, former employers, referees, banks, landlords, guarantors, accountants, lawyers and financial advisers;
- (v) service providers to Financier (including debt collection agencies, introducers, private investigators, professional advisers);
- (vi) professional organisations;
- (vii) internet sources;
- (viii) public and subscriber only databases; and
- (ix) government authorities.
- The circumstances in which Financier may do so include, where Financier requires information from a third party to assist Financier to deal with any application or request made by Customer and Guarantor (such as to verify information Customer and Guarantor have provided or to assess Customer and Guarantor's circumstances) or to assist Financier to locate Customer and Guarantor or communicate with Customer and Guarantor.
- (c) The consequences of Customer and Guarantor not providing Financier required Personal Information may include Financier not able to approve Customer's application for credit or a related product, or accept Guarantor as a guarantor, or that Financier will not be able to deal with future requests or queries from Customer and Guarantor.
- (d) Customer and Guarantor agree that Financier can disclose Customer and Guarantor Personal Information (including, where permitted to do so under the Privacy Act, Customer and Guarantor's credit information and credit eligibility information) for the purposes described in clauses 8.3(a) – (b) to:
- (i) any of Financier's Related Entities, Financier's assignees or potential assignees, the supplier or manufacturer of Goods, any other supplier appointed by Financier, credit reporting agencies or any business providing information about commercial credit worthiness, other credit providers, insurers (such as insurers who provide insurance in relation to Customer's credit), Guarantor or proposed guarantor of Customer's obligations to Financier, Customer's assignees or proposed assignees, debt collection agencies, Financier's banks and financial advisers, Financier's lawyers, accountants and other professional advisers, any suppliers or contractors to Financier whom may need to have access to Customer and Guarantor's Personal Information for the purpose of providing services to Financier, Customer or Guarantor (including valuers, physical and electronic file storage suppliers, receivables management suppliers and data warehouses);
- (ii) any person specifically authorised by Customer and Guarantor in writing;

- (iii) any person involved in any debt assignments or securitisation arrangements; and
 - (iv) any person as permitted or required by law (except this clause 8.3(d)(iv) does not permit Financier to disclose any information of the kind referred to in section 275(1) of the PPS Act unless section 275(7) of the PPS Act applies).
- 8.4 **Financier may disclose Customer and/or Guarantor's Personal Information to overseas recipients.**
- (a) Some of the organisations to whom Financier may disclose Customer and Guarantor's personal information (including credit information or credit eligibility information) will be located overseas and may not have an Australian link. The countries in which overseas recipients are likely to be located currently include the Philippines (for an updated list of countries from time to time please see the Privacy and Credit Reporting Policy).
 - (b) Customer and Guarantor acknowledge and agree that by consenting to Financier disclosing Customer and Guarantor's personal information to overseas recipients, APP 8.1 will not apply to the disclosure (which means that Financier will not be obliged under the Privacy Act to take reasonable steps to ensure that an overseas recipient does not breach the APPs and Financier may not be liable under the Privacy Act if the recipient does not act consistently with the APPs).
 - (c) By applying for this product, Customer consents to disclosures to overseas recipients. By agreeing to provide the Guarantee and Indemnity, Guarantor consents to disclosures to overseas recipients.
- 8.5 **Important information about credit reporting.**
- (a) The Privacy and Credit Reporting Policy contains important information about credit reporting, including the credit reporting bodies that Financier deals with, credit information that Financier may give them about Customer and Guarantor (such as about defaults and serious credit infringements) and details regarding how those credit reporting bodies use and disclose that information to credit providers and their policies about managing the information. Customer and Guarantor have important rights regarding access, correction and complaints relating to credit reporting information, as well as certain rights to prevent its use for direct marketing or where Customer and Guarantor have been a victim of fraud. Customer and Guarantor will also find details about these rights on the same page. Customer and Guarantor can also ask Financier to provide Customer and Guarantor with a copy of this important information.
 - (b) If Customer has made an application for commercial credit, or have obtained commercial credit from Financier, Customer acknowledges and agrees that Financier can also obtain credit reporting information about Customer from a credit reporting body for the purposes of:
 - (i) assessing Customer's application for commercial credit; or
 - (ii) collecting payments that are overdue in relation to commercial credit provided to Customer.
 - (c) Customer and Guarantor agree that Financier can obtain, from any business providing information about commercial credit worthiness, commercial credit reports about Customer and Guarantor for the purposes of assessing applications for credit.
