

TERMS AND CONDITIONS OF SALE - AUSTRALIA

1. General & Interpretation –

In these conditions:

- (1) Scalzo Trading Co Pty Ltd (ACN 005 318 810) of 156 - 170 Kensington Road, West Melbourne, Victoria 3003 ("Scalzo");
- (2) **'Buyer'** means the purchaser of any goods specified on a purchaser order to Scalzo
- (3) **'Goods'** means mean any goods Scalzo supplied to the Buyer that are described in any invoice, quotation, work authorisation or any other documents Scalzo provided to the Buyer or any order the Buyer gives to Scalzo, whether on consignment or otherwise, under these Terms and Conditions
- (4) **'Event of Default'** means:
 - (a). The Buyer fails to pay when due any moneys owing to Scalzo under these Terms and Conditions.
 - (b). 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.
 - (c). An Insolvency Event occurs or is continuing.
 - (d). The Buyer breached any other provision of these Terms and Conditions and fails to address within 14 days from Scalzo's advice.
- (5) **'Default'** has a corresponding meaning.
- (6) **'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.
- (7) **'GST Law'** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (8) **'Guarantor'** means that person, or entity, who agrees to be liable for debts whether on a principal debtor basis or who is otherwise a surety of the Buyer.
- (9). **'Insolvency Event'**:
 - (a). An administrator is appointed to the Buyer or any guarantor.
 - (b). Except for the purpose of a solvent reconstruction or amalgamation previously approved by Scalzo:
 - (A) 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:
 - (i) The Buyer's winding up, dissolution or administration or any guarantor; or
 - (ii) 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
 - (B) the Buyer cease, suspend or threaten to cease or suspend the conduct of all or a material part of the Buyer's business or dispose of or threaten to dispose of a material part of the Buyer's assets.
 - (c). The Buyer or any guarantor is, or under legislation is presumed or taken to be, insolvent or cease to carry on the Buyer's business.
 - (d). A receiver, receiver and manager, administrative receiver or similar officer is appointed in respect of the Buyer or any guarantor.
 - (e). 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.
 - (f). A security interest becomes enforceable or is enforced.
- (10) **'PPSA'** means the Personal Properties Securities Act 2009 (Cth); The expressions **account, collateral, financing statement, financing change statement, inventory, proceeds, purchase money security interest (pmsi), 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.
- (11) **'PMSI'** means a purchase money security interest as defined by the PPSA;
- (12) **Terms and Conditions** mean these terms and conditions, as amended, modified, consolidated or replaced from time to time and located on Scalzo's website current at the time of delivery. They apply to any goods or services supplied or to be supplied to the Buyer or any third party at the Buyer's request. In the event of any significant amendment, Scalzo will use reasonable endeavours to notify the Buyer of that amendment.
- (13) Each time the Buyer places a written or verbal purchase order for goods with Scalzo or the Buyer accepts goods from Scalzo 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 purchase order placed or other document produced by the Buyer.
- (14) The Buyer will advise Scalzo if there are changes to the entity name, officers or management, the registered office, become a trustee of any trust or, cease to be so, or the constitution of any partnership of which the Buyer's is a member.
- (15) Any certificate signed by the Buyer, any director or any person authorised by the Buyer as to the amount due and payable by the Buyer is sufficient evidence of the Buyer's liability to Scalzo under these Terms and Conditions as at the date of any such certificate unless proven wrong.
- (16) 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.
- (17) These Terms and Conditions contain the entire agreement in respect of the supply of goods to us.
- (18) **Interpretation;**
 - (a) The singular includes the plural and the converse.
 - (b) A gender includes all genders.
 - (c) Defined terms include their corresponding grammatical forms

