
Definitions and interpretation

Authorised 19.5.2020

Definitions

In these conditions:

Additional Charge means:

fees or charges for additional work performed at the Buyer's request or reasonably required as a result of the Buyer's conduct, calculated in accordance with Rath & Co's then current prices; and

expenses incurred by Rath & Co, at the Buyer's request or reasonably required as a result of the Buyer's conduct.

Australian Consumer Law means the law set out in schedule 2 to the *Competition and Consumer Act 2010*.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Buyer means the purchaser of the Goods as named on any Order or credit application made with Rath & Co pursuant to which the Goods are purchased. Where there is no Order or credit application, the Buyer is the entity which requested Rath & Co supply the Goods.

Event of Default means any of the following:

the Buyer fails to pay when due any moneys owing to Rath & Co under these Terms and Conditions;

the Buyer give any third party a security interest in accounts as original collateral in respect of the proceeds of any collateral covered by a security interest under these Terms and Conditions;

the Buyer, being a natural person, commits an act of bankruptcy;

an Insolvency Event occurs or is continuing;

the Buyer breached any other provision of these Terms and Conditions and fails to address the breach within 14 days from receiving written notice from Rath & Co;

the Buyer purports to assign its rights under these terms of trade without the Supplier's prior written consent; or

the Buyer ceases or threatens to cease conduct of its business in the normal manner.

Goods means any Goods Rath & Co supplied to the Buyer that are described in any invoice, quotation, work authorisation or any other documents Rath & Co provided to the Buyer or any order the Buyer gives to Rath & Co, whether on consignment or otherwise.

GST means any Goods and services or similar tax, together with any related interest, penalties, fines or other charge. Tax invoice, taxable supply and value have the meaning given to them by the GST Law.

GST Law means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event means:

- (a) An administrator is appointed to the Buyer or any guarantor.
- (a) Except for the purpose of a solvent reconstruction or amalgamation previously approved by Rath & Co:
 - (1) An application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
 - (A) The Buyer's winding up, dissolution or administration or any guarantor; or
 - (B) The Buyer or any guarantor entering into an arrangement compromise or composition with or assignment for the benefit of our creditors or a class of them; or
 - (2) the Buyer ceases, suspends or threatens to cease or suspend the conduct of all or a material part of the Buyer's business or disposes of or threatens to dispose of a material part of the Buyer's assets.
- (b) The Buyer or any guarantor is, or under legislation is presumed or taken to be, insolvent or ceases to carry on the Buyer's business.
- (c) A receiver, receiver and manager, administrative receiver or similar officer is appointed in respect of the Buyer or any guarantor.
- (d) Any distress, attachment, execution or other legal process is levied, enforced or sued out on or against all or any material part of the Buyer's assets or any guarantor and is not discharged or stayed within 20 Business Days.
- (e) A security interest becomes enforceable or is enforced.
- (f) The Buyer cannot pay its debts as and when they fall due.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trademarks, patents and registered designs.

Loss includes, but is not limited to, costs (including party to party legal costs and Rath & Co's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Order means a purchase order for Goods placed by a Buyer in response to a Quote and as varied in writing from time to time by the parties.

PPSA means the Personal Properties Securities Act 2009 (Cth); The expressions account, collateral, financing statement, financing change statement, inventory, proceeds, security agreement, security interest, verification statement have the meanings given by the PPSA. Without limitation, security interest bears its natural meaning. It also applies to all land and licences and personal property that are not personal property covered by the PPSA.

PMSI means a purchase money security interest as defined by the PPSA.

Quote means a written description of the Goods, an estimate of their cost and an estimate of the time frame for them to be provided.

Rath & Co means Rath & Co. Trading Pty. Ltd. (ACN 67 098 752 491) of Suite 3C, Level 2, 58 Victor Crescent Narre Warren 3805.

Terms and Conditions mean these terms and conditions, as amended, modified, consolidated or replaced from time to time and located on Rath & Co's website current at the time of delivery. They apply to any Goods supplied or to be supplied to the Buyer or any third party at the Buyer's request. In the event of any significant amendment to these Terms and Conditions, Rath & Co will use reasonable endeavours to notify the Buyer of that amendment.

