

## TERMS AND CONDITIONS OF SALE

### 1. INTERPRETATION

#### 1.1. In these Terms:

- (a) "Customer" shall mean any person who purchases the Goods or a person to whom a quotation for supply of the Goods is submitted;
- (b) "Goods" shall mean goods and services agreed to be supplied or supplied by Philmac to the Customer;
- (c) "Personal Property and Securities Register (PPSR)", and "perfected monies security interest (PMSI)" have the meanings that are ascribed to them in the Personal Property Security Act 2010 (Cth) (PPSA);
- (d) "Philmac" shall mean Philmac Pty Limited, ABN 17 007 873 047;
- (e) "Terms" shall mean these Terms and Conditions of sale;
- (f) the word "person" shall be deemed to include a corporation, words importing the singular or plural number shall be deemed to include the plural or singular number respectively and words importing the masculine gender only shall include the feminine or neuter gender as the case may require.

### 2. PURPOSE OF ACQUISITION

The Customer warrants and agrees that they are acquiring the Goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land and the parties agree that unless otherwise specified in writing, the Goods are of a kind not ordinarily acquired for personal, domestic or household use or consumption.

### 3. GENERAL

3.1. These Terms and any other terms and conditions for supply of the Goods to which Philmac has expressly agreed to in writing (including any credit or trading agreement) are the sole terms and conditions governing the sale and supply of the Goods by Philmac to the Customer. Any variations or additions to these Terms not expressly agreed to in writing by Philmac are expressly rejected by Philmac.

3.2. These Terms shall be deemed to be accepted by the Customer upon their signature or electronic acceptance, or by the Customer placing an order for Goods after the Terms have been supplied to them by email, hardcopy or hyperlink.

3.3. Unless otherwise specifically agreed in writing by Philmac, any terms and conditions of purchase of the Customer (including any terms included or attached to an order or provided to Philmac at any time) are expressly excluded and will not be binding on Philmac.

3.4. Philmac may vary these Terms and any credit or trading agreement (if applicable) upon prior written notice of thirty (30) days ("Notice Period"). The amended Terms shall apply to all orders placed by the Customer after the end of the Notice Period. If the Customer does not agree to the amended Terms, it should not place any further orders with Philmac.

3.5. Where the Customer acts as a reseller, distributor, retailer, or dealer of the Goods, the Customer must not make any misrepresentation in respect of the Goods or engage in misleading or deceptive conduct of any kind in respect of the Goods, and indemnifies Philmac from and against any loss, cost, damage, or claim (including legal costs on a full indemnity basis) suffered or incurred by Philmac and arising from the Customer's fraud, negligence, misrepresentation, misconduct, or breach of law in respect of the resale of the Goods.

### 4. QUOTATIONS

4.1. All quotations for the supply of Goods, however made, are not offers and are provided only as indicative statements of current price levels and their validity is limited to the period specified on the quote. No contract for the supply of Goods shall exist unless an order from the Customer has been accepted by Philmac in accordance with clause 6.1.

4.2. Philmac reserves the right to withdraw or vary a quote at any time prior to the acceptance of an order.

### 5. PRICES

5.1. Where a firm price is stated in the form of acceptance of an order placed in accordance with a quote, then, unless otherwise stated,

the price therein shall be binding for thirty (30) days from the date of the acceptance provided that delivery is required within that period. If delivery is to be made after that date (otherwise than as a result of a delay by Philmac) Philmac reserves the right to issue a new quote for consideration by the Customer. The Customer may terminate the order if the new price is not acceptable. Unless expressly stated otherwise, all quoted and list prices are excluding delivery and GST (which shall be added/included at time of sale).

5.2. If GST is payable on any supply of Goods, the Customer must pay to Philmac an additional amount equal to the GST payable, at the same time as the consideration for the Goods is due. Philmac will provide valid tax invoices in accordance with applicable laws.

### 6. ORDERS

6.1. Orders for Goods shall only be deemed to have been accepted by Philmac if:

- (a) accepted in writing by Philmac; or
- (b) delivery of the Goods is made to the Customer, in accordance with Clause 12 of these Terms.