 - (d) Customer and Guarantor acknowledge and agree that Financier may obtain credit reporting information about Guarantor from a credit reporting body for the purposes of assessing whether to accept Guarantor as a guarantor.
 - (e) Customer and Guarantor acknowledge and agree that Financier can disclose Customer and Guarantor's name, residential address and date of birth to a credit reporting body so that the credit reporting body can provide an assessment to Financier whether the information provided by Customer and Guarantor matches (in whole or in part) the information in the credit reporting body's possession or control (which may include personal information held by the credit reporting body about Customer, Guarantor or other individuals). This will be done for the purpose of verifying Customer and Guarantor's identity as required under the AML/CTF Laws where applicable. If Customer and Guarantor would prefer Financier to use another form of verification, such as passport or drivers license, Customer and Guarantor must notify Financier and provide Financier with any information Financier requests.
- 8.6 **Marketing products and services to Customer and Guarantor.** Customer and Guarantor agree to Financier to using and disclosing their Personal Information (including telephone number, regardless of whether it is listed on the Do Not Call Register and email or other electronic addresses) to provide Customer and Guarantor with information about Financier's other products and services and the products and services offered by Financier's dealers, insurers (such as insurers who provide credit-related insurance), Related Entities or suppliers. This includes communicating with Customer and Guarantor via emails, text messages or other electronic messages (without an unsubscribe facility). This agreement operates indefinitely. However, Customer and Guarantor can tell Financier that it is no longer wishes to use or disclose its Personal Information for these purposes by contacting Financier on 1300 340 447.
- 8.7 **Accessing and correcting Customer and/or Guarantor's Personal Information.**
- (a) Customer and Guarantor have rights to request access to and correction of their Personal Information that Financier holds about Customer and Guarantor (including credit information and credit eligibility information). For details about how to make such requests see the Privacy and Credit Reporting Policy.
 - (b) Financier always attempts to deal with Customer and Guarantor's Personal Information consistently with Financier's privacy obligations and Financier is committed to resolving any issues that Customer and Guarantor may wish to raise. The Privacy and Credit Reporting Policy contains details about Customer and Guarantor can make a complaint if Customer or Guarantor think there has been a breach of the Privacy Act or the Credit Reporting Privacy Code and Financier deals with such a complaint.
- 8.8 **Financier may act on behalf of an undisclosed principal.** Financier may collect, use, disclose, hold and manage Personal Information or do any of the things set out in clauses 8.2 - 8.7 in its own right or as agent for a principal (whether disclosed or not). The disclosures in this clause 8 is given by Financier and any principal (whether disclosed or not).
9. **REPRESENTATIONS AND WARRANTIES**
- 9.1 **Representations and warranties.** Customer represents and warrants to Financier that:
- (a) all information given by Customer to Financier (including in the Application Form) is true and correct in all material respects;
 - (b) the information in the Specific Security Schedule (in particular the number of employees of Customer) is true and correct;
 - (c) Customer has not relied on any statement made by or on behalf of Financier in entering into this Specific Security Agreement;
 - (d) Customer has procured all necessary authorisations, licenses and permits to enter into this Specific Security Agreement and perform its obligations under this Specific Security Agreement;
 - (e) this Specific Security Agreement has been validly executed by Customer and constitutes valid and binding obligations which are enforceable upon Customer in accordance with its terms;
 - (f) no Insolvency Event has occurred with respect to Customer or Guarantor; and
 - (g) the Security Interest granted under this Specific Security Agreement ranks first in priority in relation to Goods.
- 9.2 **Repetition of representations and warranties.** The representations and warranties contained in clause 9.1 are taken to be made by Customer when it signs this Specific Security Agreement and on the last day of each month during the Term.
- 9.3 **Reliance on representations and warranties.** Customer acknowledges and agrees that Financier has entered into this Specific Security Agreement in reliance on the representations and warranties in clauses 9.1 and 9.2.
10. **TERMINATION**
- 10.1 **Termination Event.** Without limiting Financier's rights, on the occurrence of a Termination Event, Financier may on written notice to Customer terminate this Specific Security Agreement. Before Financier takes this action in respect to a Termination Event which can be remedied, Financier will give Customer at least 30 days' notice to allow it an opportunity to remedy the Termination Event. However, Financier need not give any such notice to Customer or wait until the end of any period given in any such notice if:
- (a) Financier is of the reasonable opinion that it is necessary to terminate the Specific Security Agreement and/or take possession of Goods to manage an immediate risk; or
 - (b) a Termination Event under paragraphs (a) or (e) of the definition of Termination Event is continuing.