Interpretation

In these Terms and Conditions, unless the context otherwise requires:

a reference to writing includes email and other communication established through Rath & Co's website (if any);

the singular includes the plural and vice versa;

a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms and Conditions;

a reference to a party to these Terms and Conditions or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;

where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

headings are for ease of reference only and do not affect the meaning or interpretation of these Terms and Conditions; and

if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:

if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and

in all other cases, must be done on the next Business Day.

General

Each time the Buyer places a written or verbal Order for Goods with Rath & Co or the Buyer accepts Goods from Rath & Co the Buyer agrees to be bound by these Terms and Conditions. These Terms and Conditions supersede any other written or verbal agreement between the parties and any other terms or conditions referred to in any Order placed or other document produced by the Buyer.

The Buyer will advise Rath & Co if there are changes to the entity name, its officers or management, the registered office, or the constitution of any partnership of which the Buyer's is a member or it become a trustee of any trust or, cease to be so.

Any document signed by or on behalf of Rath & Co as to the amount due and payable by the Buyer is sufficient evidence of the Buyer's liability to Rath & Co under these Terms and Conditions as at the date of any such document unless proven wrong.

Quotes

A Quote is not an offer by Rath & Co to sell and may be withdrawn without notice. Any Order given in respect of a Quote is not binding on Rath & Co until accepted by Rath & Co in writing.

Any price quoted by Rath & Co to the Buyer for any Goods is based on Rath & Co's estimated cost of production, manufacture and/or supply at the time of quotation. The price quoted is subject to alteration by Rath & Co due to any increase in Rath & Co's costs between the date of quotation and the Buyer's confirmation.

An indication in a Quote of the time frame for the provision of the Goods is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon Rath & Co.

Any price offered or agreed by Rath & Co is based on and applies to any quantities, delivery dates, places of delivery and contract start and end dates set out in the Quote or Order. Rath & Co is free to alter the price quoted in the Order or Quote if there is any change in the quantity, delivery dates, and place of delivery or contract start and end dates. Rath & Co may amend any details in a Quote by notice in writing to the Buyer. Such amended details supersede any relevant prior detail in dealings between the parties.

Rath & Co may increase the price of any Goods ordered by the Buyer at any time arising as a result of any increased costs passed on to Rath & Co by any supplier of Rath & Co's or as a result of any change of law, including increases in any taxes. Rath & Co will notify the Buyer of any amendment as soon as practicable. If Buyer does not provide a response within 7 days, the Buyer will be taken to have accepted the increase in price.

Unless otherwise expressly agreed by Rath & Co in writing, all Goods will be charged for at the prices ruling at the date or dates of delivery. All prices quoted are exclusive of GST which if applicable will be for the Buyer's account. All prices are expressed in Australian dollars, unless otherwise specified in writing by Rath & Co.

Orders

The Buyer agrees that Rath & Co's Terms and Conditions current at the time of delivery apply to any Order placed with Rath & Co from time to time.

Rath & Co may in its absolute discretion refuse to provide Goods where:

credit limits cannot be agreed upon or have been exceeded; or

payment for Goods previously provided to the Buyer or any related corporation of the Buyer or to any other party who is, in the reasonable opinion of Rath & Co, associated with the Buyer under the same or another supply contract, has not been received by Rath & Co; or

Rath & Co, in its reasonable opinion, doubts that the Buyer will pay for the Goods by the due date.

An Order accepted by Rath & Co cannot be cancelled or altered in whole or in part by the Buyer without the prior written consent of Rath & Co. Where an Order is cancelled, the Buyer indemnifies Rath & Co against any Losses incurred by Rath & Co as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

If the Buyer wishes to vary its requirements after a Quote has been prepared by Rath & Co or after the placement of an Order, Rath & Co reserves the right to vary the Quote to include any Additional Charge due to the variation. A revised Quote issued by Rath & Co in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods.

Rath & Co has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

Invoicing and payment

Subject to any other payment terms agreed in writing, the Buyer must pay Rath & Co invoices within 30 days of the date of the invoice. Rath & Co reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery should the creditworthiness of the Buyer at any time become, in Rath & Co's reasonable opinion, unsatisfactory.