2. Quotations and Prices

- 2.1 Any price quoted by Scalzo to the Buyer for any goods is based on Scalzo's estimated cost of production, manufacture and/or supply at the time of quotation. The price quoted is subject to alteration by Scalzo due to any increase in Scalzo's costs between the date of quotation and the customer's confirmation.
- 2.2 Any price quoted in a purchase order or Agreement of Sale is based on and applies to any quantities, delivery dates, places of delivery and contract start and end dates set out in the Agreement of Sale. Scalzo is free to alter the price quoted in the purchase order or Agreement of Sale if there is any change in the quantity, delivery dates, and place of delivery or contract start and end dates.
- 2.3 Scalzo 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 Scalzo by any supplier of Scalzo's or as a result of any change of law, including increases in any taxes. Scalzo will its reasonable endeavours to notify the Buyer of any price increase in advance where possible.
- 2.4 Unless otherwise expressly agreed by Scalzo 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 Scalzo.
- 2.5 A quotation is not an offer by Scalzo to sell and may be withdrawn without notice. Any order given in respect of a quotation is not binding on Scalzo until accepted by Scalzo in writing.
- 2.6 The Buyer must pay for any goods by the date stated in the relevant invoice by electronic means or by direct debit if required in cash, cheque, bank cheque or credit card accepted by Scalzo. Unless agreed by both the Buyer and Scalzo, the payment must be free of any contra, counterclaim or any other deduction.

3. Orders - Orders accepted by Scalzo may not be cancelled or altered in whole or in part by the Buyer without Scalzo's written consent.

4. Terms of Payment - Net cash 30 days from date of invoice, but Scalzo 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 Scalzo's opinion, unsatisfactory.

5. Interest –

- 5.1 Where an account is not paid by the Buyer as provided in this Agreement Scalzo 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.
- 5.2 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%.

6. Claims

- 6.1 Once delivered, goods may not be returned unless defective or damaged in transit. Claims for defective or damaged goods must be given to Scalzo in writing within 7 days of delivery date or invoice date, whichever is the earlier. Scalzo will not be liable for any claim advised after that time. Claims are subject to inspection.
- 6.2 The Buyer must, subject to obtaining prior written authority from Scalzo, return a sample of the subject of a claim to Scalzo within 21 days after delivery of the goods.
- 6.3 Any claim relating to material supplied in the manufacturers or producers original packs will be passed by Scalzo to manufacturer or producer for action.
- 6.4 Scalzo 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.

7. Description – Any description of the goods is given in the way of identification only and the use of such description shall not constitute the contract of sale by description.

8. Implied Terms and Liability

- 8.1 Scalzo acknowledges that, under applicable State, Territory, and Commonwealth laws, certain conditions and warranties may be implied in the contract between Scalzo 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.
- 8.2 Subject to the above, Scalzo 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.
- 8.3 Scalzo's liability is expressly limited to a liability to pay to the purchaser an amount equal to: (1) the cost of replacing the goods; (2) the cost of obtaining equivalent goods; or (3) the cost of having the goods repaired, where repair, such as reprocessing is an option, whichever is the lowest amount.
- 8.4 Where so permitted the liability of Scalzo for a breach of a Non-excludable Right is limited, at Scalzo'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.

9. Indirect Loss - Subject to Clause 9, in no event shall Scalzo 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 Scalzo, its servants or agents, nor shall Scalzo be liable for special, incidental, indirect or consequential, or economic loss or damage suffered by the Buyer as a result of a breach by Scalzo 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.

10. Indemnity –

- 10.1 The Buyer shall indemnify and keep indemnified and hold Scalzo harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by Scalzo, and from and against all actions, proceedings, claims or demands made against Scalzo, 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 Scalzo adhering to instructions that the Buyer has given Scalzo about the goods.
- 10.2 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.
- 10.3 It is not necessary for Scalzo to incur expense or make a payment before enforcing a right of indemnity.