6.2. Once Philmac order has been accepted by Philmac or Philmac has commenced manufacture of any of the Goods, such order cannot be varied or cancelled by the Customer without Philmac's prior written consent.

### 7. TERMS OF PAYMENT

7.1. Where Philmac supplies the Goods to the Customer under any credit or trading agreement, the Customer agrees to pay the price for the Goods in accordance with payment terms set out in such agreement.

7.2. Where Philmac does not supply the Goods to the Customer under a credit or trading agreement, the Customer agrees to pay Philmac the price for the Goods by the due date and method specified in any invoice (or immediately upon receipt of the invoice if no due date is specified), or in accordance with any payment terms otherwise agreed. Where up-front payment is required by Philmac, Philmac may (in its sole discretion) elect not to commence pro

duction of or provide the Goods or any other services until payment in full is received and Philmac will not be liable for any resulting delay or loss or damage to any person.

7.4. The Customer agrees to provide Philmac with all necessary information to enable the issuing of an invoice and/or taking of payment by Philmac, and to inform Philmac promptly of any change to that information

7.5. All payments must be made in Australian dollars, unless otherwise indicated by Philmac.

7.6. Philmac may, at any time if the Customer is or has been in default of these Terms, or any applicable credit terms, or if, in the reasonable opinion of Philmac, the Customer's credit worthiness has changed, withdraw any credit facility and require payment upon an order being placed by the Customer. All approvals to the granting of credit shall be in writing signed by authorised officer of Philmac or their duly authorised representative and, unless approved in such manner, credit shall not be deemed to have been given to a Customer for the purposes hereof.

7.7. If a payment due by the Customer is not made on the due date for payment, Philmac shall without further notice to the Customer be entitled to charge interest on the monies so due, on and from the due date at a rate of 2% above the Commonwealth Bank of Australia's commercial lending rate at the time of charging such interest, calculated daily to the date of actual payment. Time is of the essence so far as payment of monies owing by the Customer to Philmac is concerned. The Customer shall be liable for any legal costs incurred by a Philmac on an indemnity basis for the recovery of any monies due and payable.

7.8. Credit extended by Philmac to the Customer for the purchase of Goods will be made in accordance with a credit application, credit terms and conditions and personal guarantee and charge, and any other such agreement between the Customer and Philmac. In all other respects, these Terms will apply. If credit is extended to the Customer, the Customer agrees to notify Philmac of any material change to its personal, business or financial situation.