All payments required to be made by the Buyer must be free of any set-off, contra-claim, counterclaim or other deduction. The Buyer is not entitled to retain any money owing to Rath & Co notwithstanding any default or alleged default by Rath & Co of these Terms and Conditions, including (but not limited to) the supply of allegedly faulty or defective Goods or a delay in the provision of Goods. Nothing in this paragraph affects the Buyer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

Where an account is not paid by the Buyer as provided in these Terms and Conditions, Rath & Co shall without prejudice to any other remedies available to it be entitled to charge interest on the amount outstanding calculated from the date payment is due until the date payment is made.

The Buyer will pay interest compounded monthly on any overdue account shown in any invoice at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic) plus 2%.

All costs and expenses associated with collecting overdue amounts, including (but not limited to) debt collection charges, legal fees and internal costs and expenses of Rath & Co, are to be paid by the Buyer as a debt due and payable under these Terms and Conditions.

Acceptance of Goods

Once delivered, Goods may not be returned unless defective or damaged. Claims for defective or damaged Goods must be given to Rath & Co in writing within 7 days of the delivery date or the date that the defect was reasonably identified, whichever is the earlier. Rath & Co will not be liable for any claim advised after that time. Claims of defect or damage are subject to inspection by Rath & Co.

The Buyer must return a sample of the Goods the subject of a claim to Rath & Co within 21 days after delivery of the Goods

Rath & Co makes no representation about, and accepts no responsibility for, the Goods complying with any law, regulation or standard that applies in any jurisdiction outside Australia.

Any description of the Goods is given in the way of identification only and the use of such description shall not constitute a contract of sale by description.

The Buyer acknowledges that neither Rath & Co nor any person 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.

Nothing in this clause 6 affects the Buyer's rights for any alleged breach of a guarantee under the Australian Consumer Law.

Title and risk

The risk of loss or damage to the Goods shall pass to the Buyer on delivery.

Property and title in Goods supplied to the Buyer under these Terms and Conditions does not pass to the Buyer until all money (including money owing in respect of other transactions between Rath & Co and the Buyer) due and payable to Rath & Co by the Buyer have been fully paid.

Until title passes to the Buyer, the Buyer will hold any Goods supplied to the Buyer on trust and as bailee for Rath & Co. This bailment continues in relation to each of the Goods until the price of the Goods has been paid in full.

The Buyer agrees that any proceeds of any sub-sale to any customer of the Buyer will be held in trust in a separate account until the amount the Buyer owes to Rath & Co at any time for those Goods is paid to Rath & Co. For the purposes of this clause, proceeds includes the sale price to any sub-buyer less any profit added by the Buyer to the invoiced price of any Goods or an amount equal to the proportion of the value of Rath & Co's Goods in the product or mass calculated in accordance with Part 3.4 of the PPSA.

The Buyer must store any Goods belonging to Rath & Co separately from other goods in their possession so as to prevent any deterioration and clearly mark them as Rath & Co goods.

The Buyer must comply with all applicable laws in relation to the transportation, delivery, handling and storage of any Goods, including any environmental and O H & S laws.

The Buyer agrees to instruct any customer or agent of the Buyer in relation to the proper and safe handling, carriage or storage of any Goods, including compliance with any O H & S or environmental laws.

Rights in relation to the Goods

In connection with the Goods while they remain the property of Rath & Co, the Buyer agrees with Rath & Co that:

the Buyer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation Rath & Co owes to the Buyer;

the Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by Rath & Co;

where the Buyer is in actual or constructive possession of the Goods:

- (1) the Buyer will not deliver them or any document of title to the Goods to any person except as directed by Rath & Co; and
- (2) it is in possession of the Goods as a bailee of those Goods and owes Rath & Co the duties and liabilities of a bailee.

In connection with the Goods, Rath & Co states to the Buyer that:

Rath & Co has the right to supply the Goods to the Buyer;

the activities of the Buyer in supplying the Goods do not infringe the rights of the owner of the Goods (where Rath & Co is not the owner of the Goods).

if the Goods are not owned by Rath & Co, that Rath & Co is authorized to supply the Goods to the Buyer.

