

TERMS AND CONDITIONS OF SALE

These Terms and Conditions shall apply between Baldico Pty Ltd ACN: 146 938 365 ("the **Supplier**") and the applicant named in the Credit Application ("the **Customer**") and applies to any contract or agreement between the Supplier and Customer for the supply of goods and/or services to the Customer to the exclusion of any terms the Customer issues.

1. Definitions

In these Terms and Conditions:

"**Accession**" has the meaning given by s.10 of the Person Property Securities Act 2009

"**Goods**" means the goods and/or services delivered or provided by the Supplier to the Customer and the subject of an order by the Customer

"**PMSI**" has the meaning of the term "Purchase Money Security Interest" on the PPSA.

"**PPSA**" means Personal Property Securities Act 2009 (Cth).

"**PPS Register**" has the meaning in clause 7.3 (e).

"**Proceeds**" has the meaning by s.31 of the PPSA.

"**Security Interest**" has the meaning by s.12 of the PPSA.

"**Suppliers Security Interest**" has the meaning defined in clause 7.3 (a)-(c).

"**Supply**" means the supply of goods and/or services under these Terms and Conditions.

2. General

The whole of the Agreement between the Supplier and the Customer are those set out in these Terms and Conditions as amended from time to time and those, if any, which are implied and which cannot be excluded by law ("Terms"). Any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By receiving delivery and/or supply of all or a portion of the goods, and/or services supplied by the Supplier under these Terms, the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others.

3. Credit Account

3.1

Subject to these terms and conditions, the Supplier agrees to supply goods and/or services to the Customer on credit for the amount as is notified by the Supplier to the Customer ("the Credit Limit").

3.2

The Supplier may, at its discretion and at any time:

- (a) Vary this Agreement by notice in writing to the Customer at the address last notified to the Supplier;
- (b) Vary the Credit Limit; and
- (c) Withdraw credit without notice to the Customer.

4. Price

4.1

Unless otherwise agreed or required by law, the price for the Goods is exclusive of sales tax and/or goods and services tax ("GST").

4.2

(a) If GST is or will be payable on a Supply, then the Supplier may increase the amount payable by the Customer otherwise provided pursuant to these Terms and Conditions for that Supply by the amount of that GST.

(b) If there is an event in relation to a Supply which results in the amount of GST on the Supply being different from the amount of GST recovered under clause 3.2(a), the Supplier may recover from the Customer any amount by which the GST on the Supply exceeds the amount recovered and must refund to the Customer any amount recovered which exceeds the GST on the Supply, whichever is the case.

(c) if, as a result of the introduction of a GST or a subsequent change to the imposition or calculation of the GST or as a result of any change in or abolition of other taxes (excluding income tax) occurring immediately before, upon or subsequent to the introduction of a GST, such that the costs incurred by the Supplier in making a Supply (excluding GST on the Supply) are increased, then the price payable by the Customer can be increased by the Supplier by the same proportion as the increase in the Supplier's costs.

(d) any rebates, discounts, allowances or other reductions in price calculated by reference to the sales value to which the Customer is entitled or which are granted by the Supplier are to be calculated on the base price, that is after excluding any

amount in respect of the GST payable by the Supplier on the relevant sales.

In addition to a variation to the amount payable by the Customer under clause 4.2, the Supplier may vary the price of Goods supplied to the Customer by giving written notice of variation. A variation under clause 4.3 will not apply to Goods ordered before the date of receipt by the Customer of written notice of variation.

5. Delivery

5.1

The Supplier shall deliver the goods at a place for delivery nominated by the Customer.

5.2

Delivery of Goods to the Customer occurs when they are actually delivered by the Supplier, regardless of, whether the Customer accepts delivery.

5.3

Any time which the Supplier quotes for delivery is an estimate only and the Supplier shall not be liable for failure to deliver/supply, or for delay in delivery/supply. The Customer shall not be relieved of any obligation to accept or pay for Goods, by reason of any delay in delivery/supply or dispatch. The Supplier reserves the right to stop supply at any time if the Customer fails to comply with the Terms and Conditions of Sale. The Supplier may cancel the order if it determines that it will be unable to deliver the goods within a reasonable time.