### 8. OWNERSHIP AND RISK

- 8.1. The risk of loss or damage of the Goods shall pass from Philmac to the Customer upon delivery of the Goods to the Customer or to such person (including a carrier) or destination nominated by the Customer, unless otherwise agreed in writing between the parties.
- 8.2. The ownership of Goods supplied to the Customer shall remain with Philmac until full and unconditional payment of the price of those Goods to Philmac.
- 8.3. Until the ownership of the Goods transfers to the Customer in accordance with clause 8.2:
- (a) the Customer will hold the Goods as a fiduciary and as bailee for Philmac and will be responsible for any loss, damage or conversion of the Goods;
  - (b) the Goods shall be insured and stored by the Customer in a manner as to show clearly that they remain Philmac's property. Philmac may enter onto the Customer's premises to inspect the Goods or inspect the Customer's books or records regarding the Goods at any time.
- 8.4. The Customer may sell and/or use the Goods in the ordinary course of the Customer's business activities provided that:
- (a) The Customer must hold all monies that they receive for:
    - (i) the sale of the Goods; or
    - (ii) the sale of value added goods if it has used the Goods in any value adding process (including to become part of a product or a mass as part of a manufacturing, assembling, commingling, mixing or affixing process);
  - (b) ("Proceeds") as bailee, fiduciary agent and trustee for Philmac and not by way of security. Philmac has the right to trace and claim Proceeds. Receipt by the Customer of payment shall be treated as conclusive evidence that the Customer has received Proceeds; and
  - (b) The Customer accounts to Philmac for all Proceeds which must be kept in a separate account on trust for Philmac for that purpose until the Goods are paid to Philmac.
- 8.5. For the purposes of identification of different shipments of Goods and receipt of Proceeds the Customer agrees that the principle of "First in, First Out" shall be applied to any items that cannot be distinguished.
- 8.6. The Customer shall ensure that, until ownership of the Goods passes to the Customer, the Goods are not and will not be subject to any other security interest, including a lien, granted or created in favour of any third party (whether under contract, statute or common law) without Philmac prior written consent. Without limiting Philmac's rights, if the Customer becomes aware of a third party's interest in or relating to a security interest, including a lien or any other interest in respect of the Goods, whether or not registered in the Personal Property Security Register, the Customer shall notify Philmac immediately in writing and provide Philmac with all relevant details relating to the security interest, including the third party's full name and contact details, the nature of the security interest and the Goods subject to the security interest.
- 8.7. Where the Customer sells the Goods, the Customer will sell as principal and the Customer has no power to commit Philmac to any contract or otherwise or liability but as between the Customer and Philmac, the Customer will sell as fiduciary agent.
- 9. PERSONAL PROPERTY SECURITY**
- 9.1. The Customer agrees that these Terms create a security interest or a PMSI that has attached or will attach in the Goods (and their Proceeds) supplied presently and in the future by Philmac to the Customer when the Customer take possession of the Goods and that attachment of the security interest or PMSI has not in any way been deferred or postponed from the date of these terms and conditions.
- 9.2. The Customer agrees to do all things necessary and execute all documents reasonably required by Philmac to register the security interest or PMSI granted by the Customer under these terms and conditions and to ensure that Philmac acquires a perfected security interest in the Goods under the PPSA. If Philmac perfects any security interest or PMSI that Philmac has in relation to the Goods then the Customer must not do anything that may adversely affect, in Philmac's opinion, Philmac's security position under these terms and conditions.
- 9.3. The Customer will, upon demand, pay all of Philmac's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of the PMSI or any other security interest and all other costs associated with protection and enforcement of the PMSI or any other security interest created by these terms and conditions, or for undertaking an audit under the provisions of the PPSA, or the repossession of the product the subject of these terms and conditions or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that Philmac has with you. Such expenses may, where appropriate, be debited against the Customer's credit account with Philmac
- 9.4. This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations of if any updated credit application is submitted by the Customer, a Director, or a Guarantor.
- 9.5. The Customer agrees that the Customer must not allow the Goods to become an accession or commingled with other products until Philmac has first perfected any security interest or PMSI that Philmac have in respect of the product.
- 9.6. Until ownership of the Goods passes to the Customer, the Customer waives its rights under the following provisions of the PPSA, to the maximum extent that it is permitted by law, to: receive a notice of intention to remove an accession (s 95); receive a notice that Philmac have determined to enforce our security interest in accordance with land law (s118); receive a notice of enforcement action against liquid assets; receive a notice of disposal of the product by way of us purchasing the product from Philmac (s129); receive a notice of disposal of the product (s130); receive a statement of account following disposal of the product (s132(2)); receive a statement of account every 6 months where there has been no disposal of the product (s132(4)); receive notice of retention of the product by Philmac (s135(2)); object to any proposal by Philmac to either retain and dispose of the product (s137(3)); redeem the product before Philmac dispose of it (s142); reinstate the security agreement (s143); and receive any verification statement in relation to any registration event to which the Customer is a party (s157(1) and 157(3)).
- 9.7. To the extent permitted by law and the PPSA, these Terms exclude any provisions of the PPSA which may be excluded in Philmac's discretion and which would otherwise confer rights on the Customer.
- 9.8. The Customer further agrees that where Philmac has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
- 9.9. If the Customer, being an individual, commits an act of bankruptcy, or the Customer being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's assets, or any proceedings are instituted for the Customer's winding up, or the Customer enters into a deed of company arrangement, or the Customer cease or threaten to cease conducting business in the normal manner or apply for deregistration or receive a deregistration notice, or any cheque the Customer provides to Philmac is dishonoured for payment, or the Customer fails to comply with any demand for payment issued by Philmac, or the Customer breaches any of the terms and conditions contained herein and/or are in default of any other agreement between Philmac and the Customer, then, without prejudice to any of Philmac's other rights, the Customer's right to sell the Goods in the ordinary course of business and any of the Customer's other rights in respect of the products, immediately cease; and the Customer must immediately return to Philmac the Goods in which title has not passed to the Customer.
- 9.10. The Customer agrees that, if Philmac has cause to exercise any of its rights under section 110 of the PPSA, then Philmac is entitled to enter any premises where the Goods still unpaid for are located and to repossess, remove and sell such Goods. The Customer agrees to indemnify and keep Philmac indemnified in respect of any claims, actions and costs that may arise against Philmac in relation to the removal, repossession and sale of the Goods pursuant to these terms and conditions including any claims brought by third parties as a result of that exercise.
- 9.11. The Customer agrees that repossession and retention of the Goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to Philmac by the Customer, as is equivalent to Philmac's reasonable estimation of the market value of the Goods at the date of repossession and the repossession and retention will immediately extinguish any rights or interest the Customer has on the value of Goods recovered.
- 9.12. Until ownership of the Goods passes, the Customer agrees not to give Philmac a written demand or allow any other person to give Philmac a written demand requiring Philmac to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPSR a financing change statement under the PPSA; agree not to change the Customer's name or undertake any changes to any documents that Philmac have registered, require to be registered or are capable of being registered without Philmac's prior written consent; and undertake not to remove, deface or alter any serial number appearing on any Goods.
- 9.13. Any time that the Customer makes a payment to Philmac, irrespective of whether the payment is made under or in connection with these Terms, Philmac may apply that payment first, to satisfy an obligation that is not secured; second, to satisfy an obligation that is secured, but not by a PMSI; third, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the Goods subject to that PMSI;

