

TERMS AND CONDITIONS

Definitions

1. In these terms and conditions:

'**Australian Consumer Law**' means Schedule 2 to the *Competition and Consumer Act 2010*.

'**Additional Services**' means additional services provided by Hilustre which fall outside the scope of the Services, and includes, without limitation, rectification of corroded or previously coated parts by way of machine abrasion or abrasive blasting, drilling holes for hanging points and drainage of pre-treated chemicals.

'**Customer**' means the person, firm, organisation, partnership, corporation, trustee of a trust or other entity (including its successors and permitted assigns) to whom Services are provided by Hilustre.

'**Customer Material**' means any and all information, specifications, data, and documents provided by the Customer to Hilustre (whether in hard copy or in an electronic format).

'**Finished Goods**' means Goods which have been the subject of the Services.

'**Goods**' means any and all goods provided by the Customer to Hilustre for the purposes of Hilustre providing the Services pursuant to an Order.

'**GST**' has the meaning given to it by *A New Tax System (Goods and Services Tax) Act 1999*.

'**Hilustre**' means Hilustre Coatings Pty. Ltd. ACN 004 533 402 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*).

'**Order**' means any request for the provision of Services by the Customer.

'**PPSA**' means the *Personal Property Securities Act 2009*.

'**PPSR**' means the Personal Property Securities Register.

'**Services**' means powder coating, corrosion protection and other associated services provided by Hilustre.

'**Warranty Period**' has the meaning given to it by clause 71.

Payment terms

2. Subject to clause 3, payment shall be, at Hilustre's discretion, due and payable:

1. on or prior to delivery of the Finished Goods in accordance with clause 22; or
2. by the date nominated by Hilustre's invoice (or any other correspondence or documents).

3. Where the Customer has been granted commercial credit facilities by Hilustre, the terms of payment are strictly thirty (30) days from the date of invoice (or such other period as nominated by Hilustre's herein). Hilustre may, at any time, vary the terms of payment for account customers in accordance with the terms and conditions herein.

The Customer must check all invoices and advise Hilustre of any errors or omissions within seven (7) days of receipt. Failing advice from the Customer that the invoice contains any errors or omissions, the invoice may be deemed accepted by Hilustre.

Should the Customer not pay for the Services supplied by Hilustre in accordance with the terms as provided herein, or as agreed in writing by Hilustre and Customer from time to time, after issuing a written demand to the Customer demanding payment within fourteen (14) days, Hilustre will be entitled to charge an administration fee of ten (10) percent of the amount of the invoice payable.

The Customer acknowledges that Hilustre shall be at liberty to charge:

- a surcharge for credit card transactions equal to the merchant fees incurred by Hilustre; and
- a dishonour fee of \$35.00 if a cheque payment is dishonoured.

Purpose of credit

The Customer acknowledges and agrees that any credit to be provided to the Customer by Hilustre is to be applied wholly or predominantly for commercial purposes.

Formation of contract

1. Quotations are exclusive of GST shall remain valid for a period of thirty (30) days from the date of quotation, unless otherwise specified in writing. Hilustre, in its sole discretion, reserves the right to withdraw, vary or extend any quotation at any time prior to the formation of a contract in accordance with clause 9.

2. Quotations made by Hilustre are considered to be an invitation to treat only and will not be construed as an offer or obligation to supply Services in accordance with the quotation. Hilustre reserves the right to accept or reject, at its discretion, any Order received by it upon provision of written reasons to the Customer. Only written acceptance by Hilustre of the Customer's Order will complete a contract.

3. Placement of an order, either verbally or in writing, will imply acceptance of these terms and conditions.

4. At Hilustre's sole discretion, a deposit may be required. The deposit amount or percentage of the price due will be stipulated after an Order for Services is received by Hilustre and shall immediately become due and payable upon the formation of a contract in accordance with clause 9.

Variations

5. Where the Customer requests or directs that any Services be supplied that are not strictly in accordance with the quotation or Order, then such Services shall constitute a variation, unless otherwise agreed between the parties.

6. The Customer understands and agrees that:

- (a) all variations must be agreed between the parties in writing prior to the Services being supplied; and
- (b) all variations shall be, at Hilustre's discretion, invoiced at the rate(s) specified in the quotation, as specifically quoted, or in accordance with Hilustre's current prevailing rates (as amended from time to time).