Rath & Co and the Buyer agree that:

pending payment in full for the Goods, the Buyer:

- (1) must not supply any of the Goods to any person outside of its ordinary or usual course of business;
- (2) must not allow any person to have or acquire any security interest in the Goods;
- (3) must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business;
- (4) must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.

Despite clause 0, if the Buyer supplies any of the Goods to any person before all monies payable by the Buyer have been paid to Rath & Co (and have not been claimed or

clawed-back by any person standing in the place of or representing the Buyer), the Buyer agrees that:

- it holds the proceeds of re-supply of all the Goods on trust for and as agent for Rath & Co immediately when they are receivable or are received;
- it must either pay the amount of the proceeds or re-supply to Rath & Co immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for Rath & Co;
- any accessory or item which accedes to any of the Goods by an act of the Buyer or any person at the direction or request of the buyer becomes and remains the property of Rath & Co until Rath & Co is paid for the Goods;
- if the Buyer fails to pay for the Goods within the period of credit (if any) extended by Rath & Co to the Buyer, Rath & Co may recover possession of all the Goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that Rath & Co has an irrevocable license to do so. The Buyer indemnifies Rath & Co for any damage to property or personal injury which occurs as a result of Rath & Co entering the Buyer's premises.

Default in Payment

If Rath & Co reasonably anticipates that the Buyer will fail to pay for the Goods or otherwise fail to observe and or perform the Buyer's obligations under these Terms and Conditions, Rath & Co may terminate the Order for the Goods. Termination of the Order pursuant to this clause shall not affect the rights of Rath & Co to recover from the Buyer any monies due to Rath & Co by reason of the Order or damages in breach thereof.

If an Event of Default occurs or is continuing, Rath & Co may without limitation to any right under these Terms and Conditions, do any one or more of the following:

- terminate these Terms and Conditions;
- terminate any or all Orders and credit arrangements (if any) with the Buyer;
- pursuant to clause 10, repossess and re-sell any Goods delivered to the Buyer, the payment for which has not been received;
- retain (where applicable) all money paid by the Buyer.
- suspend delivery of any Goods on order and/or refuse to process any unfulfilled orders;
- enforce any security interest;
- require payment in cash on delivery;
- require payment of any proceeds held by the Buyer in a separate account or otherwise; and/or
- appoint a receiver and manager of any of the Buyer's real or personal property that is subject to a security interest. The Buyer agrees that any such receiver and manager has the powers conferred by the *Corporations Act 2001* (Cth).

In the event that the Buyer has not been paid for the sale of Rath & Co's Goods by any customer of the Buyer, at Rath & Co's option, Rath & Co may in addition to the powers in s 120 of the PPSA, collect that account on giving the Buyer's customer notice in writing to that effect. Rath & Co will be entitled to issue proceedings in the Buyer's name against the Buyer's customer for recovery of that account for Rath & Co's benefit. The Buyer indemnifies Rath & Co in respect of any such action and proceedings. For the purposes of this clause, the Buyer must keep proper records and accounts in respect of such unpaid sales, including the dates of sale, price, amount and identity of such customer and Rath & Co's Goods.

Rath & Co's may, at its discretion and despite s 14(6) of the PPSA, apply for any moneys received in respect of any Purchase Money Security Interests obligations of the Buyer's on a pro rata basis.

The Buyer must pay enforcement costs in relation to the PPSA and for any legal costs incurred by an agent of Rath & Co.

Personal Properties Securities Act 2009

The Buyer hereby acknowledges that these Terms and Conditions constitute a security agreement which creates a security interest in favour of Rath & Co. The Buyer agrees to grant a PMSI to Rath & Co.

The Buyer acknowledges and agrees that by assenting to these terms the Buyer grants a security interest (by virtue of clauses 8 and 9 of these Terms and Conditions) to Rath & Co and all Goods previously supplied by Rath & Co to the Buyer (or for the Buyer's account) and these terms shall apply notwithstanding anything express or implied to the contrary contained in the Buyer's Order.