and fourth, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source, or, despite the foregoing, in any manner as Philmac sees fit.

## 10. DEFAULT

### 10.1.

If:

- (a) the Customer fails to pay any monies owed to Philmac on the due date of payment; or
- (b) Philmac has any reasonable grounds to believe that the Customer may not be able to make due and punctual payment to Philmac of any monies owing by the Customer; or
- (c) an administrator, liquidator, provisional liquidator or external manager is appointed in respect of the Customer; or
- (d) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer; or
- (e) the Customer goes into bankruptcy or is wound up; or
- (f) the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due; or
- (g) there is a breach by the Customer of any of these Terms; then:
- (a) all monies payable by the Customer to Philmac may, at Philmac's election, become immediately due and payable notwithstanding the due date for payment shall not have expired;
- (b) Philmac may without prejudice to any other rights it may have do any or all of the following:
  - (i) withdraw any credit facilities which may have been extended to the Customer;
  - (ii) withhold any further delivery of Goods;
  - (iii) in respect of Goods already delivered, enter onto the Customer's premises to recover and resell the Goods for its own benefit;
  - (iv) recover from the Customer the cost of materials or Goods acquired specifically for the purpose of any orders from the Customer;
  - (v) exercise such rights as are afforded to Philmac under the PPSA; and
  - (vi) register a default with any credit reference facility.

## 11. TRUST AND TRUSTEES

### 11.1.

Where the Customer is a trustee:

- (a) The Customer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by Philmac.
- (b) The Customer warrants that it has full power and authority to enter into these Terms on behalf of the trust and that it shall be bound by these Terms both personally and as trustee, irrespective of whether or not it discloses to Philmac that it is a trustee at the time of entering into any agreement with Philmac.

## 12. DELIVERY AND RECEIPT OF THE GOODS

### 12.1.

Delivery of the Goods to the Customer or to such person (including a carrier) or destination nominated by the Customer and agreed by Philmac shall constitute both delivery to and receipt of the Goods by the Customer. Unless otherwise stated in Philmac's quotation and/or acceptance of order, the Customer shall arrange and pay for the cost of the transportation of the Goods and shall pay the cost of all charges necessarily incidental to the transportation of the Goods, including but without limiting the generality of the preceding, insurance in respect of the Goods.

