Metcash Trading Terms

METCASH TRADING LIMITED (ABN 61 000 031 569) and each related body corporate from time to time (as defined in the Corporations Act 2001) and **MITRE 10 AUSTRALIA PTY LTD (ABN 98 009 713 704)** of 50 Waterloo Road, Macquarie Park NSW 2113 (individually and together called "**Metcash**")

1. Application of terms

1.1 The terms of this Agreement apply in every case where Metcash provides goods or services of any kind ("**Goods**") to the customer (as referred to in the Application for Trading Account or if there is no application, the customer placing the order, or on whose behalf the order is placed) ("**Customer**") on the Customer's trading account ("**Trading Account**"), unless otherwise agreed in writing between Metcash and the Customer. Acceptance of Goods by the Customer is conclusive evidence before any court that this Agreement (and any variation) applies and is binding on it and the Guarantors.

1.2 In the event of, and to the extent of, any inconsistency between this Agreement and the terms of any purchase order for the provision of Goods, this Agreement prevails.

1.3 This Agreement comprises the Application for Trading Account, the Acknowledgement and Authority pursuant to the Privacy Act 1988 and these Trading Terms, as amended from time to time.

2. Credit

2.1 Metcash may, in its absolute discretion:

(a) grant, sell or supply any Goods to the Customer, as requested by the Customer from time to time, on credit;

(b) provide, in association with any other credit provider(s) from time to time, credit card access or facilities to the Customer for a range of Goods, on and subject to the terms and conditions of this Agreement and debit to the Customer's Trading Account the relevant price stated or the amount charged in respect of the Goods, together with a service fee for each transaction in an amount or at a rate as notified by Metcash to the Customer from time to time;

(c) debit the Trading Account with the price stated or the amount charged or the Amount(s) Payable (as defined in **clause 3**) in any invoice or statement in respect of the Goods, and if no price is stated, then Metcash's normal selling price for the Goods as notified by Metcash to the Customer from time to time;

(d) issue a statement at any time showing the debit or credit balance of the Trading Account at the date shown on the statement ("**Statement**"); and

(e) terminate the Trading Account by notice in writing to the Customer accompanied by a Statement showing the final balance of the Trading Account ("**Final Statement**").

2.2 Metcash's agreement to open the Trading Account does not entitle the Customer, at any time, to credit or any particular amount of credit.

3. Payment of Accounts

3.1 The Customer must, without demand from Metcash, pay the whole amount of any debit balance shown on a Statement ("**Amount(s) Payable**") on or before the due date shown on the Statement (which unless otherwise stated is seven (7) days from the date of the Statement) ("**Due Date**"); and where the Statement is a "Final Statement", on or before the due date shown on the Final Statement ("**Final Due Date**"). This clause does not affect the obligation of the Customer to pay the entire Amount Payable prior to a Due Date or the Final Due Date where required under any other provision of the Agreement.

3.2 By setting the Due Date on a particular Statement:

(a) Metcash does not represent that the Due Date will be the same number of days from the date of the Statement in future Statements; and

(b) Metcash does not limit its right to vary the number of days between the date of a Statement and the Due Date from one Statement to another.

3.3 In this Agreement, "**Amount(s) Payable**" includes:

(a) all amounts debited to the Trading Account for Goods supplied pursuant to this Agreement, now and in the future;

(b) all money now and in the future owing or payable to Metcash by the Customer, either alone or jointly with another person, whether directly or indirectly or contingently under this Agreement or on any other account whatsoever, and including all such money arising from:

(1) any guarantee, deed, indemnity, account, document or other agreement in writing between Metcash and the Customer and/or any Guarantor (as referred to in the Application for Trading Account);

(2) any service fee or accounting administration fee or any other charge, cost or expense payable by the Customer to Metcash under this Agreement;

(3) all costs (including legal costs on a full indemnity basis and expenses), expenses or losses incurred or sustained by Metcash in relation to any failure by the Customer and/or Guarantor to comply with the terms and conditions of this Agreement;

(4) interest on any judgment entered by Metcash against the Customer in respect of the Amount(s) Payable; and

(5) all advances, further advances, loans, credits or financial accommodation (whether given on, before or after the date of this Agreement) by Metcash, to,

for or on account of or at the request of the Customer and/or any Guarantor;

(c) any tax, duty, charge or other impost or levy made at any time by any local, state or Commonwealth government in connection with the Goods or this Agreement; and

(d) all amounts owing in accordance with **clause 10.1**(if applicable).