- 10.2 **Customer's rights on material breach of this Specific Security Agreement by Financier.** If Financier breaches a material term of this Specific Security Agreement and does not rectify such breach(es) within five (5) Business Days of receiving a detailed written rectification request from Customer to do so, Customer may immediately terminate this Specific Security Agreement by providing written notice to Financier. If validly terminated under this clause 10.2, Customer must immediately pay Financier upon demand:
- (a) the Present Value Amount;
 - (b) the Arrears; and
 - (c) if any, all other amounts then due and payable under or in connection with this Specific Security Agreement and which remain outstanding.
- 10.3 **Termination before the Expiry Date – during the Term.** Subject to clause 10.2, if this Specific Security Agreement is terminated for any reason before the Expiry Date, Customer must immediately pay Financier:
- (a) the Early Termination Amount;
 - (b) the Arrears; and
 - (c) all other amounts then due and payable under or in connection with this Specific Security Agreement and which remain outstanding.
- 10.4 **Termination on the Expiry Date – end of the Term.** Where this Specific Security Agreement is terminated for any reason on the Expiry Date, Customer must immediately pay Financier any Moneys Owing.
- 10.5 **Attorney.** Customer irrevocably separately appoints Financier and any Authorised Officer of Financier as the attorney of Customer (**Attorney**) (without imposing any liability on Financier as secured party in possession) with full power for Financier at any time to appoint a substitute and revoke any appointment. Attorney may, prior or subsequent to any Termination Event, at the full cost of Customer perform any action, whether in the name of Customer, which:
- (a) Customer should perform under any agreement created by this Specific Security Agreement;
 - (b) Financier may perform under any power conferred by this Specific Security Agreement; or
 - (c) Financier in its discretion considers necessary or desirable for the effectiveness of this Specific Security Agreement.
11. **GUARANTEE AND INDEMNITY**
- 11.1 **Guarantor acknowledgements.** Guarantor acknowledges and agrees that:
- (a) Financier has entered into this Specific Security Agreement at Guarantor's request;
 - (b) it has received valuable consideration for entering into this Specific Security Agreement;
 - (c) Financier is acting in reliance of Guarantor incurring obligations and giving rights under this Specific Security Agreement;
 - (d) it (or its directors if a company) has read and understood the terms of this Specific Security Agreement, including the Guarantee and Indemnity; and
 - (e) it has made its own enquiries and satisfied itself as to the financial condition of Customer and Customer's ability to perform its obligations and has not relied in any way on any information provided by Financier.
- 11.2 **Guarantee.**
- (a) Guarantor unconditionally and irrevocably guarantees to Financier, Customer's compliance with its obligations, including each obligation to pay all amounts under this Specific Security Agreement from time to time.
 - (b) If Customer does not comply with its obligations on time and in accordance with this Specific Security Agreement, then Guarantor agrees to comply with those obligations within 2 Business Days of demand from Financier. A demand may be made whether or not Financier has made a demand on Customer.
 - (c) This Guarantee and Indemnity creates a principal and independent liability of Guarantor.
- 11.3 **Indemnity.**
- (a) Guarantor unconditionally and irrevocably indemnifies Financier against any liability or direct loss arising from, any reasonable costs Financier incurs, if:
 - (i) Customer does not, or is unable to, comply with an obligation it has (including an obligation to pay money);
 - (ii) an obligation Customer would otherwise have under this Specific Security Agreement (including an obligation to pay money) is found to be void, voidable or unenforceable;
 - (iii) an obligation Guarantor would otherwise have under clause 11.2 is found to be void, voidable or unenforceable; and
 - (iv) a representation or warranty by Customer in this Specific Security Agreement is found to have been incorrect or misleading when made or taken to be made. The indemnity in this clause 11.3 does not apply to an obligation which is found to be void, voidable or unenforceable solely as a result of the fraud, negligence or willful misconduct of Financier or Financier's agents, contractors or employees, or a Receiver appointed by Financier, or because the relevant term of this Agreement is void for unfairness or illegality under the laws of a State or Territory of Australia.