### 12.2.

Philmac reserves the right to deliver the Goods by instalments and each instalment may be separately invoiced by Philmac.

### 12.3.

Delivery statements shall be prima facie evidence as to delivery of the Goods, including for:

- (a) The description and quantity
- (b) The date of delivery; and
- (c) The place of delivery.

### 12.4.

Any date for delivery of the Goods by Philmac is an estimated date for delivery only. Philmac shall endeavour to meet delivery dates (if any) specified by the Customer but shall not be liable for any loss, damage or harm of any nature whatsoever suffered by the Customer or any other person arising directly or indirectly from delivery of the Goods not being effected by any delivery date specified as aforesaid.

### 12.5.

Upon delivery, the Customer must inspect the Goods to ensure that the Goods correspond with the Customer's order and have no apparent defect. The Customer shall be deemed to have accepted a delivery of Goods unless it has notified Philmac of any issue within 7 days of delivery.

### 12.6.

The Customer must preserve any Goods that are found to have a defect in the state in which they were delivered and either return them to Philmac or (if agreed by Philmac) allow Philmac (or a nominated agent) access to the Customer's premises for the purpose of inspecting the Goods. If, upon inspection, Philmac agrees that such Goods have a Defect, the Goods may be returned to Philmac in accordance with

## Clause 13.

### RETURN OF GOODS

Unless otherwise agreed in writing by Philmac, Goods may only be returned to Philmac if:

- (a) within 7 days of delivery, the Customer has notified Philmac in writing that the Goods (i) do not comply with the Customer's order; or (ii) have an apparent manufacturing defect; and
- (b) Philmac has accepted the Customer's reasons for the rejection; and
- (c) the Goods must be unused, undamaged, clean and in their original packaging (if applicable). Where more than one Good is contained in a packaging unit, the Goods must be returned in a whole packaged unit.

### 13.2.

Philmac will not accept Goods to be returned if they have been ordered in error, damaged by the Customer in their care (including by the Customer's carrier) or where the Customer has not complied with all safety, care, disposal and manufacturing best practices, or Philmac's related directions or requirements.

### 13.3.

In case of a return in accordance with Clauses 13.1(a) – (c), Philmac shall, in its sole discretion, (i) replace the Goods or supply equivalent goods; (ii) repair the Goods; or (iii) refund or credit the price of the Goods.

### 13.4.

Notwithstanding the above, Philmac may, in its absolute discretion and on such terms as may be agreed, accept Goods for return in other circumstances. In such case, Philmac shall issue a Return Authorisation Number and the Customer shall deliver the Goods to Philmac, and unless otherwise agreed between Philmac and the Customer, the Customer shall pay:

- (a) a restocking fee equal to 20% of the costs of the Goods to be returned; and

- (b) any delivery costs incurred in returning the Goods to Philmac.

### 14.

### SPECIAL ORDERS

In case of Goods manufactured based on drawings, specifications and/or designs provided by or on behalf of the Customer:

- (a) the Customer shall indemnify Philmac from and against any loss or claim arising from an infringement or alleged infringement of any patent, registered design, copyright or common law intellectual property right of any person related to the use of drawings/designs/specifications provided by the Customer; and

- (b) Philmac shall not be liable for any defect, issue or claim related to the Goods if the Goods have been manufactured in accordance with the drawings/designs/specifications provided by the Customer.

### 15.

### SPECIFIC PACKAGING

The parties may agree on the use of specific packaging for the Goods. In such case, unless otherwise agreed, Philmac shall retain the ownership of such specific packaging and may collect it from the Customer after delivery of the Goods.

### 16.

### CERTIFICATION

If the Customer requires that the Goods be certified, then the issuance of any certification certificate will be entirely at the discretion of Philmac and, if issued, will incur a fee in an amount to be advised by Philmac to the Customer at the time that the request for certification is received.