4. Changes to Trading Account

Metcash may at any time, in its absolute discretion, without notice and without assigning any reason:

4.1 set, change or limit credit in relation to the Trading Account;

4.2 refuse to open a Trading Account, close the Trading Account and/or refuse to extend credit to the Customer on any account;

4.3 refuse or limit credit or suspend or terminate the supply of Goods or the granting of any rights under this Agreement. All subsequent trading between Metcash and the Customer will revert to a cash purchase or a cleared funds basis until Metcash, in its absolute discretion, reinstates the provision of credit to the Customer; and

4.4 set, change, vary or discontinue any credit card access or facilities as described in **clause 2.1(b)**.

5. Payments by the Customer

5.1 Metcash may appropriate any moneys paid to it by the Customer in such manner and at such times as Metcash, in its absolute discretion, determines.

5.2 The amount stated in a certificate signed by Metcash's duly authorised representative or solicitor as being due and payable by the Customer to Metcash under this Agreement is prima facie evidence that such amount is owing.

5.3 Amounts payable by the Customer under this Agreement must be paid without deduction, retention or set-off of any kind and for any reason.

5.4 Metcash may, at its discretion, apply a credit balance in any of the Customer's Trading Accounts towards satisfaction of a debit balance in any of the Customer's other Trading Accounts.

5.5 Payment by cheque or other negotiable instrument is not deemed to be payment of any moneys payable until the cheque or other negotiable instrument is met on first presentation for payment.

6. Retention of Title

6.1 Title to all Goods purchased by the Customer whilst the Trading Account has a debit balance ("**Bailed Goods**") remains with Metcash.

6.2 The Customer must hold all Bailed Goods in the possession of the Customer:

(a) as fiduciary, bailee and agent for Metcash; and

(b) in a separate area and in such a manner that the Bailed Goods remain clearly identifiable and are able to be matched to specific invoices.

6.3 The Customer is authorised to sell the Bailed Goods in the ordinary course of its ordinary business, but only until:

(a) notified in writing to the contrary by Metcash; or

(b) the occurrence of an event listed in **clauses 6.5(a)** – **6.5(i)** (inclusive).

6.4 The Customer must hold the proceeds from the sale of the Bailed Goods on trust for Metcash in a separate bank account and must not mix the proceeds with any other money, including the Customer's money.

6.5 If the Customer or any person who has guaranteed the debts of the Customer to Metcash:

(a) becomes an '*externally-administered body corporate*' within the meaning of the Corporations Act 2001;

(b) has any step taken for its winding up or dissolution;

(c) holds a meeting of directors which considers a resolution that an administrator should be appointed;

(d) is insolvent within the meaning of the Corporations Act 2001, or being taken or presumed to be insolvent;

(e) commits an '*act of bankruptcy*' within the meaning of section 40 of the Bankruptcy Act 1966 or any amendment or replacement thereof;

(f) has distress, attachment or other execution levied or enforced over any of its property;

(g) fails to pay the entire Amount Payable in accordance with this Agreement;

(h) breaches any other provision of this Agreement or any other agreement with any Metcash Entity (as defined in **clause 18.1**); or

(i) if, without the prior consent of Metcash, there is a change in control of the Customer (as defined in the Corporations Act 2001) or the business of the Customer is sold to another person,

the Customer must immediately notify Metcash and Metcash may, at its election and without prejudice to other rights which Metcash may have:

(j) declare the Amount Payable immediately due for payment; and

(k) enter the premises at which the Bailed Goods are kept ("**Premises**") and remove the Bailed Goods from the Premises.

6.6 Metcash may sell or otherwise dispose of any Bailed Goods recovered by Metcash pursuant to this **clause 6** in its absolute discretion and on its own account, without limitation to any other rights which Metcash may have.

6.7 The Customer indemnifies Metcash and every person acting on its behalf against any loss, damage, liability or expense incurred or sustained as a result of the reasonable exercise by Metcash of its rights under this **clause 6**.