 - (b) Guarantor must pay these amounts within two (2) Business Days after Financier requests. Financier need not incur expense or make payment before enforcing its right or indemnity under clause 11.3(a).

- (c) The liability of Guarantor under clause 11.3(a) is a separate and additional liability of Guarantor as a principal debtor and not as a surety.
- 11.4 **Extent of Guarantee and Indemnity.** Each of the guarantee in clause 11.2 and indemnity in clause 11.3 are continuing obligations despite any intervening payment (including Payment), settlement or other thing and extends to all Customer's obligations. Guarantor waives any right it has of first requiring Financier to commence proceedings or enforce any other right against Customer or any other person before claiming from Guarantor under this Guarantee and Indemnity.
- 11.5 **Variations and replacements.** Guarantor agrees that the obligations guaranteed under clause 11.2 include any obligations under this Specific Security Agreement as varied or replaced unless the effect of the variation or replacement increases the Amount Financed or the aggregate amount of the Instalment Payments.
- 11.6 **Limit to Guarantor's liability.** This Guarantee and Indemnity is a guarantee and indemnity for all guaranteed obligations (including the obligation to pay money). However, for each Guarantor that has a Guarantee Limit, the amount payable by Guarantor is limited to that Guarantee Limit plus any costs and expenses payable under clause 11.7 and interest under clause 11.8.
- 11.7 **Costs and expenses.** Guarantor must pay Financier for:
- Financier's reasonable costs in arranging, administering (including enforcing or taking any other action in connection with Financier's rights) and terminating this Guarantee and Indemnity; and
 - all stamp and other duties, fees, taxes and charges payable in connection with this Guarantee and Indemnity and any transaction (such as a payment or receipt) under it and any interest, penalties, fines and expenses in connection with them.
- 11.8 **Overdue balances.** Unless the amount is already accruing interest under clause 13.5, Guarantor must pay interest calculated on daily balances on any amount Guarantor owes under clauses 11.2 – 11.4 from the date Financier requests Guarantor for the amount until Guarantor pays it. The interest will be calculated in accordance with clause 13.5 as if references in that clause to Customer are to Guarantor.
- 11.9 **Avoided transactions.** Guarantor acknowledges that a trustee in bankruptcy, liquidator or similar person may ask Financier to refund a payment that Financier has received in connection with this Specific Security Agreement or this Guarantee and Indemnity. To the extent Financier is obliged to, or Financier agrees to, make a refund, Financier may treat the original payment as if it had not been made. Financier is then entitled to its rights against Guarantor under this Guarantee and Indemnity as if the payment had never been made.
- 11.10 **No merger.** The Guarantee and Indemnity does not merge with or adversely affect:
- any other guarantee or indemnity, or mortgage, charge or other security, or right or remedy to which Financier is entitled at any time; or
 - a judgment or order which Financier obtains against Guarantor in respect of an amount payable under the Guarantee and Indemnity.
- Financier can still exercise its rights under the Guarantee and Indemnity as well as under the judgment, order, other guarantee or security.
- 11.11 **No competing claims.** As long as an amount payable remains unpaid, Guarantor may not, without Financier's prior written consent (such consent not to be unreasonably withheld):
- reduce Guarantor's liability under the Guarantee and Indemnity by claiming that Guarantor, Customer or any other person has a right of set-off or counterclaim against Financier;
 - exercise any legal rights to claim to be entitled to the benefit of another guarantee or mortgage, charge or other security given in connection with an amount payable under this Specific Security Agreement or an amount payable under this Guarantee and Indemnity;
 - claim an amount from Customer or another guarantor of Customer's obligations under a right of indemnity; or
 - claim an amount in the insolvency of Customer or another guarantor of Customer's obligations under this Specific Security Agreement (including a person who has signed this Guarantee and Indemnity).
- 11.12 **Trust.** If Guarantor is a trustee, clause 13.9 applies equally to Guarantor and each reference to "Customer" in that clause is taken to be a reference to Guarantor.
- 11.13 **Partnership.** If Guarantor is a partnership, clause 13.10 applies equally to Guarantor and each reference to "Customer" in that clause is taken to be a reference to Guarantor.
- 11.14 **Guarantor must act on demand.** Guarantor must promptly do anything Financier reasonably requests (such as obtaining consents, signing and producing documents and getting documents completed and signed) to bind itself under the Guarantee and Indemnity.