7. Notwithstanding clauses 12 and 13, and subject to any rights the Customer might have under any relevant legislation, Hilustre reserves the right to vary the quoted price if:

- (a) there is any movement in the cost of supplying the Services specified in the Customer's Order (including, without any limitation, any increase in the costs of materials and/or labour, concealment, undetectable or latent defects in the Goods, lack of accessibility, incorrect or incomplete information, and/or other regulatory requirements affecting the Goods);
- (b) the Services specified in the Customer's Order are varied from the Services specified in Hilustre's quotation;
- (c) the Customer requests that Additional Services be provided;
- (d) otherwise provided for in these terms and conditions.

8. The Customer acknowledges that any special packing and packaging materials used in relation to the Finished Goods shall be at the Customer's sole expense, notwithstanding that such costs may have been omitted from Hilustre's quotation.

Suspension of Services and cancellation of orders

9. Unless otherwise agreed in writing between the parties, the Customer may not cancel an Order (or any part of an Order) unless the Customer pays to Hilustre (in Hilustre's sole discretion) any and all costs incurred by Hilustre in relation to the cancelled Order (or cancelled part of an Order) up until and including the date of cancellation.

10. Notwithstanding any other rights Hilustre may have under this agreement, Hilustre may, at its discretion, suspend the provision of Services or cancel any Order, by providing written notice to the Customer if the Customer:

- (a) defaults in payment of any invoice by the due date;
- (b) enters into liquidation or, in the case of an individual, becomes bankrupt; or
- (c) breaches an essential term of this agreement.

11. To the fullest extent permitted by law, Hilustre accepts no liability for any loss whatsoever incurred by the Customer or any third party as a result of Hilustre exercising its rights under clause 17.

Provision of Services

The Customer acknowledges and understands that:

- any estimate for performance or completion of the Services provided by Hilustre is an estimate only;

unless specified by Hilustre in writing, Hilustre does not make any warranty or representation that it will be capable of providing the Services within any timeframe(s) specified by the Customer; and

it is not relieved from any obligation arising under these terms and conditions by reason of any delay in performance or completion of the Services.

Delivery

Where Hilustre has been engaged to deliver the Finished Goods:

the Customer shall be liable for all costs associated with delivery, including freight, insurance, handling and other charges, unless otherwise agreed in writing; and delivery will be made within normal business hours between Monday to Thursday, 07.30am to 4.00pm, and Friday, 07.30 to 1.30pm only (unless otherwise agreed to in writing).

12. The Customer acknowledges and accepts that any estimated delivery time(s) provided by Hilustre is an estimate only. To the extent permitted by law, Hilustre will not be liable for any loss suffered by the Customer as a result of any delay in the delivery or dispatch of the Finished Goods.

13. Delivery is deemed to occur at the earlier of:

- (a) the collection of the Finished Goods from Hilustre by the Customer or any third party on behalf of the Customer;
- (b) the time of loading of the Finished Goods at Hilustre's premises for the purpose of delivery to the Customer.

14. Hilustre is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Finished Goods.

15. The Customer accepts that Hilustre may deliver the Finished Goods by instalments and may require payment for each separate instalment in accordance with these terms and conditions.

16. The Customer acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions by reason of any delay in delivery.

Site access

17. The Customer acknowledges that it shall at all times permit Hilustre (including its contractors, agents and employees) to have free, clear and unrestricted access to the site where the Services are to be provided to enable Hilustre to fulfil its obligations under this agreement without unreasonable interruption, impediment, delay or obstruction.

18. In the event that free, clear and unrestricted access to the site is not available to Hilustre in accordance with clause 26, Hilustre reserves the right to cease the provision of Services upon the provision of written notice to the Customer.

19. The Customer agrees to indemnify Hilustre from any and all costs and penalties (including claims for liquidated damages) if the completion of the Services is delayed due to interrupted site access.

Claims>Returns

20. The Customer must inspect the Finished Goods immediately upon delivery and must within seven (7) days after the date of inspection give written notice to Hilustre with particulars, of any claim that the Finished Goods are not in accordance with this agreement. Further, the Customer must, upon request from Hilustre, allow Hilustre to enter upon any premises occupied by the Customer to inspect the Finished Goods that are subject of the claim. If the Customer fails to give notice or refuses to allow Hilustre to inspect the Finished Goods, then to the extent permitted by law, the Finished Goods must be treated as having been accepted by the Customer and the Customer must pay for the Services in accordance with these terms and conditions.