The Buyer undertakes to:

sign any further documents and/or provide any further information (which information the Buyer warrants to be complete, accurate and up-to-date in all respects) which Rath & Co may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");

not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of the Company;

give Rath & Co not less than 14 days' written notice of any proposed change in the Buyer's name and/or any other changes in the Buyer's details (including by not limited to changes in the Buyer's address, facsimile number, email address, trading name or business practice);

waive any rights it may have under sections 115 of the PPSA upon enforcement.

Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by Rath & Co, the Buyer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.

The Buyer gives Rath & Co a security interest in:

- (a) all Goods supplied by Rath & Co that are described in any invoice, delivery or shipping documentation of Rath & Co' s or order documentation that the Buyer give Rath & Co. Without limitation, this includes any Rath & Co property referred to in these Terms and Conditions;
- (b) all present and future inventory and accounts as original collateral; and
- (c) the security interest given by the Buyer is given as beneficial owner. If the Buyer is trustee of any trust, the Buyer will acknowledge that the security interest given by the Buyer applies to the assets of the trust and personal assets. The Buyer appoints Rath & Co as the attorney by way of security for the purposes of this clause and in respect of any enforcement powers.

The Buyer agrees not to grant:

any security interest over any of the Buyer's personal property except in the ordinary course of business; and

a security interest in any account as original collateral under s 64 of the PPSA.

Any security interest that arises under this clause is a continuing security interest. It applies to all real property, personal property and any proceeds. It is not extinguished or in any way diminished even if any Goods or any part of them is processed or commingled with and becomes part of a product or a mass as part of a manufacturing, assembling or commingling process.

Any security interest arising secures the due and punctual payment of all moneys payable by the Buyer under these Terms and Conditions.

Any account arising by virtue of any sale of any Goods supplied to the Buyer takes effect as a transfer.

Rath & Co may register a financing statement, including any financing change statement, on the PPSR.

The Buyer acknowledges that until the Buyer has paid for all Goods that the Buyer is not the owner of those Goods and, as such, if chapter 4 of the PPSA applies to these Terms and Conditions, then the Buyer contracts out of the enforcement provisions referred to in s 115(1), except sections 120 and 121.

To the extent the law allows, Rath & Co do not need to give any notice required by the PPSA or any other law, including any notice mentioned in any of the enforcement provisions in chapter 4 of the PPSA.

Exclusions and limitation of liability

Rath & Co acknowledges that, under applicable legislation, including State, Territory, and Commonwealth laws, including the Australian Consumer Law, and the laws of foreign markets in which the Goods are sold, certain conditions and warranties may be implied in the contract between Rath & Co and the Buyer and rights and remedies conferred upon the Buyer and other parties in relation to Goods which

cannot be excluded, restricted or modified by agreement ("Non- excludable Rights"). The limitations below are subject to these Non- excludable Rights.

Subject to the above, Rath & Co disclaims all conditions and warranties expressed or implied, and rights and remedies conferred on the Buyer or other parties, by statute the common law, equity, trade, custom or usage or otherwise howsoever and all such conditions and warranties and such rights and remedies are hereby expressly excluded other than any Non- excludable Rights.

The Australian Consumer Law may give to the Buyer certain guarantees. Where liability for breach of any such guarantee can be limited, Rath & Co's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods.

Where so permitted the liability of Rath & Co for a breach of a Non- excludable Right is limited, at Rath & Co's option, in the case of Goods, to the replacement or repair of the Goods or the supply of equivalent Goods or the cost of replacing or repairing the Goods or of acquiring equivalent Goods.

All information, specifications and samples provided by Rath & Co in relation to the Goods are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Buyer's use of the Goods, will not entitle the Buyer to reject the Goods upon delivery, or entitle the Buyer to make any claim in respect of them.

Any advice, recommendation, information, assistance or service given by Rath & Co in relation to Goods, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. Rath & Co does not accept any liability or responsibility for any Loss suffered as a result of the Buyer's reliance on such advice, recommendation, information, assistance or service.