11. Delivery and Force Majeure

- 11.1 The Buyer agrees that Scalzo's Terms and Conditions current at the time of delivery apply to any order we place with Scalzo from time to time.
- 11.2 Any order placed by the Buyer with Scalzo is irrevocable.
- 11.3 Delivery to the Buyer will be at Scalzo premises or as requested by the Buyer, including any agent of the Buyer. If not collected after 14 days of any nominated delivery date, the Buyer must pay all storage costs. Scalzo will not be liable for any delays. All expenses relating to delivery, insurance, transit or storage of goods after delivery to the Buyer will be at the Buyer's cost.
- 11.4 Scalzo may stop goods in transit whether or not delivery has been made to the Buyer if the Buyer is in default at any time.
- 11.5 The Buyer irrevocably authorise Scalzo and any of Scalzo's lawful agents, at any reasonable time, to enter the Buyer's premises or any premises occupied by the Buyer or the Buyer's agents and re-take any goods and then to re-sell those goods and retain the proceeds of the sale without prejudice to Scalzo's rights to claim the balance of all moneys due. The Buyer indemnifies Scalzo in respect of any such entry. The provisions of this clause survive the termination of any security agreement that arises in respect of these Terms and Conditions.
- 11.6 Unless otherwise expressly agreed by Scalzo in writing the goods will be delivered ex works. Any time quoted for delivery is an estimate only. Scalzo 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.
- 11.7 Scalzo shall not be liable for any loss or damage to the Buyer 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 Scalzo's control including but not limited to fire, flood, drought, explosion, epidemic, 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 (a Force Majeure Event).
- 11.8 If Scalzo determines that it is unable to comply with any term or condition in the Contract by reason of a Force Majeure Event or that it is unable to deliver within a reasonable time or at all Scalzo may cancel the Contract. In the event of cancellation the Buyer shall have no claim against Scalzo 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 in or failure to deliver.
- 11.9 For the purposes of this clause freight or shipping space shall be deemed unavailable if Scalzo, having taken all reasonable steps to procure the same, has failed to do so. Scalzo 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 this contract.
- 11.10 Scalzo reserves the right to treat the action of any Government affecting the goods intended to satisfy this Contract 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 Scalzo to cancel the Contract by giving written notice of the cancellation to the Buyer. Forward goods are subject to safe arrival.
- 11.11 All payments under this Contract and under any other existing contract between the Buyer and Scalzo are to be made on the due date as a condition precedent to future deliveries under the Contract.

12. Permits and Notices - Scalzo agrees to make all reasonable inquiries concerning any notices, permits or fees concerning the goods that are required by legislation, regulations or by-laws. Scalzo agrees to obtain such notices or permits unless otherwise agreed in writing. Where Scalzo's reasonable inquiries fail to reveal any such notices, permits or fees any costs associated with obtaining or paying for them or for failing to do so shall be to the Buyer's account.

13. Bill of Lading - A Bill of Lading or Shipping Receipt shall be evidence of the time of shipment, and that goods were in good order and condition, and may contain special conditions required by the carrier, and need not necessarily provide for direct shipment. Production of a Bill of Lading or Shipping Receipt received by Scalzo shall be prima face evidence of the signature thereto and of the authority of the signer. Rejection by the Buyer shall at Scalzo's option be deemed to constitute shipment and or delivery and on rejection Scalzo may at its option sue for the price but such right shall be without prejudice to any of the other rights or remedies of Scalzo under this contract or the general law.

13.1 Where Scalzo on-sells documents to Buyer who collects container directly, unpacks stock and returns the empty container - Where Scalzo on-sells documents to Buyer who collects container directly, unpacks stock and returns the empty container, the Bill of Lading shall be assigned 'to order of the consignee' with Scalzo named as the notify party. The Buyer must inform Scalzo immediately of any damages to or discrepancies in stock counts and provide Scalzo with a supporting count and condition / warehouse report for the particular container. The number of free days to return the empty container shall be governed by the nominated carrier on the Bill of Lading and the precise free time and empty depot location should be sought from Scalzo or the carrier itself. Any detention fees shall be payable by the Buyer.

14. 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.

15. Right to deviate - Vessels shall have the right to deviate and call at any ports. Shipment means an offer of goods for carriage to vessel at port of shipment. The date of shipment or loading means the time of commencement of either operation. Shipment is permitted in more than one vessel providing other terms and conditions under this contract are complied with. Tran-shipment is permitted.

16. Property & Risk

- (a) The risk of loss or damage to the goods shall pass to the Buyer on delivery.
- (b) Until title passes to the Buyer, Scalzo will hold any goods supplied to the Buyer on trust and as Bailee for the Buyer.
- (c) 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 Scalzo at any time for those goods is paid to Scalzo. 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 Scalzo's goods in the product or mass calculated in accordance with Part 3.4 of the PPSA.
- (d) The Buyer must store any goods belonging to Scalzo separately from other goods in their possession so as to prevent any deterioration and clearly mark them as Scalzo goods.
- (e) The Buyer must comply with all applicable laws in relation to the transportation, delivery, handling and storage of any goods. Without limitation, any environmental and O H & S laws.
- (f) 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.