Risk

21. Where Goods and/or Customer Material is supplied by the Customer to Hilustre for the purpose of providing Services, risk in the Goods and/or Customer Material shall at all times remain with the Customer. The Customer acknowledges and understands that, to the extent permitted by law:

Hilustre's obligations as bailor are expressly excluded; Hilustre accepts no liability for any loss, damage or theft of the Goods and/or Customer Material while the Goods are in Hilustre's possession.

22. Where the Services are to be provided at Hilustre's premises, risk of damage to or loss of the Finished Goods passes to the Customer on delivery and the Customer must insure the Finished Goods on or before delivery.

23. Where the Services are to be provided at the Customer's site or elsewhere, risk of damage to or loss of the Finished Goods passes to the Customer upon completion of the Services.

24. If any of the Finished Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Hilustre is entitled to receive all insurance proceeds payable for the Finished Goods to the extent of the indebtedness of the Customer to Hilustre. The production of these terms and conditions by Hilustre is sufficient evidence of Hilustre's rights to receive the insurance proceeds without the need for any person dealing with Hilustre to make further enquires.

25. If the Customer requests that the Finished Goods are delivered either to an unattended location, left outside, or are left outside Hilustre's premises for collection, the Customer acknowledges that Hilustre will deliver the Finished Goods as requested at the Customer's risk.

Customer's warranties and obligations

The Customer warrants and represents that it is the owner of the Goods or has the authority of the owner to deal with the Goods.

The Customer acknowledges that it must:

obtain, and provide to Hilustre, all things necessary for Hilustre to perform the Services in a timely manner;

inform Hilustre of any special requirements pertaining to the Order or the performance of the Services (i.e. use of the Finished Goods in adverse conditions, such as marine or industrial environments).

Cancellation of terms of credit

26. Where Hilustre has granted commercial credit facilities to the Customer, Hilustre reserves the right to withdraw credit at any time upon provision of 48 hours' written notice.

27. Notwithstanding clause 37, if the Customer defaults in the payment of any amount due to Hilustre pursuant to this agreement and does not cure such default within seven (7) days after being given notice of such default, Hilustre may terminate this agreement (to be effective immediately) upon notice to the Customer.

28. Upon the withdrawal of credit in accordance with clause 37, or upon termination of this agreement in accordance with clause 38, all liabilities incurred by the Customer become immediately due and payable to Hilustre.

29. For the avoidance of doubt, termination of this agreement will not affect:

- (a) the right of any party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof; and
- (b) the rights and/or obligations pursuant to this agreement which by their nature are intended to survive termination of this agreement.

Indemnity

The Customer agrees to indemnify Hilustre and keep Hilustre indemnified against any claim that arises out of the Services supplied under this agreement to the extent that such a claim is a consequence of a default by the Customer under the terms of this agreement. This indemnity includes any legal fees and expenses Hilustre incurs in order to enforce its rights, on an indemnity basis.

Provision of further information

30. The Customer undertakes to comply with any reasonable written requests by Hilustre to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.

31. If the Customer is a corporation (with the exception of a public listed company), it must advise Hilustre of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders Hilustre may ask for its directors to sign a guarantee and indemnity.

Corporations

32. If the Customer is a corporation, the Customer warrants that all of its directors have signed this agreement and acknowledges that all of its directors may be required to enter into a guarantee and indemnity with Hilustre in relation to the Customer's obligations to Hilustre.

Trustee capacity

33. If the Customer is the trustee of a trust (whether disclosed to Hilustre or not), the Customer warrants to Hilustre that:

- (a) the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
- (b) the Customer has the right to be reasonably indemnified out of trust assets;
- (c) the Customer has the power under the trust deed to sign this agreement; and
- (d) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising Hilustre and having the new or additional trustee sign an agreement on substantially the same terms as this agreement.

34. The Customer must give Hilustre a copy of the trust deed upon request.

Partnership

35. If the Customer enters into this agreement in its capacity as a partnership, the Customer warrants that all of the partners have signed this agreement and that all of the partners may be required to enter into a guarantee and indemnity with Hilustre in relation to the Customer's obligations to Hilustre.

36. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising Hilustre. In the case of a change of partners, Hilustre may ask for new guarantors to sign a guarantee and indemnity.

Insolvency

37. If the Customer becomes insolvent, to the extent permitted by law, the Customer remains liable under this agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this agreement even if Hilustre receives a dividend or payment as a result of the Customer being insolvent.

Waiver

38. A waiver of any provision or breach of this agreement by Hilustre must be made by an authorised officer of Hilustre in writing. A waiver of any provision or breach of this agreement by the Customer must be made by the Customer's authorised officer in writing.

Security Interest

39. The Customer hereby consents to Hilustre recording the details of this agreement on the PPSR (in any manner Hilustre considers appropriate) and the Customer undertakes to do anything that is required by Hilustre:

- (a) so that Hilustre can acquire and maintain one or more perfected security interests under the PPSA;
- (b) to register a financing statement or financing change statement; and
- (c) to ensure that Hilustre's security position, and rights and obligations, are not adversely affected by the PPSA.

40. Unless the Customer has obtained the Hilustre's prior written consent, the Customer undertakes not to register a financing change statement in respect of a security interest contemplated or constituted by this agreement.

41. The Customer:

- (a) waives its right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under the agreement;
- (b) agrees that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
- (c) agrees that the following provisions of the PPSA will not apply and the Customer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

42. The Customer agrees that it will, if requested by Hilustre, sign any documents, provide any information or do anything else Hilustre requests, to ensure that any security interest created in Hilustre's favour by this agreement is, to the fullest extent possible under the PPSA, perfected in accordance with Part 2.2 of the PPSA.

Security charges

The Customer charges in favour of Hilustre all of its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.

The Customer charges in favour of Hilustre all of its estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.

As security for the payment of the amount of its indebtedness to Hilustre from time to time, the Customer irrevocably appoints as its duly constituted attorney Hilustre's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat Hilustre may choose to lodge against real property that the Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Customer (in the event that there is no default by the Customer in carrying out its obligations hereunder).

Where the Customer has previously entered into an agreement with Hilustre by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the PPSA) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Customer under this agreement. Hilustre may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Costs

43. The Customer must pay for its own legal, accounting and business costs and all costs incurred by Hilustre relating to any default by the Customer under this agreement. The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).

44. The Customer will pay Hilustre's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis.

45. Subject to clauses 62 and 63, payments by, or on behalf of, the Customer will be applied by Hilustre as follows.

- (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 41 and 60.
- (b) Secondly, in payment of any interest incurred in accordance with clause 66.
- (c) Thirdly, in payment of the outstanding invoice(s), or part thereof in an order determined by Hilustre in its absolute discretion.

46. To the extent that payments have been allocated to invoices by Hilustre in its business records, Hilustre may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at Hilustre's absolute discretion, including in a manner inconsistent with clause 61 herein.

47. Payments allocated (and/or reallocated) under clause 61 and/or 62 will be treated as though they were allocated (and/or reallocated) in the manner determined by Hilustre on the date of receipt of payment.

Taxes and duty

48. The Customer must pay GST on any taxable supply made by Hilustre to the Customer under this agreement. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply.

49. If as a result of:

- (a) any legislation becoming applicable to the subject matter of this agreement; or
- (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

Hilustre becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay Hilustre these additional amounts on 48 hours' written demand.

Interest rates

50. The interest rate on any outstanding debts is a fixed rate of ten (10) percent per annum.

Set-off

51. All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by Hilustre and the Customer in writing or as required by law.

52. Any amount due to Hilustre from time to time may be deducted from any monies which may be or may become payable to the Customer by Hilustre.

Accuracy of the Customer Material

53. The Customer warrants that any and all Customer Material provided to Hilustre is accurate and correct. Hilustre, to the extent permitted by law, accepts no liability for any loss, damage, costs or expense (including, for the avoidance of doubt, rectification costs) incurred by the Customer or by any third party as a result of the Customer Materials being inaccurate or incorrect.

54. Where the Customer has provided Customer Material to Hilustre, the Customer grants Hilustre a non-exclusive license to use the Customer Material for the purposes of supplying the Services and warrants that the use of the Customer Material does not infringe the intellectual property rights of any third party. Further, the Customer agrees to indemnify Hilustre against any claim arising from the use of the Customer Material, where such Customer Material infringes or is alleged to infringe the intellectual property rights of any third party.