Indirect Loss

Subject to clause 11, and to the fullest extent permissible at law, in no event shall Rath & Co be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the Buyer howsoever arising including any loss or damage arising from or caused or contributed to by negligence of Rath & Co, its servants or agents, nor shall Rath & Co be liable for special, incidental, indirect or consequential, or economic loss or damage suffered by the Buyer as a result of a breach by Rath & Co of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue or costs arising from such breach.

Indemnity

The Buyer shall indemnify and keep indemnified and hold Rath & Co harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by Rath & Co, and from and against all actions, proceedings, claims or demands made against Rath & Co, arising from one or more of the following;

- (a) as a result of the Buyer's failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods or the use of the Goods;
- (b) as a result of any other negligence, breach of contract or other breach of duty by the Buyer; or
- (c) as a result of Rath & Co adhering to instructions that the Buyer has given Rath & Co about the Goods.

It is not necessary for Rath & Co to incur expense or make a payment before enforcing a right of indemnity.

Each indemnity and payment obligation of the Buyer under these Terms and Conditions is a continuing obligation, separate and independent from all other obligations, and survives termination of these Terms and Conditions.

The Buyer shall indemnify Rath & Co from and hold it harmless against all losses, expenses or liability whatsoever and howsoever incurred by Rath & Co as result of compliance or adherence by Rath & Co with any instruction of the Buyer in relation to the Goods.

Delivery

The place of delivery will be nominated by Rath & Co at the time of providing a quote or agreeing to supply the Goods.

Rath & Co may stop Goods in transit whether or not delivery has been made to the Buyer if the Buyer is in default at any time.

Any time quoted for delivery is an estimate only. Rath & Co shall not be liable for any loss or damage which is a consequence or result of any failure to deliver or delay in delivering the Goods or shipping documents or service whatever the cause of such failure to deliver or late delivery maybe.

Rath & Co reserves the right to deliver by instalments.

Where delivery is to the Buyer's nominated premises, delivery is deemed to have occurred if the Goods are transported to that location, even if the Buyer is unable, or refuses to take delivery.

If a person at the delivery address cannot or refuses to take delivery of the Goods, or the Goods cannot be delivered for any other reason, the Buyer authorises Rath & Co to deal with the Goods at the Rath & Co's reasonable discretion, including storing, disposing of, or returning the Goods.

Force majeure

Other than a failure to pay an amount due under these Terms and Conditions neither party shall be liable for any loss or damage to the other party or any other party in connection with the contract that is the direct or indirect result or consequence of any circumstances of whatsoever nature beyond the affected party's reasonable control including but not limited to fire, flood, drought, explosion, epidemic, pandemic, riot, embargo, war, hostilities between any powers, civil commotion,

breakdown of machinery, strike, lock-out or other industrial act or dispute or the break-down of or accident to plant, crop failure or crop sabotage, the unavailability or shortage of raw materials, labour, power supplies or transport facilities, failure or delay in delivery or shipment on the part of manufacturers, producers, suppliers, merchants or agents, delay in delivery from a manufacturer's plant to the port of shipment, delay in transportation or failure or inability to obtain licenses or any act of God or any law, regulation, order, direction or policy of any local, State or Federal Government or Government authority or instrumentality (**Force Majeure Event**).

If Rath & Co determines that it is unable to comply with any term in these Terms and Conditions by reason of a Force Majeure Event or that it is unable to deliver within a reasonable time or at all Rath & Co may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased. In the event of cancellation the Buyer shall have no claim against Rath & Co for any loss, cost or expense whatsoever. The Buyer shall not be relieved of any obligation to accept or pay for the Goods by reason of any delay.

For the purposes of this clause freight or shipping space shall be deemed unavailable if Rath & Co, having taken all reasonable steps to procure the same, has failed to do so. Rath & Co shall not be deemed to have failed to take all reasonable steps because it may have allocated available freight or shipping space for shipment of other Goods under contracts entered into before or after the Order for the affected Goods.

Rath & Co reserves the right to treat the action of any Government affecting the Goods intended to satisfy an Order such as the alteration or introduction of any duty, tax, export or import license, minimum government prices, quotas, trade impediments, or other restrictions as a Force Majeure Event entitling Rath & Co to cancel the Order by giving written notice of the cancellation to the Buyer.