### 17.

### WARRANTY

Philmac warrants the Goods against defects in material and workmanship for a period of one (1) year starting upon the later of the date of manufacturing stamped on the Goods or the date of purchase of the Goods (the "Warranty Period").

### 17.2.

This Warranty is expressly limited to the free replacement - including shipping costs to the original point of delivery - or reimbursement, at Philmac's discretion, of the Goods proving defective in material or workmanship. This Warranty does not cover consumables, tools and fixing material. Philmac does not guarantee standard product design and does not offer any warranty of fitness for purpose. Services will be rendered in a professional manner and will be warranted for 30 days as of the date of completion. Services that proved defective will be re-performed at no cost.

### 17.3.

The Warranty under clause 17.2 is the sole and exclusive remedy for warranted defects and shall exclude claims for (i) punitive, special, incidental and consequential damages (ii) indirect damages, (iii) removal and reinstallation costs (iv) loss of use, loss of (anticipated) profit, loss of contract, overhead costs, the cost of business interruption, etc.

### 17.4.

The warranty claim must be notified in writing to Philmac (i) before the expiration of the Warranty Period and (ii) no later than 30 calendar days after noticing the defect. The relevant Goods must be returned without undue delay to Philmac for inspection and testing. Use of the Goods alleged to be defective must be discontinued as soon as the alleged defect is noticed.

### 17.5.

The Warranty under Clause 17 does not apply to (i) defects that are apparent or visible - such defects must be reported in accordance with clause 12.5; (ii) defects due to improper use, storage, transport or handling of the Goods; (iii) Goods not installed, used or maintained according to Philmac's latest technical specifications and instructions, or in violation of good industry practices, or the state-of-the-art practices; (iv) Goods that have been disassembled, repaired or