Warranty against defects

Subject to clause 73, Hilustre warrants that the Finished Goods will be free from defects for a period of one (1) month from the completion of the Services or delivery of the Finished Goods (whichever comes later) (**Warranty Period**). Hilustre can offer a longer warranty period through its coating supplier, but only by prior arrangement and if agreed by Hilustre in writing.

During the Warranty Period, if the Finished Goods are deemed by Hilustre to be defective as a direct result of the Services, Hilustre may (at its option):

- provide equivalent Services to rectify the defect; or
- make payment of the reasonable costs of rectifying the defect or have equivalent services provided (capped to the Order value or the amount paid by the Customer, as applicable).

The warranty contemplated by clauses 71 and 72 shall at all times be subject to the following conditions.

The Finished Goods shall only be deemed defective if they fail to adhere to manufacturer's specifications due a default in material or workmanship arising as a direct result of the Services. Normal weathering of the coating applied to the Finished Goods (including a change of the colour or gloss within normal parameters) and/or corrosion of the substrate material is not covered by the warranty.

The Finished Goods must not have incurred damage as a result of:

- physical, natural or environmental forces (e.g. impact damage or corrosion); or
- high humidity or high pollution environments (e.g. swimming pools, marine and coastal environments and chemical plants); or
- high abrasion environments (e.g. mines or cement factories).

In the event the Finished Goods are repaired, altered, or overhauled by the Customer (or any third party), Hilustre's obligations in respect of the warranty shall cease immediately.

Some of the materials used in performance of the Services are not manufactured by Hilustre and are not covered by the warranty contemplated by clause 71 and are instead covered by their individual manufacturer's warranty (where applicable). Hilustre will use its best endeavours to pass on to the Customer the benefit of any third-party warranties.

Consumers' rights under the Australian Consumer Law

55. Hilustre's Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, the Customer is entitled:

- (a) to cancel its Service contract (i.e. Order) with Hilustre; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.

The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, the Customer is entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel your Order and obtain a refund for the unused portion of the Order.

Limitation of liability

56. In relation to the supply of Services, to the extent permitted by law, Hilustre's liability is limited to (at Hilustre's option):

- (a) supplying the Services again; or
- (b) providing for the cost of having the Services supplied again.

57. Hilustre is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer as a result of the Services supplied under this agreement.

58. Except as expressly provided in these terms and conditions, all express and implied warranties, guarantees and conditions under statute or general law as to the Services or merchantability, description, quality, suitability or fitness of the Finished Goods for any purpose or as to workmanship or otherwise are, to the extent permitted by law, expressly excluded.

59. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of Services pursuant to this agreement of all or any of the provisions of the Australian Consumer Law or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

Subcontracting and assignment

60. The Customer acknowledges that Hilustre reserves the right to subcontract the Services to be supplied (or any part of those Services).

61. Any rights, obligations or benefits created or conferred by this agreement are not unilaterally assignable by one party and will not be assigned without the prior written consent or approval of the other party.

62. The Customer agrees that it will not unreasonably withhold its consent should Hilustre attempt to assign rights, obligations or benefits in accordance with clause 80.

Miscellaneous

63. The descriptions, illustrations and performance criteria contained in catalogues, price lists and other advertising materials do not form part of these terms and conditions.

64. Hilustre is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, supplier shortages, plant or mechanical breakdown, disease or pandemic, acts of God or any other activity beyond Hilustre's control.

65. The Customer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to Hilustre by the Customer or the Customer's authorised representative.

Severance

66. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

67. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation of agreement

- 68. The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of Hilustre at any time by written notice to the Customer. Subject to clause 88, after fourteen (14) days of receipt of the written notice of the variation(s), the variation(s) will be deemed agreed by the Customer.
- 69. If the Customer does not agree with the variation(s) proposed by Hilustre, it must notify Hilustre in writing within fourteen (14) days from receipt of the written notice that the variation(s) is/are not agreed to. Hilustre and/or the Customer will then be at liberty to suspend/withdraw credit facilities until such time as agreement can be reached between the parties regarding the proposed variation(s). Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction by Hilustre without notification.
- 70. Any proposed variation to these terms and conditions by the Customer must be requested in writing. Hilustre may refuse any such request without providing reasons either orally or in writing.
- 71. Variations requested by the Customer will only be binding upon Hilustre if they are in writing signed by an authorised officer of Hilustre.