6.8 This **clause 6** is for the benefit of Metcash, and Metcash may waive the benefit of this clause by giving notice in writing to the Customer at any time.

6.9 Notwithstanding the other provisions of this **clause 6** and without derogating from the rights of Metcash, Metcash may take any action it deems necessary, including legal proceedings, to recover as a liquidated debt an Amount Payable.

6.10 The Customer grants to Metcash a purchase money security interest, as defined in the Personal Properties Securities Act 2009 ("**PPSA**") in the Bailed Goods and any proceeds of sale of the Bailed Goods ("**PMSI"**) to secure the purchase price of the Bailed Goods.

6.11 The costs of registering a financing statement will be paid by the Customer and may be debited against the Customer's Trading Account.

6.12 The Customer agrees not to do or permit anything to be done that may result in the PMSI granted to Metcash ranking in priority behind any other security interest (as defined in the PPSA).

6.13 The Customer will take such further steps (including obtaining consents, supplying information, signing forms or executing documents) which may be required by Metcash to take further or better security under the PPSA in respect of the Bailed Goods and proceeds of sale of the Bailed Goods or to maintain the effectiveness or priority of any security interest under the PPSA.

7. Risk in Goods and Customer Obligations

7.1 All Goods purchased by the Customer are at the risk of the Customer from the time the Goods are delivered to the Customer or its nominated agent. Delivery is deemed to occur when the Goods are delivered to the carrier, whether Metcash arranges, procures or effects the transport of the Goods at the request of the Customer or otherwise. The Customer must insure the Goods (with Metcash's interest noted on the policy) from the date of delivery until title passes to the Customer or the Goods are sold in accordance with **clause 6**.

7.2 The Customer must inspect all Goods delivered to the Customer or its nominated agent within 24 hours (or such other time period for perishable, dry, security or other Goods as notified by Metcash from time to time) of delivery to the relevant Premises ("**Inspection Period**") in order to ensure that Goods delivered are as ordered by the Customer and are not delivered in a damaged state. The Customer must notify Metcash within the Inspection Period if Goods are found to be other than as ordered by the Customer or have been delivered in a damaged state.

7.3 Subject to **clause 9.1(e)**, if the Customer has not notified Metcash within the Inspection Period that Goods delivered were not as ordered by the Customer, or that Goods were delivered in a damaged state, then the Goods will be deemed to have been delivered in good condition and as ordered by the Customer.

7.4 Goods supplied by Metcash are resold by the Customer in the same consequential order as the Goods have been supplied by Metcash. All Goods of the same type as the Bailed Goods will be deemed to have been supplied by Metcash unless the Customer proves to the contrary at the time Metcash claims to be entitled to possession of such Goods.

7.5 The Customer must sell the Goods in the original packaging supplied by Metcash. The Customer must not alter or interfere in any way with the Goods or remove any labelling or instructions provided with the Goods.

7.6 The Customer must not make any representation or give any warranty in relation to the Goods not expressly authorised by Metcash in writing.

7.7 To the extent permitted by law, if the Customer is in breach of this Agreement, Metcash may (without prejudice to any other rights) repossess the Bailed Goods and the Customer licences Metcash and its employees and agents to enter its premises at any time without notice for such purpose, with all related costs of Metcash to be paid by the Customer on demand.

7.8 The Customer indemnifies Metcash and each of Metcash's officers, employees and agents in respect of all loss, damages and expenses relating to, or arising out of a breach of **clause 7.5** or **clause 7.6**.

8. Data and Information

8.1 Metcash may provide data to the Customer's retail outlet(s). This data can take many forms including:

(a) Full initial load data;

(b) Weekly data updates;

(c) Weekly promotional data files; and

(d) Monthly or bi-monthly promotional files.

The data includes but is not limited to: Product codes; Global trade identification number (GTIN – previously referred to as APN); Descriptions; Size; Pack quantity; Cost price; Retail price; Promotional start and end dates; tax rates and numerous other flags.