5.5

The Customer shall have no claim against the Supplier if the Supplier cancels the order or fails to deliver (for any reason) the Goods, or if there is any delay in the delivery of the Goods.

5.6

The goods supplied by the Supplier are temperature sensitive. If the Customer does not provide access to the premises where the goods are to be delivered if delivery is outside trading hours so the goods can be placed in the freezer/ refrigeration, the Customer is deemed to accept delivery.

6. Risk

6.1

The risk of loss or damage to the goods shall pass to the Customer on delivery. The Customer must insure the goods from the time of delivery/supply.

7. Payment

7.1

The Supplier may at any time, issue an account statement to the Customer setting out;

- (a) the price for all goods and services supplied to the Customer up to and including the date of the statement inclusive of GST;
- (b) any payments made to the Supplier by the Customer;
- (c) amounts authorised by the Customer to be charged to the account;
- (d) any fees, charges or taxes paid or payable to the Supplier in connection with the establishment or operation of the account; and
- (e) any credit charges or interest owing by the Customer.

7.2

The Customer must pay the Supplier the amount stated in any invoice due on or prior to seven (7) days from the date of any invoice rendered, unless otherwise indicated ("the due date").

7.3

The Supplier may require the Customer to pay in full prior to delivery if in the Supplier's opinion the creditworthiness of the Customer becomes unsatisfactory.

7.4

Agreed discounts, rebates and allowances to which the Customer is entitled are credited to the Customer by the Supplier. In no circumstances is the Customer permitted to deduct any discount, rebate or allowance from moneys owing by it to the Supplier.

7.5

If the Customer has not paid in full by the due date, the Supplier may:

- (a) charge the Customer a late fee of \$35 per seven (7) days on balances until accounts are paid. This fee will be an ongoing fee for every seven (7) days the account remains outstanding and shall be deemed a genuine pre-estimate of the Supplier's loss by reason of the Customer's default. This late fee may be amended at any time by the Supplier without prior notice to the Customer at such amount as the Supplier may from time to time determine to be a genuine pre-estimate of costs unless proven otherwise by the Customer; and