Consent to register

- 72. The Customer hereby consents to Hilustre recording the details of this agreement on the PPSR and agrees to do all things necessary and reasonably required by Hilustre to effect such registration.
- 73. The Customer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the PPSR.

Jurisdiction

The Customer acknowledges and agrees that this agreement will be governed by the laws of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria.
 The Customer acknowledges and agrees that any contract for the supply of Services between Hilustre and the Customer is formed at the address of Hilustre.

The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.

Entire agreement

- 74. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by Hilustre and the Customer in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
- 75. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Customer and Hilustre, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.
- 76. For the avoidance of doubt, the Customer understands and agrees that these terms will prevail over, and Hilustre will not be bound by, any conditions (express or implied) added or provided by the Customer, whether in an order or otherwise, unless otherwise agreed in writing by Hilustre.

Privacy Act

- 77. The Customer agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* contained in this document.

PRIVACY STATEMENT

- 1. This privacy statement encompasses consents, notifications and disclosures under or in relation to the *Privacy Act 1988 (Act)*.
- The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
- For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
- Hilustre may collect personal information about the Customer and/or Guarantor(s) for Hilustre's primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.
- The Customer and/or Guarantor(s) consent to Hilustre collecting, using and disclosing personal information (including sensitive information) for both their primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
- Hilustre may collect, and may already have collected, information from the Customer and/or Guarantor(s), other credit providers, credit reporting bodies and other third parties for the purposes of its functions and activities including, but not limited to, credit, sales, marketing and administration. If the information was not collected by Hilustre it may restrict or impede upon Hilustre trading with, extending credit to, continuing to extend credit to or extending further credit to the Customer and/or Guarantor(s) or their related bodies corporate.
- The Customer and/or Guarantor(s) consent to Hilustre obtaining and making disclosure of information about the Customer and/or Guarantor(s) from and to a credit reporting body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose. Hilustre notifies the Customer and/or Guarantor(s) that it may use and/or disclose credit eligibility information under section 21G of the Act.
- Hilustre may provide personal information about the Customer and/or Guarantor(s) to any or all of the credit reporting bodies nominated below. Hilustre intends to disclose default information to any or all of the credit reporting bodies listed below. The Customer and/or Guarantor(s) consent to such disclosure. Hilustre's credit reporting policy contains a statement of notifiable matters in accordance with s21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what Hilustre may disclose and the Customer's and/or Guarantor(s) right to request limitations to the use of their information.

Hilustre may disclose information to, and about them and the Customer and/or Guarantor(s) hereby acknowledge that they consent to the disclosure of such information to Hilustre's employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective credit providers of the Customer and/or Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit.

By reason of the Customer's and/or Guarantor(s)' consent to the disclosure to overseas recipients hereunder, APP 8.1 will not apply to Hilustre's dealing with the Customer's and/or Guarantor(s)' information.

A full copy of Hilustre's privacy policy and credit reporting policy can be obtained from Hilustre's website (details above) or by making a request in writing directed to Hilustre's privacy officer. Hilustre's privacy policy and credit reporting policy contain information about how to access and seek correction of information, or how to complain about a breach of the Act, APP, code(s) and how Hilustre will deal with any such complaint.

The Customer and/or Guarantor(s) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to Hilustre within fourteen (14) days of receipt of this statement that its terms are not accepted, continuing to trade with Hilustre after receipt of this Statement or, if the Customer and/or Guarantor(s) are directors or guarantors of a customer, by not taking steps to prevent the customer from continuing to trade with Hilustre after receipt of

Equifax Australia Level 15, 100 Arthur Street NORTH SYDNEY NSW 2060 Tel: 1300 921 621	Creditor Watch Level 13, 109 Pitt Street SYDNEY NSW 2000 Tel: 1300 501 312	NCI Level 2, 165 Grenfell St ADELAIDE SA 5000 Tel: 1800 882 820
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Illion Level 2, 143 Coronation Drive MILTON QLD 4064 Tel: 07 3360 0600	Experian Level 6, 549 St Kilda Road MELBOURNE VIC 3004 Tel: 03 9699 0100
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