8.2 Subject only to **clause 8.3** Metcash has no liability for data provided by it to the Customer.

8.3 Where Metcash has charged an incorrect price for Goods, Metcash will correct the data as soon as it becomes aware of the error and will credit or debit (as applicable) to the Customer, the difference between the invoice price and the correct price. The Customer must, in addition to its other obligations under this Agreement,

take steps to mitigate any loss it may suffer as a result of Metcash's error.

8.4 The Customer bears responsibility for the normal retail price and promotional pricing generated by their POS system and the overall running of that system. The Company warrants and represents that it is relying upon its own skill and judgment in relation to the actioning of the data in its retail store.

8.5 The Customer acknowledges and agrees that all trading information as between the Customer and Metcash belongs to Metcash at all times and that the Application for Trading Account and Trading Terms are confidential information and may not be disclosed to any third party without the prior written consent of Metcash.

8.6 Metcash agrees to take reasonable steps to prevent the disclosure of a Customer's trading information to a competitor of the Customer and will require that any third party receiving the Customer's trading information enter into a confidentiality agreement.

9. Liability

9.1 The Goods are deemed to be defective if any Goods:

(a) are not of merchantable quality;

(b) are not fit for any purpose for which they are acquired by Customer;

(c) do not conform to any sample, specification or other description given to Metcash by the Customer in relation to the Goods;

(d) being in the nature of services, are not of a reasonable standard, quality, value or grade; or

(e) do not comply with any consumer guarantee or implied warranty applicable to the supply of the Goods which cannot be excluded (including pursuant to the Competition and Consumer Act 2010 ("**CCA**")).

9.2 Where Goods are defective (as defined in **clause 9.1**) Metcash may, at its option, elect to:

(a) replace the Goods; or

(b) repair the Goods or reimburse the Customer for the cost of repairing the Goods; or

(c) in the case of Goods being in the nature of services, re-supply the services; or

(d) if payment of the purchase price for the Goods has not been made by the Customer - release the Customer from any obligation to pay the purchase price; or

(e) if payment of the purchase price for the Goods has been made by the Customer - refund the purchase price to the Customer, subject to the Customer, where applicable, first restoring the unencumbered ownership of the Goods to Metcash; and

(f) in any case, reimburse to the Customer any cost incurred by the Customer in transporting the Goods to the Customer from Metcash.

9.3 To the extent permitted by law, Metcash will not accept the return of Goods unless:

(a) prior authorisation has been given (which will not be unreasonably withheld);

(b) the claim is supported by the relevant invoice;

(c) the Goods are in the same condition as at the date of supply;

(d) the Goods are returned via Metcash's nominated carrier and at Metcash's designated rates; and

(e) in the case of Goods delivered in a damaged state or Goods delivered other than in accordance with the Customer's order, Metcash was given notice in accordance with **clause 7.2**.

9.4 Other than any remedies the Customer may have under the CCA, the sole remedies of the Customer under or in relation to this Agreement whether in contract, in tort, under statute or otherwise are only as specified in this Agreement and are subject to the limitations set out in **clause 9.6** and the following limitations:

(a) Metcash, and Metcash's officers, employees and agents, will not have any liability or other obligation to any person or other entity, including the Customer, arising out of, or in any way directly or indirectly connected with, the matters referred to in **clauses 9.1(a)** – **9.1(e)** except to comply with its obligations (subject to the other provisions and limitations in this **clause 9**) under **clause 9.2**;

(b) all conditions, warranties and other terms pertaining to the condition or quality of Goods are excluded to the extent permitted by law (including the CCA);

(c) the Customer warrants and represents that it is relying upon its own skill and judgment in relation to the quality of Goods, and their fitness for any purpose that may be required, and not upon any conduct or representation of Metcash, or any of Metcash's officers, employees or agents; and

(d) the Customer must not make any claim or demand, or take any action or other proceeding against Metcash, or any of Metcash's officers, employees or agents, for any loss of profits, loss of revenue, loss of anticipated savings, loss or corruption of data, loss of contract or opportunity, loss of goodwill OR any indirect, special or consequential loss of whatever nature including of any loss of a type described in this sub-clause, whether or not reasonably foreseeable, reasonably contemplatable or actually contemplated by the parties at the time of execution of this Agreement, arising out of, or in any way directly or indirectly relating to this Agreement including in relation to any of the matters referred to in **clauses 9.1(a)** – **9.1(e).**

9.5 Subject to the remainder of this **clause 9**, the Customer:

(a) releases and forever discharges Metcash, and each of Metcash's officers, employees and agents, from all claims under or in relation to this Agreement; and

(b) indemnifies Metcash and each of Metcash's officers, employees and agents in respect of all loss, damages and expenses relating to, or arising out of, any claim.