	(b) pursue an action for the price of the goods for which payment has not been made (plus damages, interest and costs), even though property in the goods remains with the Supplier.	
7.6	The Customer must pay the Supplier for the Goods in full even if: (a) there was a delay in the delivery of Goods; (b) the Customer disputes the quality, quantity or condition of the Goods delivery.	8.2 discharge the Customer's liability to the Supplier in full for or in relation to the Goods and shall retain the consideration or other Proceeds of the Goods separate from all other property of the Customer and in a manner, which clearly identifies it as such consideration or other Proceeds of the Goods, product, mass or whole (unless otherwise agreed in writing by the Supplier).
7.7	All payments must be made in Australian Dollars.	the Customer acknowledges that the installation of any goods sold to the Customer does not render such goods fixtures and that the parties intend that goods shall be capable of removal by the Supplier until property in the goods passes to the Customer.
7.8	The Customer must pay to and indemnify the Supplier against all costs and expenses incurred by the Supplier in connection with: (a) default by the Customer under these Terms and Conditions; (b) the recovery of any monies due and payable but unpaid by the Customer (including legal costs on a solicitor /client basis, commercial or mercantile agent and dishonour fees); and (c) the exercise or attempted exercise by the Supplier of any power conferred on it by these Terms and Conditions.	8.3 the Customer must not sell, dispose, assign or encumber the goods (by mortgage, lien, charge or otherwise) without the consent of the Supplier.
7.9	A statement in writing signed by an authorised officer of the Supplier setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing unless manifest error can be shown.	8.4 The Customer agrees that: (a) a Security Interest is retained in favour of the Supplier in: (i) the Goods; (ii) the Proceeds of the Goods; (iii) any other property, to which the Goods become an accession; (iv) any product or mass, of which the Goods become a part by manufacture, process, assembly or commingling (b) the retention of title constitutes the grant of a purchase money security interest by the Customer in favour of the Supplier in respect of all present and after acquired Goods supplied to the Customer by the Supplier. (c) the Security Interest secures: (i) the Customer's obligation to pay for the Goods, and (ii) any and all other obligations of the Customer to pay money or money's worth (including costs, expenses, damages or losses) for the benefit of the Supplier now or in the future or from time to time under this agreement. (d) to the extent the Supplier's Security Interest secures the Customer's obligation to pay for the Goods, it constitutes a PMSI; (e) with respect to the Supplier's Security Interest, the Customer will when called upon by the Supplier sign any further documents or provide any further information which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Properties Security Register ("PPS Register"), or in connection with the issue of a verification statement; (f) it will not register or apply to register a financing statement or financing change statement which is in any way connected with the Goods (or any accession, mass or product, of which they form part) without the Supplier's prior written consent, which may be given or withheld at the Supplier's absolute discretion; (g) it will pay any costs or expenses incurred by the Supplier and keep the Supplier indemnified against any loss, damage or liability to third parties incurred in relation to: (i) registering or seeking the release of any document relating to the Supplier's Security Interest on the PPS Register; or (ii) enforcing the Supplier's security Interest (including its legal costs, on a solicitor-Customer basis); (h) it will give the Supplier at least 14 days written notice of any proposed change in its name, contact details, place of incorporation, address, location, nature of business, ownership, or business practice; and (i) it irrevocably appoints the Supplier to be the Customer's attorney to do anything which the Customer agrees to do under these Terms and Conditions and anything which the attorney thinks desirable to protect the Supplier's Security Interest and the Customer will take all steps required to ratify anything done by the attorney under this clause.
7.10	If the Customer is a partnership no change to the constitution of the partnership shall affect, impair or discharge the liability of the Customer under this Agreement whether past, present or future notwithstanding the provisions of any legislation or any similar enactment in amendment, modification or substitution regulating partnerships.	8.5 To the extent permitted by law, the Customer waives its right to notice as a grantor under section 157 of the PPSA; acknowledging, that the collateral, subject of the Supplier's Security Interest is properly described as commercial property. To the extent that they impose any obligation on the Supplier or grant any right to the Customer and section 115(1) of the PPSA allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132 (3), 132 (4), 135, 142, and 143 of the PPSA do not apply to this agreement or the Supplier's security interest in the Goods. To the extent, that Part 4.3 of the PPSA imposes any obligation on the Supplier or grants any right to the Customer and s.115(7) permits, its application pursuant to s.116(2) is excluded.
7.11	If the Customer enters into this Agreement as a Trustee of any Trust, then the following provisions shall apply:- (i) the Customer shall be personally liable for the performance of all obligations and undertaking under this Agreement. (ii) the Customer warrants that the Customer has complete and valid authority pursuant to the Trust to enter into this Agreement. (iii) notwithstanding that there is no reference to a specific Trust the Supplier's rights of recourse shall extend both the Customer's assets personally and the assets of the Trust. (iv) The Customer undertakes to the Supplier that the Customers right of indemnity against the Trust assets have not been excluded by the provisions of the Trust or any breach of trust or otherwise and that the Customer will not release or otherwise prejudice such rights of indemnity.	8.6 Notwithstanding the payment by the Customer of part or all of the price relating to the Goods, the Supplier's Security Interest will continue in the Goods, any Proceeds of the Goods or other property, to which the Supplier's Security Interest may apply (by
7.12	If the Customer defaults under any term of this Agreement; or the Supplier has reasonable grounds to believe that any information supplied by the Customer to the Supplier for the purpose of this Agreement or otherwise is false or misleading the Supplier may terminate this Agreement and the balance of the Customer's account together with all the moneys payable by the Customer to the Supplier shall become immediately due and payable notwithstanding that the time for payment under clause 7.2 has not yet expired.	
7.13	The Supplier may refuse to supply goods and/or services to the Customer until all amounts due to the Supplier have been paid in full.	
8.	Title	
8.1	Until the Customer has paid for the Goods in full and also paid all other moneys due and payable to the Supplier by the Customer: (a) property in the Goods shall remain with the Supplier ("the retention of title"); (b) the Customer shall hold the Goods as a fiduciary and bailee of the Supplier; (c) the Customer shall hold the Goods in a way that clearly indicates the Supplier's title to the Goods. (d) if the Goods are processed or commingled with or made an accession to other goods by the Customer, the Customer shall record and make available to the Supplier on request the record of the date of the processing, commingling or accession and hold the product, mass or whole in a way that clearly indicates the Supplier's title to the product, mass or whole. (e) the Customer shall not deal with the Goods, either in their original state or as part of a product, mass or whole, for a consideration of less value than the amount necessary to	