17. Rights in relation to the goods:

- 17.1** In connection with the goods while they remain the property of Scalzo, the Buyer agrees with Scalzo that:
- 17.1.1 the Buyer has no right or claim to any interest in the goods to secure any liquidated or unliquidated debt or obligation Scalzo owes to the Buyer;
- 17.1.2 the Buyer cannot claim any lien over the goods;
- 17.1.3 the Buyer will not create any absolute or de feasible interest in the goods in relation to any third party except as may be authorized by Scalzo;
- 17.1.4 where the Buyer is in actual or constructive possession of the goods:
- 17.1.4.1 the Buyer will not deliver them or any document of title to the goods to any person except as directed by Scalzo; and
- 17.1.4.2 it is in possession of the goods as a Bailee of those goods and owes Scalzo the duties and liabilities of a Bailee.
- 17.2** In connection with the goods, Scalzo states to the Buyer that:
- 17.2.1 Scalzo has the right to supply the goods to the Buyer;
- 17.2.2 the activities of the Buyer in supplying the goods do not infringe the rights of the owner of the goods (where Scalzo is not the owner of the goods).
- 17.2.3 if the goods are not owned by Scalzo, that Scalzo is authorized to supply the goods to the Buyer.
- 17.3** Scalzo and the Buyer agree that:
- 17.3.1 the property of Scalzo in the goods remains with Scalzo until Scalzo has been paid in full for the goods under all individual contracts for the supply of the goods between Scalzo and the Buyer;
- 17.3.2 the Buyer is a Bailee of the goods until such time as property in them passes to the Buyer and that this bailment continues in

- relation to each of the goods until the price of the goods has been paid in full;
- 17.3.3 pending payment in full for the goods, the Buyer:
- 17.3.3.1 must not supply any of the goods to any person outside of its ordinary or usual course of business;
- 17.3.3.2 must not allow any person to have or acquire any security interest in the goods;
- 17.3.3.3 must insure the goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorized to conduct the business of insurance in the place where the Buyer carries on business;
- 17.3.3.5 Must not remove, deface or obliterate any identifying plate, mark or number on any of the goods.

- 17.4** Despite clause 17.3, if the Buyer supplies any of the goods to any person before all monies payable by the Buyer have been paid to Scalzo (and have not been claimed or clawed-back by any person standing in the place of or representing the Buyer), the Buyer agrees that:
- 17.4.1 It holds the proceeds of re-supply of all the goods on trust for and as agent for Scalzo immediately when they are receivable or are received;
- 17.4.2 It must either pay the amount of the proceeds or re-supply to Scalzo 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 Scalzo;
- 17.4.3 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 Scalzo until Scalzo is paid in accordance with clause 17.3.1 when the property in the goods (including the accessory) passes to the Buyer;
- 17.4.4 if the Buyer fails to pay for the goods within the period of credit (if any) extended by Scalzo to the Buyer, Scalzo may recover possession of all the goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that Scalzo has an irrevocable license to do so.

18. Charge overland –

- 18.1 In consideration of Scalzo selling the goods to the Buyer, the Buyer agrees to charge all the Buyer's interest in land in favor of Scalzo to secure payment of all monies due to Scalzo, whether contingently or otherwise. The Buyer acknowledges that Scalzo may lodge a caveat pursuant to the charge and/or mortgage hereby created;
- 18.2 Upon the written request of Scalzo to provide an instrument of mortgage pursuant to these Terms and Conditions, the Buyer agrees to execute an Instrument of Mortgage prepared by Scalzo within seven (7) days of receiving the Instrument of Mortgage.
- 18.3 In the event that the Buyer fails, refuses or neglects to provide Scalzo with an executed Instrument of Mortgage in accordance with clause 17.2 above, the Buyer appoints Scalzo as the attorney of the Buyer to execute an Instrument of Mortgage to secure payment of all monies due to Scalzo under these Terms and Conditions.
- 18.4 Any stamp duty, land registration fees and solicitor-client legal costs relating to the charge and/or mortgage shall be paid by the Buyer upon request by Scalzo. The Supplier may pay any such cost or expense itself and may recover the same from the Buyer as monies owing to Scalzo.