9.6 To the extent permitted by law, Metcash's total liability for any claim under or in relation to this Agreement is limited to the price paid by the Customer for the Goods or services the subject of the claim.

10. Administration Fee and Enforcement Costs

10.1 The Customer agrees that if any Amount Payable is not paid by the Due Date or by the Final Due Date in accordance with this Agreement, Metcash shall be entitled to charge and recover:

(a) interest on the outstanding amount at a rate equivalent to 3% p.a. above the annual business overdraft interest rate of its principal banker, as determined and calculated by Metcash, in its discretion; and/or

(b) an additional amount representing an accounting administration fee and loss of use of moneys not exceeding 3.5% per month or part thereof on the Amount Payable overdue for the period between the Due Date or the Final Due Date until payment is made in full. The Customer acknowledges that this fee is a genuine pre-estimate by Metcash of the loss, costs and expenses of Metcash which shall be incurred by reason of the Customer's default in payment of the Amount Payable and the recovery of same.

10.2 If the Customer breaches its obligations under this Agreement, the Customer shall immediately pay to Metcash on demand, all costs and expenses whatsoever incurred by Metcash in the enforcement or attempted enforcement of this Agreement including, but without limiting the generality of the foregoing costs and expenses including legal costs (on a full indemnity basis) freight costs, storage costs, electricity and telephone charges (except to the extent such costs and expenses directly result from Metcash's breach of this Agreement) and the Customer authorises Metcash to debit any Trading Account with such costs and expenses.

11. Security Interest

11.1 The Customer:

(a) grants a security interest in all of its present and after-acquired property and in all of its present and future rights in relation to any personal property (as defined in the PPSA) ("**Personal Property**") to Metcash;

(b) charges all of its rights, property and undertaking of whatever kind and wherever situated, whether present or future including, without limitation, its capital and any interest in real property (both legal and beneficial, in freehold and leasehold land) (other than any Personal Property to which the PPSA applies) to Metcash; and

(c) agrees to mortgage all of its present and future interests in any real property to Metcash,

as security for the performance of its obligations under this Agreement including payment of the Amount(s) Payable.

11.2 The Customer must, within 10 days of request from Metcash, execute such documents as Metcash requires to perfect the security interest, charge and mortgage. The Customer must pay on demand any stamp duty (including any fines and penalties) assessed in connection with the security interest, charge and mortgage. The costs of registering a financing statement will be paid by the Customer and may be debited against the Customer's Trading Account.

11.3 The Customer acknowledges that Metcash, by virtue of the charge and mortgage, has a caveatable interest in any real property of the Customer which is or becomes subject to the charge and/or mortgage and may lodge a caveat over that property.

12. Change in Customer Details

12.1 The Customer must notify Metcash, in writing, within seven (7) days, of any proposed or actual change in:

(a) the address of the business and the address at which the Goods will be located (if it differs to the Premises);

(b) the trading name of the business;

(c) the person(s), director(s) or trustee(s) conducting the business of the Customer;

(d) the ownership or proprietorship of the Customer in the event that the Customer converts to a trust, sole trader or company;

(e) control of the Customer;

(f) the Australian Business Number of the Customer; or

(g) the address of any Guarantor.

12.2 The Customer indemnifies Metcash against any damage or loss incurred by it as a result of the Customer's failure to provide notice in accordance with **clause 12.1**.

13. Attorney

13.1 The Customer and each Guarantor irrevocably appoints Metcash and each of its authorised officers, jointly and severally, to be its attorney to do any act or thing which it is required to do under this Agreement.

13.2 Metcash may only exercise the power set out in **clause 13.1** where the Customer or Guarantor (as applicable) is in breach of this Agreement and it may

exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so.