	operation of these Terms and Conditions or statute) until the Supplier's Security Interest is discharged in writing by the Supplier.	
8.7	The Customer will not do, or omit to do, nor allow to be done or omitted to be done, anything which might adversely affect the Supplier's Security Interest.	
8.8	If the Customer sells the Goods, either in their original state or as part of a product, mass or whole to its customers, the Customer assigns to the Supplier and authorises the Supplier to sue in its name to recover the benefit of any claim against its customers for the price of the Goods, the product, mass or whole, and in addition to its obligations under the PPSA, it shall hold on trust for the Supplier and account to the Supplier for the consideration and all Proceeds received in relation to the Goods, product, mass or whole.	
8.9	This clause shall apply even though the Supplier may give credit to the Customer.	
9.	Right of Entry and Resale	
9.1	Without limiting the rights or remedies available to the Supplier under these Terms and Conditions, statute (including under the PPSA) or other law, if the Customer;	
	(a) (being a natural person) commits an act of bankruptcy;	
	(b) (being a corporation) does anything which entitles anyone to apply to wind up the Customer or is subject to the appointment of an administrator or receiver and manager; or	
	(c) breaches any of these "Terms and Conditions", (each of which is hereafter referred to as 'an act of default'),	
	the Supplier may take possession of and retain, resell or otherwise dispose of the Goods or any product, mass or whole, of which they form part.	
9.2	To the extent permitted by law, in the event of any such act of default, the Customer authorises the Supplier to enter premises where the Goods may be located to take possession of the Goods or any product, mass or whole, of which they form part without notice to the Customer. The Customer shall indemnify the Supplier against all claims arising out of the entry by the Supplier into premises to take possession of the Goods or any product, mass or whole, of which they form part.	
10.	Return of Goods/ Shortages	
10.1	The Customer shall not return any goods to the Supplier without obtaining prior authorisation from the Supplier. Unauthorised returns will not be accepted. No returns will be accepted unless a copy of the relevant invoice is enclosed with the returned goods. A list of the goods returned including product descriptions, quantity, date of return and the Customer's name and address must also be enclosed. Freight charges must be paid by the Customer unless the goods are returned through the Supplier's approved carrier (i.e. where the Customer has obtained prior authorisation to return them). All goods must be returned in the original packaging and the Customer shall be responsible for all damage (including any perishing) incurred during return shipment. A credit note will be issued by the Supplier only after goods returned are either collected by the Supplier authorised representative or agent or returned to it by the Customer as set out above. The Customer shall not deduct the amount of any anticipated credit from any payment due to the Supplier but must await receipt of a credit note.	
10.2	No cancellations or partial cancellation of an order by the Customer shall be accepted by the Supplier unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by the Supplier will indemnify the Supplier against all loss, without limitation. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment.	
10.3	All complaints, claims, or notification of lost goods, incomplete goods, defective goods, and goods damaged in transit or goods that do not comply with the Customer's purchase order must be submitted by the Customer to the Supplier in writing within seven (7) business days of the date of the invoice rendered for the supply of the goods. Otherwise, the Customer shall be deemed to have accepted the goods and shall not refuse to pay for the goods on the basis that they were lost, incomplete, damaged in transit, or do not comply with the Customer's purchase order.	
10.4	All shortages must be reported within 24 hours of delivery.	
		11. Liability
		All conditions and warranties express or implied by law, statute, or otherwise, are excluded to the extent permitted by law. Where so permitted by law, the liability of the Supplier for the breach of a condition or warranty that cannot be excluded is limited, at the Supplier's option, to the replacement of the Goods or the supply of equivalent goods, or the cost of replacing the goods or acquiring equivalent goods.
		Where the Supplier installs goods, the Supplier and Supplier's officers, agents and employees, shall not be liable for any losses, Costs or damages, with respect to existing property on or about the place where the goods are installed, and whether as a result of negligence, breach or statutory duty or otherwise. The Customer must indemnify the Supplier, and the Supplier's officers, agents and employees, against claims in respect of personal injury or death, or loss of damage to any property, whether as a result of negligence, breach of statutory duty or otherwise, which arise out of, or are a consequence of any act or omission of the Customer.
		So far as the law permits, the Supplier shall not be liable for any loss or damage, which may be suffered by the Customer for any reason including, but not limited to, delay, negligence or any act, matter or thing done or permitted or omitted to be done by the Supplier.
		12. Charge
		The Customer hereby charges separately:
		(a) all the Customer's freehold and leasehold interest in land, including land which the customer, after the date of this Agreement, obtains an interest in; and
		(b) all of the Customer's personal property;
		as security for the performance by the Customer of its obligations to the Supplier under this Agreement and otherwise, including due payment to the Supplier of all moneys that may become payable to the Supplier arising out of the subject matter of the Agreement.
		The charges created by clause 12.1 are separate charges over the Customer's property and in the event that either charge is void or unenforceable then such charge will be severable from this Agreement and does not affect validity of the other charge.
		If requested by the Supplier, the Customer must promptly deliver an executed mortgage, or such other instrument of security as the Supplier may require, in registrable form as additional security.
		The Customer agrees to further to:
		(a) the Supplier lodging a caveat over the Customer's title to any freehold and leasehold interest in land; and to secure the Supplier's interest in the real property.
		(b) Pay all stamp duty, registration fees and other costs (including legal costs) which the Supplier incurs in lodging, releasing or withdrawing a caveat.
		13. Notice
		Any notice to be given by the Supplier to the Customer may be given by facsimile, post or hand delivered to the Customer's business address on the Account Application or last known to the Supplier.
		Any notice to be given by the Customer to the Supplier must be in writing by facsimile, post or hand delivered to the Supplier's business address on the Account Application or last notified in writing by the Supplier.
		A notice:
		(a) given by facsimile shall be deemed to be given on the business day following it is sent;
		(b) sent by pre-paid post shall be deemed to be given on the business day following the day on which it was posted; or
		(c) delivered by hand shall be deemed given when delivered.
		14. Entire Agreement
		These Terms and Conditions, in addition to any written agreement between the Supplier and the Customer signed by an authorised representative of each party, constitute the entire agreement or contract between the Supplier and the Customer for the supply of Goods.
		The Customer acknowledges that neither the Supplier nor anyone purporting to act on its behalf has made any