- modified; (v) defects caused totally or partially by abnormal mechanical, environmental or working conditions or by an act or an omission of the Customer, the end user, or any third party; (vi) defects caused by any event or circumstances not under the control of Philmac; (vii) wear and tear, discolouration; (viii) defects caused by force majeure events as defined by the applicable law and case law, including but not limited to natural disasters, severe adverse weather conditions.
- 17.6. The benefits given by this Warranty are in addition to rights and remedies consumers may have in relation to the Goods based on applicable mandatory laws
- 18. STATUTORY WARRANTY AND LIMITATION OF LIABILITY**
- 18.1. Warranties provided or that may be implied by the Competition and Consumer Act 2010 (Cth) (Australian Consumer Law), or any other legislation applicable to the Goods are hereby expressly excluded to the extent that such exclusion is not prohibited by such legislation.
- 18.2. If the Australian Consumer Law applies, our Goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, consumers are entitled:
- (a) to cancel their service contract with us; and
  - (b) to a refund for the unused portion, or to compensation for its reduced value.
- Consumers are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a service does not amount to a major failure, consumers are entitled to have the failure rectified in a reasonable time. If this is not done consumers are entitled to a refund for the Goods and to cancel the contract for the service and obtain a refund of any unused portion. Consumers are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.
- 18.3. If the Australian Consumer Law does not apply, then:
- (a) Philmac's liability to the Customer for any breach of its obligations hereunder in relation to delivery of the Goods, defective Goods, damaged Goods or any warranty implied by law (other than a warranty as to title) shall in all cases be limited to an amount equal to the lesser of (as determined by Philmac):
    - (i) the cost of having the Goods repaired; or
    - (ii) the cost of replacing the Goods; or
    - (iii) the cost of obtaining and supplying equivalent goods.
  - (b) Neither party shall not be liable to the other for any loss of use, loss of product, loss of profit, downtime or any other indirect, incidental, special, punitive or consequential damages.
  - (c) The Customer acknowledges that Philmac does not offer any warranty of regarding the Goods' fitness for purpose.
- 18.4. Each party must take reasonable steps to mitigate any loss it suffers or incurs.
- 19. COMPLIANCE**
- 19.1. The Customer represents and undertakes that it has and will continue to (i) conduct its business in an ethical and responsible manner, (ii) avoid or disclose to Philmac any conflict of interest related to their relationship, (iii) ensure compliance with applicable laws and regulations, including but not limited in relation with privacy and data protection, export controls and sanctions, modern slavery, anti-bribery and corruption, and (iv) not engage or participate in any criminal or fraudulent behaviour.
- 19.2. Philmac will collect, use, hold, and disclose personal information generally in accordance with its privacy policy (available at <https://www.philmac.com.au/privacy-policy>) and all applicable law, including the Privacy Act 1988 (Cth). Personal information collected by Philmac in performance of these Terms will only be collected, used, held, or disclosed for the purposes of providing the Goods, developing the business relationship with the Customer, and otherwise with consent of the Customer.
- 20. FORCE MAJEURE**
- 20.1. No failure or omission to carry out or observe any of the conditions of these Terms shall give rise to any claim against Philmac or result in a breach of these Terms if such failure or omission arises by reason of delay or inability to obtain materials, epidemic, fire, storm or other action of the elements, accidents, government restrictions or from other causes whether like or unlike the foregoing which are unavoidable or otherwise beyond the reasonable control of Philmac.
- 21. MISCELLANEOUS**
- 21.1. Philmac remains the sole owner of all intellectual property rights in the Goods. Nothing in these Terms shall be deemed to transfer to the Customer any intellectual property rights in the Goods.
- 21.2. No provision of these Terms shall be deemed to have been waived by Philmac unless such waiver shall be in writing and signed by an officer of Philmac.
- 21.3. If any provision of these Terms is or becomes invalid or unenforceable, that provision will be deemed deleted from these Terms. The invalidity or unenforceability of that provision will not affect the other provisions of these Terms, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 21.4. The Customer shall not assign or purport to assign its rights and obligations herein to any third party without the prior consent in writing of Philmac.
- 21.5. Philmac reserves the right to use subcontractors with regards to the sale and supply of Goods and any other obligations under these Terms.
- 21.6. Philmac shall be entitled to set off any amounts due to the Customer against any amounts that the Customer owes to Philmac, whether under these Terms or otherwise.
- 21.7. Any notice required to be given under these Terms shall be in writing and (i) if the party is a company, be signed by a Director, Manager, or Senior officer of such party, and (i) if not a company then by the party themselves and shall be deemed to have been given on the second day following posting if sent by pre-paid mail in an envelope addressed to the registered office or principle place of business or last known address as the case may be of the party to whom the notice is being sent.
- 22. DISPUTES**
- 22.1. If any dispute arises in relation to Goods supplied by Philmac to the Customer, the parties must use their best endeavours to amicably resolve such dispute. Notwithstanding the foregoing, Philmac may by notice in writing to the Customer at any time prior to determination by a court require that such dispute or part thereof be determined by arbitration according to law. The arbitration is to be conducted in accordance with the relevant Commercial Arbitration Act (of whatever name) of the State or Territory nominated as being the governing law and in the capital city of that State or Territory. Philmac may give notice that any dispute with the Customer is arbitrated with any other dispute relating to the same Goods or issues. There is to be a single arbitrator appointed by agreement or failing agreement by the president of the law society of that State or Territory. The arbitrator's decision is final and binding subject to any right of appeal under the relevant Commercial Arbitration Act.
- 22.2. The reference of a dispute to arbitration does not affect the Customer's obligation to pay the price for the Goods when due which must be paid without deduction or equitable or other set off pending the resolution of any dispute whether referred to arbitration or otherwise.
- 23. PROPER LAW**
- 23.1. These terms and conditions are governed by and are to be interpreted according to the laws in force in the State or Territory where the Goods or Services are supplied to the Customer, and the parties submit to the non-exclusive jurisdiction of the courts operating in that State or Territory. Where the Goods or Services are supplied to multiple States, this Guarantee is governed by and is to be interpreted according to the laws in force in South Australia and the parties submit to the non-exclusive jurisdiction of the courts operating in South Australia.
- 23.2. The operation of the United Nations Convention on Contracts for the Sale of International Goods is hereby excluded.