13.3 A third party may rely on a copy of this Agreement certified by a solicitor as evidence of the appointment of Metcash as the attorney of the Customer or Guarantor.

13.4 The Customer and each Guarantor must ratify all acts and things done by Metcash and its authorised officers in the exercise of the power of attorney granted in accordance with this clause.

14. Customer Warranties and Covenants

14.1 The Customer warrants that the facts and representations contained in the Application for Trading Account are true and correct and the Customer is aware and acknowledges that Metcash has relied upon the correctness of such facts and representations in providing the Trading Account to the Customer.

14.2 The Customer covenants that all Goods will be purchased for the purpose of re-supply or in connection with a business carried on by the Customer or by the Customer and another person or persons and not for personal, domestic or household use.

14.3 The Customer acknowledges and agrees that:

(a) all transactions and dealings between the Customer and Metcash in connection with the supply of Goods on the Trading Account will be made strictly in accordance with this Agreement (unless otherwise agreed by Metcash in writing);

(b) the Customer will pay the Amount(s) Payable punctually and strictly in accordance with this Agreement;

(c) no director or principal of the Customer is or has been bankrupt;

(d) the Customer is solvent and able to pay its debts as and when they fall due and has not made any compromise or arrangements with its creditors and no application has been made and no application is contemplated for the appointment of an administrator or controller of the Customer or any meeting of the Customer's creditors or any class of them;

(e) the Customer has, prior to signing or execution of this Agreement **obtained independent legal and financial advice** and/or had the opportunity to obtain such advice as to the Customer's obligations and the true meaning, nature and effect of this Agreement; and

(f) the Customer acknowledges receipt of a copy of this Agreement.

15. Guarantee & Indemnity and Security Interest

In consideration of Metcash at the request of the Guarantor entering into this Agreement with the Customer, the Guarantor covenants and agrees with Metcash that:

15.1 The Guarantor irrevocably guarantees to Metcash due performance by the Customer of its obligations under this Agreement including payment of the Amount(s) Payable.

15.2 The Guarantor separately and independently indemnifies Metcash and will at all times keep Metcash indemnified from and against all losses and expenses which Metcash may suffer or incur in consequence of any breach or non-observance by the Customer or any Guarantor of any of the terms of this Agreement (including a failure to pay the Amounts Payable and all enforcement expenses and legal costs on a full indemnity basis) or any part of this Agreement being void or unenforceable.

15.3 The Guarantor:

(a) grants a security interest in all of its present and after-acquired property and in all of its present and future rights in relation to any personal property (as defined in the PPSA) ("**Guarantor Personal Property**") to Metcash;

(b) charges all of its rights, property and undertaking of whatever kind and wherever situated, whether present or future including, without limitation, its capital and any interest in real property (other than any Guarantor Personal Property to which the PPSA applies) to Metcash; and

(c) agrees to mortgage all of its present and future interests in any real property to Metcash,

as security for the performance of its obligations under this Agreement including its guarantee of the Customer's obligation to pay the Amount(s) Payable.

15.4 The Guarantor must, within 10 days of request from Metcash, execute such documents as Metcash requires to perfect the security interest, charge and mortgage. The Guarantor must pay on demand any stamp duty (including any fines and penalties) assessed in connection with the security interest, charge and mortgage. The costs of registering a financing statement will be paid by the Customer and may be debited against the Customer's Trading Account.

15.5 The Guarantor acknowledges that Metcash, by virtue of the charge and mortgage, has a caveatable interest in any real and leasehold property of the Guarantor which is or becomes subject to the charge and mortgage and may lodge a caveat over that property.

15.6 The Guarantor remains liable to Metcash under **clauses 15.1, 15.2, 15.3** and **15.4** notwithstanding that:

(a) Metcash has exercised any of its rights under this Agreement;

(b) the Customer (being a company) may be wound up or dissolved or (being a natural person) may be declared bankrupt; and

(c) the guarantee given by the Guarantor may be for any reason unenforceable, either in whole or in part.