- representation or given any promise or undertaking which is not expressly set out in writing, whether as to the fitness of the Goods for any particular purpose or any other matter.
- 14.3 These Terms and Conditions may be varied by the Supplier with effect in relation to all Goods ordered after that variation by notice to the Customer of the Terms and Conditions, as proposed to be varied, in which case, unless advised otherwise in writing by the Customer to the Supplier, received within 7 days of despatch of the Supplier's notice, the Customer will be deemed to have accepted and be bound by those varied Terms and Conditions.
- 14.4 All the rights and remedies of the Supplier under these Terms and Conditions shall remain in full force and effect notwithstanding any neglect, forbearance or delay in enforcement by the Supplier and may only be waived expressly in writing.
- 15. Force Majeure**
The Supplier will not be liable for any breach of contract due to any matter or thing beyond the Supplier's control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention of public authority, explosion or accident).
- 16. No Assignment**
Neither this Agreement nor any rights arising under this Agreement may be assigned by the Customer without the prior written consent of the Supplier which is at the Supplier's absolute discretion.
- 17. Severability**
If any provision contained in these Terms and Conditions is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.
- 18. Governing Law**
These Terms and Conditions shall be governed by and construed in accordance with the laws of the state or territory nominated by the Supplier in which either the goods were produced or the Customer took delivery and in default of nomination in accordance with the laws of the state of New South Wales and the parties submit to the jurisdiction of the courts of the state or territory so nominated or in default of nomination, the courts of New South Wales.