Freight and insurance

Any price quoted is based on ruling rates of freight and insurance. Any rise or fall shown by the amounts actually paid for freight and insurance are to be for Buyer's account.

Charges

In consideration of Rath & Co selling the Goods to the Buyer, the Buyer agrees to charge:

all the Buyer's interest in land in favour of Rath & Co to secure payment of all monies due to Rath & Co, whether contingently or otherwise. The Buyer acknowledges that Rath & Co may lodge a caveat pursuant to the charge hereby created; and

all the Buyer's estate and interest in any personal property that the Buyer owns at present or in the future in favour of Rath & Co to secure payment of all monies owing to Rath & Co.

Dispute resolution

If a dispute arises out of or in connection with an order or this Agreement the parties shall use their best endeavours to bring the matter to the other party's attention as soon as possible, to resolve the dispute through discussion in good faith and to promptly

elevate it to senior levels of management as appropriate for the nature of the dispute.

If the dispute remains unresolved within 30 Business Days following the referral of the dispute to senior levels of management, the dispute shall be referred to mediation by a mediator mutually agreed by the parties under the auspices of the Institute of Arbitrators and Mediators (IAMA). Mediation shall be in English and held in Melbourne, Victoria.

If mediation fails to resolve the dispute, the dispute shall be settled by arbitration in accordance with and subject to the rules of the UNCITRAL and shall be conducted under the auspices of the IAMA. Arbitration shall be in English, before a single arbitrator and held in Melbourne, Victoria. Neither party will resort to external mediators or arbitrators unless it reasonably believes, after reasonable discussion and negotiation, that it is unable to resolve the dispute satisfactorily.

Clause 0 only applies if the Buyer is based outside of Australia and does not have a permanent presence in Australia.

Miscellaneous

Governing Law

Subject to clause 18, this Agreement shall be governed by and construed in accordance with the laws of Victoria and the parties submit to the jurisdiction of its Courts.

Waiver

- (a) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- (b) Failure by Rath & Co to insist upon strict performance of any term, warranty or condition of the Deed or these Terms and Conditions shall not be deemed as a waiver thereof or of any rights Rath & Co may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

Confidentiality

Any security agreement that arises under these Terms and Conditions is confidential. Despite this, the Buyer agrees that Rath & Co may disclose any information concerning the Buyer to any interested person under section 275(6) of the PPSA.

Intellectual Property Rights

The Buyer warrants that any design or instruction provided to Rath & Co will not cause Rath & Co to infringe any Intellectual property rights (including patents, registered designs, trademarks, copyright, confidential information and the like) in the execution of the Buyer's Order and it is agreed that the sale and purchase of Goods does not confer on the Buyer any license or rights under any Intellectual Property Rights which is the property of Rath & Co.

Notices

Any notice to be given by the Buyer to Rath & Co shall be sent to Rath & Co's valid business address or the valid email address of a current Rath & Co employee with whom the Buyer has been dealing in relation to the Goods (a "valid Rath & Co address"). No notice shall be deemed to have been given until it is actually received at a valid Rath & Co address.

Any notice required under these Terms and Conditions may be given by any director or authorised person of Rath & Co.

Any notice may be given at the Buyers registered address or other address stipulated in Buyer documentation in connection with these Terms and Conditions or as notified in writing for the purposes of this clause. Without limitation, this includes any electronic address of the Buyer

Severance

If any provision of these Terms and Conditions is unenforceable for any reason, it will not invalidate any other provisions that will remain in full force and effect despite that invalidity.

Entire Agreement

These Terms and Conditions contain the entire agreement in respect of the supply of Goods to Rath & Co.

Non- reliance

In entering into these Terms and Conditions, the Buyer has not relied on any warranty, representation or statement, whether oral or written, made by Rath & Co or any of its employees or agents relating to or in connection with the subject matter of these Terms and Conditions.

Agency and assignment

The Buyer is not to assign, or purport to assign, any of its obligations or rights under these terms of trade without the prior written consent of Rath & Co.