15.7 It is not necessary that Metcash provide notice to the Customer to rectify any breach of this Agreement prior to the Guarantor being required to fulfil its obligations under this **clause 15.**

15.8 A demand on the Guarantor is deemed to have been duly made if it is in writing and signed on behalf of Metcash by its authorised representative or solicitor and has been given to the Guarantor or left at or posted to the address of the Guarantor or Customer as shown in the Application for Trading Account or such last known address as notified to Metcash in writing by the Guarantor.

15.9 The terms of this **clause 15** are not affected by any action taken or notice issued in relation to any other securities. Metcash is under no obligation to marshal in favour of the Guarantor any security whatsoever held by Metcash.

15.10 This is a continuing guarantee and the liability of the Guarantor under this **clause 15** is not affected by:

(a) any other person giving or not giving a guarantee or indemnity to Metcash;

(b) the winding up, deregistration, administration, liquidation or insolvency of the Customer;

(c) the granting of time or concession (including a release, waiver, variation, assignment, novation, compounding or relinquishment of rights) to the Customer by Metcash;

(d) any delay or laches on the part of Metcash;

(e) any variation of this Agreement between Metcash and the Customer (whether or not the Guarantor is party to that variation and whether or not such variation increases the Guarantor's liability under the Guarantee) or any assignment or novation of this Agreement;

(f) Metcash taking, varying, wholly or partially discharging or otherwise dealing with or losing or impairing any security for the Customer's obligations under this Agreement or a security of that kind being or becoming void, voidable or unenforceable; or

(g) anything that Metcash may do or omit to do which, but for this provision, might otherwise affect the liability of the Guarantor.

15.11 As between the Guarantor and Metcash the Guarantor is to be deemed to be a primary debtor to Metcash independent of the Customer.

15.12 To the fullest extent permitted by law the Guarantor waives such of the Guarantor's rights as surety or indemnifier (legal equitable statutory or otherwise) which may at any time be inconsistent with any of the provisions of this **clause 15**.

15.13 The covenants and agreements made or given by the Guarantor are not conditional in any way and remain binding notwithstanding that any other person has not executed or duly executed this Agreement.

15.14 The obligations of the Guarantor under this **clause 15** continue in force until Metcash confirms in writing that it has been released.

15.15 The Guarantor acknowledges that:

(a) it has, prior to signing or execution of this Agreement **obtained independent legal and financial advice** and/or had the opportunity to obtain such advice as to its obligations and the true meaning, nature and effect of this Agreement; and

(b) Metcash is under no obligation to notify the Guarantor of any changes to this Agreement or any dealings with the Customer (and the Guarantor appoints the Customer as its agent for the receipt of notices in connection with this Agreement).

15.16 In the event of liquidation or bankruptcy of the Customer, the Guarantor will not prove in such liquidation or bankruptcy in competition with Metcash.

15.17 The Guarantor agrees that:

(a) if any payment to Metcash must be refunded under any statutory provision or otherwise, the liability of the Guarantor continues, and the parties will immediately be restored to the rights each would have had if the payment had not been made; and

(b) the Guarantor will immediately pay to Metcash the amount refunded by Metcash so that all amounts payable to Metcash under this Agreement have been paid.

15.18 If the obligation of the Guarantor in respect of any part of the debt is unenforceable, the Guarantor's obligation in respect of the other part of the debt will not be affected by such unenforceability.

15.19 Metcash may apply any amounts received under this Guarantee towards satisfaction of any parts of the Amounts Payable or any other amounts under this Agreement in whatever manner it sees fit.

16. General

16.1 Time is to be of the essence so far as it relates to the Customer's obligations to Metcash under this Agreement.

16.2 Metcash does not waive any breach by the Customer or the Guarantor of this Agreement unless the waiver is in writing signed by Metcash. No waiver is to be construed as a general waiver unless it is expressly stated to be a general waiver.

16.3 Should any provision of this Agreement be illegal, void or unenforceable, that provision will be ineffective and is to be severed from this Agreement to the extent only of that illegality, voidability or unenforceability. All remaining provisions are to be enforceable between Metcash, the Customer and the Guarantor.

16.4 This Agreement is enforceable against each of the Customer and Guarantor (if more than one person) jointly and each of them severally.