- 11.15 **Marshalling.** Financier may claim against Guarantor under this Guarantee and Indemnity before Financier enforces any of its rights:
- against Customer or any other person; or
 - under another document such as a guarantee or mortgage, charge or other security.
- 11.16 **Application of money.** Financier may use any money paid by or for Customer towards meeting any part Financier chooses of the amounts Customer owes Financier (including meeting any amount Guarantor does not guarantee). Financier may use any money paid by Guarantor under this Guarantee and Indemnity towards paying any part Financier chooses of the amounts Guarantor owes Financier under this Guarantee and Indemnity.
- 11.17 **Guarantee and Indemnity remains unaffected.** Subject to clause 11.18, this Guarantee and Indemnity and Guarantor's liability under it are not affected by anything which might otherwise affect them including:
- the occurrence of a Termination Event;
 - the granting to any person by Financier of any waiver;
 - any increase or variation in the amount payable under this Guarantee and Indemnity or this Specific Security Agreement for any reason unless the effect of the increase or variation increases the Amount Financed or the aggregate amount of the Instalment Payments;
 - any transfer of this Specific Security Agreement, or any right or liability of any person under this Specific Security Agreement, whether for or without consideration;
 - any termination of this Specific Security Agreement, or any right or liability of any person under this Specific Security Agreement;
 - any release by Financier of any right or liability of Financier or any person under this Specific Security Agreement;
 - Financier taking, completing or perfecting, or any failure in taking, completing or perfecting any Security Interest or any right under this Specific Security Agreement;
 - any failure by any person concerning, or by Financier in requesting or requiring, the execution or effective execution of this Specific Security Agreement at any time by any person;
 - any exercise or enforcement, or any failure or incapacity in the exercise or enforcement, by Financier of any right conferred on Financier by this Specific Security Agreement or by law;
- the invalidity of any agreement other than the Guarantee and Indemnity, or its execution by any person other than Guarantor, for any reason;
 - any incapacity of or fact relating to any person other than Guarantor, including any change in the constitution or membership of any person;
 - any invalidity or incapacity of, or in any consent or conferral or delegation of power to, any person other than Guarantor, whether in its own right or any other purported capacity, to execute, or perform any liability under, any agreement; or
 - any failure in obtaining the consent of any person by Financier in connection with this Specific Security Agreement.
- This clause 11.17 does not apply to any action taken by Financier with the specific and express purpose of varying, waiving or terminating a right or liability of Guarantor.
- 11.18 **Consent to certain events**
Financier will obtain Guarantor's consent to the release of any Security Interest or guarantee given to support Customer's obligations under this Specific Security Agreement.
- 11.19 **Security for Guarantee and Indemnity.** This clause 11.19 will only apply if the Specific Security Schedule for Guarantor indicates that the Guarantee and Indemnity is to be secured. If so:
- Guarantor charges in favour of Financier all of Guarantor's real property (including all real property acquired after the Acceptance Date) for the purpose of securing payment to Financier of all Moneys Owing under this Guarantee and Indemnity and compliance with all obligations of Guarantor to Financier under this Specific Security Agreement and:
 - grants Financier a mortgage of any land now or hereafter held by Guarantor with such mortgage containing a covenant to the effect that the mortgage secures all Moneys Owing by Guarantor to Financier under this Specific Security Agreement;
 - acknowledges the mortgage is to be in registrable form and incorporates the covenants contained in Memorandum Q860000 (NSW) or on equivalent terms in other states or territories and contain such other terms as Financier may require;
 - authorises Financier to take all actions necessary to give effect to this security including the lodgement of a caveat upon the title of any such land of Guarantor; and
 - irrevocably appoints Financier and any person nominated by us severally as attorney of Guarantor to execute, sign, seal and deliver such mortgage or other document to give effect to and enforce this security.
 - If the charge created by clause 11.19(a) is or becomes void or unenforceable, it may be severed from this Specific Security Agreement without any effect on its validity and Guarantor will not be exonerated in the whole or in part, nor will Financier's right, remedies or recourse against Guarantor be in any way prejudiced or adversely affected by such severance.
12. **SECURITY**
- 12.1 **Security Interest.** In consideration of Financier disbursing the Amount Financed, Customer grants a Security Interest in Goods to and in favour of Financier as a continuing security for payment of the Moneys Owing. The Security Interest granted under this Specific Security Agreement ranks first in priority in relation to Goods as against every other Security Interest created at any time in relation to Goods.