19. Performance and Representations - The Buyer acknowledges that neither Scalzo 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.

20. Instalments -The failure of Scalzo to deliver any instalment shall not entitle the Buyer to cancel the balance of the order. In the event of the Buyer making default in respect of any instalment, Scalzo may elect to treat the default as a breach of contract relating to each other instalment.

21. Default in Payment –

- 21.1 Scalzo will treat any default by the Buyer in payment of any monies due to Scalzo as a breach of these Terms and Conditions. Scalzo reserves the right thereupon to cease work on the relevant order and all other orders placed by the Buyer and hold all the Buyer's work until the due payment or payments are made. Recurring payments default may, at Scalzo's discretion, lead to the Buyer's account with Scalzo being closed and any further order placed by the Buyer and accepted by Scalzo will only be processed when prepaid. The buyer shall pay all of Scalzo's costs and expenses (including legal costs determined as between Solicitor/own client and mercantile agents) which may be incurred in the recovery or attempted recovery of overdue amounts from the buyers.
- 21.2 If Scalzo reasonably anticipates that the Buyer will fail to pay for the goods otherwise fail to observe and or perform the Buyer's obligations under this Contract, Scalzo may determine the order for the goods. Determination of the order pursuant to this clause shall not affect the rights of Scalzo to recover from the Buyer any monies due to Scalzo by reason of the order or damages in breach thereof. If:
- the Buyer makes default in any payment due hereunder;
 - a resolution is passed or proposed or a petition is presented or an application made for winding up of the Buyer;
 - a Receiver or a Receiver and Manger is appointed of the property or any part of the property of the Buyer;
 - the Buyer makes or proposes to make any arrangement with its creditors;
 - execution is levied upon the assets of the Buyer for an amount in excess of \$1,000.00 and is not satisfied within seven days, then Scalzo

may at its option withhold further deliveries of the goods or cancel the Contract without prejudice to its rights under this Contract provided that Scalzo may at any time and from time to time upon such terms as it may determine waive any of its rights under this clause without prejudice to its rights to subsequently rely upon such clause.

22. Currency - If, due to exceptional circumstances, Scalzo agrees to the Buyer's request to cancel an order, any fluctuation in currency related to the cancellation of the order shall be passed to the Buyer. When a contract/order is booked with an open currency the onus is on the Buyer to advise when the contract/order is to be covered. If the Buyer does not provide any advice to Scalzo, the Goods will be covered at the rate of the day at time of payment of goods or upon receipt of the container, whichever is applicable.

23. Waiver - Failure by Scalzo to insist upon strict performance of any term, warranty or condition of the Deed or these terms and conditions of sale shall not be deemed as a waiver thereof or of any rights Scalzo may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

24. Intellectual Property Rights - The Buyer warrants that any design or instruction furnished to Scalzo shall not be such as will cause Scalzo 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 the Buyer agrees to indemnify Scalzo against any infringement or unauthorized use of the intellectual property rights arising out of the manufacture or use of the goods and it is especially 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 Scalzo.

25. Inspection - Any inspection or test agreed upon prior to acceptance of the goods by the Buyer must, unless otherwise agreed, be carried out at Scalzo's premises. In the event of any specialized inspection being required or special tests prescribed by the Buyer, the cost shall be to the Buyer's account. In the case of any inspection prior to acceptance of the goods, Scalzo accepts no responsibility for any defects in the goods which are identified once the goods in question have left Scalzo's premises but which should reasonably have been detected upon inspection at Scalzo's premises.

26. Instructions by the Buyer - The Buyer shall indemnify Scalzo from and hold it harmless against all losses, expenses or liability whatsoever and howsoever incurred by Scalzo as result of compliance or adherence by Scalzo with any instruction of the Buyer in relation to the goods.

27. Notices

- 27.1 Any notice to be given by the Buyer to Scalzo shall be sent to Scalzo's valid business address or the valid email address of a current Scalzo employee with whom the Buyer has been dealing in relation to the goods (a "valid Scalzo address"). No notice shall be deemed to have been given until it is actually received at a valid Scalzo address.
- 27.2 Any notice required under these Terms and Conditions may be given by any Scalzo party, any director or authorised person of Scalzo.
- 27.3 Any notice may be given at the Buyers registered address or other address stipulated in application 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

28. Severance - If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision in the Agreement and each such other provision shall remain in full force and effect.