16.5 Metcash may at any time assign its rights and interests or novate its rights and obligations (in whole or in part) under this Agreement. The Customer must not assign any of its rights or obligations under this Agreement without Metcash's prior consent in writing, which

consent may be refused or given subject to such terms and conditions as Metcash may determine, at its absolute discretion.

16.6 This Agreement binds each person who signs as Customer or Guarantor even if another person who was intended to sign does not sign it or is not bound by it.

16.7 This Agreement binds the Customer and each Guarantor both personally and as trustee of any trusts for which it is trustee.

16.8 This Agreement may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up the one document. Metcash's acceptance of this Agreement may be evidenced by establishing a Trading Account or supplying Goods to the Customer.

16.9 Only a director or company secretary of Metcash has the authority to (a) vary this Agreement in any way or (b) accept orders or supply Goods under the Trading Account on terms other than this Agreement. This Agreement may be varied from time to time at the discretion of Metcash by giving seven (7) day's notice to the Customer and the Customer and Guarantors prospectively authorise and consent to any such variation.

16.10 This Agreement is governed by and the Customer and Guarantor submit to the laws of the State of New South Wales (or any other State or Territory nominated by Metcash). The courts of that State or Territory have non-exclusive jurisdiction in connection with this Agreement.

16.11 In this Agreement, words or terms incorporating the singular or the plural shall include the plural and singular respectively and words importing the masculine gender shall include the feminine and neuter genders.

16.12 In this Agreement, references to **include** and **including** are to be construed without limitation.

16.13 Notices in connection with this Agreement may be provided to the Customer and Guarantors by mail, facsimile or email to the Customer's address provided on the Application for Trading Account, or any other address provided by it to Metcash. Metcash may also provide notice of any variation of this Agreement by publishing the revised Metcash Trading Terms on its website and Metcash may (but is not obliged to) notify the Customer that it has done so on an invoice, Statement or order acknowledgement.

17. Contracting out of the PPSA

17.1 The Customer and Guarantor agree that nothing in sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA shall apply to this Agreement, or the security under this Agreement and to the extent permitted by the PPSA, agree to waive and contract out of its rights to receive any notice or statement under sections:

(1) 95 (notice of removal of an accession);

(2) 118 (notice of decision to enforce security interest under land law);

(3) 121(4) (enforcement of liquid assets – notice to grantor);

(4) 123 (notice of seizure of collateral);

(5) 130 (notice of disposal of collateral);

(6) 132(3)(d) (statement of account following a disposal showing the amounts paid to other secured parties);

(7) 132(4) (statement of account if there is no disposal);

(8) 135 (notice of retention of collateral);

(9) 157 (notice in relation to registration events),

or otherwise. The parties also contract out of each other provision of Part 4.3 of the PPSA, under sections 115(7) and 116(2), but only to the extent that the provision impose obligations on Metcash.

17.2 The Customer, Guarantor or Metcash will not disclose information of the kind mentioned in section 275(1) of the PPSA, unless required by law.

18. Set-off

18.1 Metcash may set off any amount owing by Metcash or any associated entity (as defined in the Corporations Act 2001) of Metcash Trading Limited from time to time ("**Metcash Entity"**) to the Customer (whether or not due for payment) against any Amount Payable.

18.2 Metcash may do anything necessary to effect any set-off under this **clause 18** (including varying the date for payment of any amount owing by a Metcash Entity to the Customer). This **clause 18** applies despite any other agreement between the Customer and a Metcash Entity.

18.3 If there are any amounts owing or due for payment by the Customer to a Metcash Entity (other than Metcash), the Customer authorises Metcash to pay all or part of any such amount to the relevant Metcash Entity in satisfaction of all or part of the Customer's obligations. Any amount paid by Metcash will be automatically debited against the Customer's Trading Account and will constitute a debt from the Customer to Metcash under this Agreement. If Metcash makes a payment to another Metcash Entity under this **clause 18.3**, it must provide written notice to the Customer within fourteen (14) days of any such payment.

18.4 The Customer acknowledges that the Metcash Entities have entered into, or will enter into, arrangements to effect and authorise the set-off arrangements contemplated by this **clause 18**.

18.5 The Guarantor consents to the arrangements set out in this **clause 18** and acknowledges that the guarantee in **clause 15** extends to any amounts payable by the Customer under this clause.