- 12.2 **PPSA Acknowledgements.**
- Nothing in this Specific Security Agreement may be taken as an agreement that Financier's Security Interest in Goods attaches later than the time contemplated by section 19(2) of the PPSA.
 - For the purposes of section 20(2)(b)(i) of the PPSA, the collateral that is subject to Financier's Security Interest in Goods under this Specific Security Agreement is goods.
- 12.3 **Further Assurance.** Customer must (at its own cost) promptly following a request by Financier:
- deposit with Financier any Title Document relating to Goods;
 - execute any document (in form and substance satisfactory to Financier in all respects) and perform any action reasonably required by Financier to more effectively secure the interest of Financier in Goods and any right of Financier under any Security Document or the PPSA, including any document or action:
 - to enable Financier to take possession or control of any Goods;
 - to enable, facilitate or complete the attachment, perfection or temporary perfection of the Security Interest granted under this Specific Security Agreement; or
 - to reinstate, improve or protect the priority of the Security Interest granted under this Specific Security Agreement;
 - ensure, or provide any reasonable assistance to Financier to ensure, any document executed under this clause is duly stamped and in registrable form;
 - perform any reasonable action within its power and control necessary to effect the transfer of any Goods by Financier under any right conferred by this Specific Security Agreement or the PPSA; and
 - execute any document and perform any action which Financier considers reasonably necessary or desirable in respect of any application for and completion of the effective registration of a financing statement or financing change statement.
- 12.4 **Serial Numbered Property.** If Goods include property which may or must be described by serial number in a financing statement registered on the PPSR, Customer represents and warrants to Financier that the serial numbers and other identification details set out in the Specific Security Schedule are complete and accurate.
13. **GENERAL**
- 13.1 **Assignment.**
- Financier may assign, transfer or otherwise deal with all or any part of Financier's rights or obligations under or in connection with this Specific Security Agreement without Customer's or Guarantor's consent; and
 - Customer must not assign, transfer or otherwise deal with any of its rights under or in connection with this Specific Security Agreement without Financier's prior written consent which will not be unreasonably withheld.
- 13.2 **Rights.** Termination of this Specific Security Agreement will be without prejudice to Financier's rights, powers and remedies with respect to any antecedent breach by Customer.
- 13.3 **Financial information.** Customer must provide Financier with any reasonable financial or other information relating to the financial condition, business, assets and affairs of Customer and any of its related bodies corporate as and when requested by Financier.
- 13.4 **Notices.** Any notice to be given by Financier under or in connection with this Specific Security Agreement may be served on Customer and/or Guarantor by being left at or sent by pre-paid mail, or sent by email to Customer's and/or Guarantor's email address specified in the Specific Security Schedule or as otherwise notified in writing to Financier. Notice or demand will be treated as having been given and received, if:
- delivered, on the day of delivery;
 - sent by pre-paid mail, on the next delivery day; and

- (c) if sent by email, on the day of sending if a Business Day, or otherwise on the next Business Day where a delivery receipt has confirmed delivery to the relevant email address.
- Customer and/or Guarantor authorises Financier to accept and act on a communication given by email without verification if Financier reasonably assumes that communication to be genuine.
- 13.5 **Overdue fees.** Customer must pay to Financier on demand interest on any moneys payable which are overdue on a daily basis for the respective periods from the date the moneys became due to the date of payment by Customer. This interest will be calculated at the rate for judgments in the Supreme Court of New South Wales, and such amount will compound monthly. If a liability under or in connection with this Specific Security Agreement becomes merged in a judgement or order, Customer, as an independent obligation, must pay interest on the amount of that liability from the date the liability becomes payable both before and after the judgement or order until it is paid, also at that rate.
- 13.6 **Commission.** Customer consents to Financier paying a commission to any third party. Customer acknowledges that any third party which submitted this Specific Security Agreement to Financier, or who conducted any antecedent negotiations with Customer, is not and was not Financier's agent for any purpose.
- 13.7 **Authority to complete and amend.** Customer and Guarantor authorise Financier to complete and/or amend any blank, incomplete, missing or inaccurate particulars in this Specific Security Agreement and to otherwise complete all necessary formalities to render this Specific Security Agreement complete and enforceable.