29. 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). 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. 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.

30. Execution of Credit Application as a Deed - Where the Buyer completes a credit application the parties acknowledge and accept that the terms and conditions of the application are executed as a Deed.

31. Governing Law - 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.

32. Security Interest - The Buyer gives the Company a Security Interest in all of the Buyer's present and after-acquired property in which Goods or materials supplied or financed by the Company have been attached or incorporated. The Buyer agrees that these Terms and Conditions, including any order and invoice covering any goods ordered by the Buyer, together constitute a security agreement for the purposes of the PPSA.

33. Personal Properties Securities Act 2009

- 33.1 The Buyer hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of Scalzo. The Buyer agrees to grant a "Purchase Money Security Interest" ("PMSI") to Scalzo.
- 33.2 The Buyer acknowledges and agrees that by assenting to these terms the Buyer grants a security interest (by virtue of the retention of title clause in these Terms and Conditions of Trade) to Scalzo and all Goods previously supplied by Scalzo 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 purchase order.
- 33.3 The Buyer undertakes to:
- 33.3.1 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 Scalzo may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");
- 33.3.2 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;
- 33.3.3 give Scalzo 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);
- 33.3.3 the Buyer waives any rights it may have under sections 115 of the PPSA upon enforcement.
- 33.4 Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by Scalzo, 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.
- 33.5 The Buyer agrees that immediately on request by Scalzo the Buyer will procure from any persons considered by Scalzo to be relevant to its security position such agreement and waivers as Scalzo may at any time require.
- 33.6 The Buyer gives Scalzo a security interest in:
- a). all goods supplied by Scalzo that are described in any invoice, delivery or shipping documentation of Scalzo's or order documentation that the Buyer give Scalzo. Without limitation, this includes any Scalzo 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 Scalzo as the attorney by way of security for the purposes of this clause and in respect of any enforcement powers.
- 33.6.1 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.
- 33.7 Any security interest arising secures the due and punctual payment of all moneys payable by the Buyer under these Terms and Conditions.
- 33.8 Any account arising by virtue of any sale of any goods supplied to the Buyer takes effect as a transfer.
- 33.9 Scalzo may register a financing statement, including any financing change statement, on the PPSR.
- 33.10 The Buyer acknowledges that until the Buyer have paid for all goods that the Buyer are not the owner of those goods and, as such, if chapter 4 of the PPSA applies to these Terms and Conditions, then the Buyer contract out of the enforcement provisions referred to in s 115(1), except sections 120 and 121.
- 33.11 To the extent the law allows, Scalzo 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.

34. Enforcement

- 34.1 If an Event of Default occurs or is continuing, Scalzo may *immediately* enforce the necessary Terms and Conditions to obtain payment for goods supplied. Without limitation this may include any one or more of the following:
- a). retaking possession of any goods not paid for by the Buyers;
- b). suspending delivery of any goods on order and/or refusing to process any unfulfilled orders;
- c). enforcing any security interest;
- d). requiring payment in cash on delivery; and/or
- e). requiring payment of any proceeds held by the Buyer in a separate account or otherwise.
- f). appointing 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*.
- 34.2 The powers exercisable by Scalzo are those given by these Terms and Conditions, including the PPSA, at law or in equity.
- 34.3 In the event that the Buyer has not been paid for the sale of Scalzo's goods by any customer of the Buyer, at Scalzo's option, Scalzo 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. Scalzo will be entitled to issue proceedings in the Buyer's name against the Buyer's customer for recovery of that account for Scalzo's benefit. The Buyer indemnifies Scalzo 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 Scalzo's goods.

- 34.4 At Scalzo's discretion 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.
- 34.5 The Buyer will pay enforcement costs in relation to the PPSA and for any legal costs incurred by an agent of Scalzo.

35. Negative pledge

- 35.1 The Buyer agrees not to grant any security interest over any of the Buyer's personal property except in the ordinary course of business.
- 35.2 The Buyer agrees not to grant a security interest in any account as original collateral under s 64 of the PPSA.

36. Confidentiality

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