- 13.8 **Set-Off.** Customer irrevocably authorises Financier to set off without notice any money held by Financier on any account of Customer against any money owing by Customer to Financier (including any liquidated damages). If Customer claims Financier owes it money, Customer may bring a claim for this amount against Financier but may not exercise any set-off, counterclaim or deduction.
- 13.9 **Trust.** Customer represents and warrants that it does not enter into this Specific Security Agreement as a trustee unless specified in the Specific Security Schedule. If Customer enters into this Specific Security Agreement as a trustee of a trust (**Trust**), Customer:
- represents and warrants that Customer does so for a proper purpose of the Trust;
 - has power and authority under the Trust to do so and perform its obligations under this Specific Security Agreement;
 - has the right to be indemnified fully out of the Trust property before the Trust's beneficiaries for all liabilities Customer incurs; and
 - must not (unless with Financier's prior written consent) distribute any capital of the Trust, retire as trustee or be replaced as trustee, re-settle the Trust, amend the trust deed of the Trust or otherwise vary the terms of the Trust, grant a Security Interest over any of the assets of the Trust, or breach any terms of the Trust.
 - Customer must provide immediate written notice to Financier if any of the events in clause 13.9(a) – (d) occur.
- 13.10 **Partnership.** Customer represents and warrants that it does not enter into this Specific Security Agreement as a partnership unless specified in the Specific Security Schedule. If Customer enters into this Specific Security Agreement as a partnership:
- each partner signing represents and warrants that they have power and authority to do so for the partnership and perform their obligations;
 - each partner of the partnership is liable to Financier as a separate, independent, principal and personal obligation, whether or not Financier may recover any sum from the partnership assets; and
- (c) Customer must provide immediate written notice to Financier if the partnership is dissolved, and if this occurs (to the extent permitted by law) then each partner must act in relation to the administration of the partnership assets in the manner directed by Financier, a retiring partner is not discharged from any liability to Financier as a result of an agreement between the then existing partners, and the obligations of a retiring partner to Financier are not affected by anything which might otherwise affect them at law or in equity.
- 13.11 **Governing law and jurisdiction.** This Specific Security Agreement is governed by the law of the State or Territory of in which Customer is located. Customer irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State or Territory in which Customer is located.
- 13.12 **Sever invalid provisions.** If any provision is found to be invalid or unenforceable, it will have no force or effect and will be severed without affecting the remaining provisions and without affecting the operation of this Specific Security Agreement.
- 13.13 **Conditions of consent.** Financier may or may not grant any consent or approval under or in connection with this Specific Security Agreement in Financier's discretion (acting reasonably) and upon such conditions as Financier may determine.
- 13.14 **Agency.** Financier may enter into this Specific Security Agreement as agent for another person (whether disclosed or not).
- 13.15 **Time of the essence.** Time is of the essence in respect of all of Customer's obligations.
- 13.16 **Information.** Financier will, upon written request from Customer, provide such information as Customer reasonably requests in relation to the calculation of:
- Early Termination Amount;
 - any other amount payable by Customer under this Specific Security Agreement.
- 13.17 **Direct Debit authority.** Customer must complete and provide Financier with the Direct Debit Request. Customer irrevocably authorises Financier to debit any amounts due to Financier on any account of Customer.
- 13.18 **Counterparts.** This Specific Security Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.
- 13.19 **Specific Security Agreement binding.** This Specific Security Agreement is binding upon Customer immediately upon Customer executing this Specific Security Agreement notwithstanding that Financier may never execute this Specific Security Agreement. The Guarantee and Indemnity is binding upon Guarantor immediately upon Guarantor executing this Specific Security Agreement notwithstanding that Financier may never execute this Specific Security Agreement.
- 13.20 **Amendment of this Specific Security Agreement.** An amendment to this Specific Security Agreement must be in writing and signed by the parties.
- 13.21 **Authority to sign.** Where this Specific Security Agreement is executed by individual(s) on Customer's and/or Guarantor's behalf, that/those individual(s) warrant(s) that/they have the authority and delegated power to execute this Specific Security Agreement on Customer's and/or Guarantor's behalf.
- 13.22 **Electronic signature.** If this Specific Security Agreement is signed by Customer or Guarantor by use of electronic signature(s) (including by signing on an electronic device or by digital signature), then Customer and Guarantor:
- agree that Financier may rely on the electronic signature(s) as having the same force and effect as handwritten signature(s); and
 - unconditionally consent to any method used by Financier to identify the signatories and to confirm their intention to enter into a binding legal agreement.