

TERMS & CONDITIONS

TERMS & CONDITIONS OF SALE - SUNBATHER PTY LTD.

CLAUSE 1 - DEFINITIONS AND INTERPRETATIONS.

1.1 The following definitions apply unless otherwise stated:

- 'Agreement' These Terms and Conditions together with the Quotation and the Credit Terms (if applicable);
- 'Business Day' Any day except a Saturday, a Sunday, and any public holiday in Victoria;
- 'Buyer' Any person or entity purchasing, or who has purchased, Products or Services from Sunbather, which, for the avoidance of doubt, includes a Reseller and a Trade Buyer;
- 'Collateral' Has the meaning given to it in Clause 18
- 'Credit Terms' The terms and conditions set out in Sunbather's application form for a 30 day term credit facility (as amended or replaced from time to time);
- 'Dispute' Has the meaning given to it in Clause 20;
- 'GST' Has the meaning given to that term in the GST Law;
- 'GST Law' Has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended or replaced from time to time);
- 'Hours of Operation' Between 8.30 AM and 5.00 PM each Business Day;
- 'Intellectual Property Rights' All rights in and to any copyright, trademark, trading name, design, patent, know how (trade secrets) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic field and any application or right to apply for registration of any of these rights and any right to protect or enforce any of these rights;
- 'Liability' Any and all claims, proceedings, losses, liability, damage, demands, costs, charges and expenses (including Sunbather's legal costs);
- 'Licence' Has the meaning given to it in Clause 11.6;
- 'Notice' Has the meaning given to it in Clause 6;
- 'PPSA' The Personal Property Securities Act 2009 (Cth) (as amended or replaced from time to time);
- 'Purchase Price' The price specified in the Quotation, subject to Clause 17.2;
- 'Product(s)' The products described in a Quotation;
- 'Quotation' The written statement issued by Sunbather in accordance with Clause 2 in response to the Buyer's request for the supply of Products and/or Services, or an enquiry relating to the price of any Products and/or Services;
- 'Reseller' A person who purchases Products solely for resale to a third party end user and/or provides Services to a third party;
- 'Security Interest' Has the meaning given to it in the PPSA;
- 'Services' The installation of Products and maintenance and repairs to Products described in a Quotation;
- 'Sunbather' Sunbather Pty Ltd (ABN 81 004 898 631) (contact number: 1800 228 437; email: info@sunbather.com.au);
- 'Sunbather warehouse' Sunbather's warehouse and principal place of business at 2174 Frankston-Flinders Road, Hastings, Victoria 3915, or such other address as notified by Sunbather from time to time;
- 'Terms and Conditions' These terms and conditions of sale as varied or modified from time to time;
- 'Trade Buyer' A person who has been granted a 30 day term credit facility by Sunbather, in accordance with the Credit Terms.

1.2 In this Agreement, except where the context otherwise requires:

- (i) another grammatical form of a defined word or expression has a corresponding meaning;
- (ii) a reference to AS, dollar or \$ is to Australian currency;
- (iii) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (iv) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (v) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (vi) all samples, drawings, descriptive matter and specifications issued by Sunbather and/or any relevant manufacturer of the Products are issued or published for illustration only and do not form part of this Agreement or any Quotation;
- (vii) all third party terms and conditions are excluded from the Agreement and shall not, in part or in whole, be binding upon Sunbather unless Sunbather otherwise agrees in writing;
- (viii) to the extent that the Buyer is a Trade Buyer, the Credit Terms shall apply to the Trade Buyer in addition to these Terms and Conditions and any accepted Quotation; and
- (ix) unless these Terms and Conditions expressly provide otherwise, in the event of any inconsistency between these Terms and Conditions, the Credit Terms (if applicable) and a Quotation, such inconsistency shall be resolved by giving precedence (to the extent of the inconsistency) in the following sequence:
 - a. the Credit Terms (if applicable);
 - b. the Quotation; and
 - c. these Terms and Conditions.

CLAUSE 2 - QUOTATIONS

- 2.1 At the Buyer's request, Sunbather may issue a Quotation in connection with the potential or proposed supply of Products and/or Services.
- 2.2 For the avoidance of doubt and unless Sunbather agrees otherwise in writing:
 - (i) any Quotation issued shall set out:
 - a. the Buyer's name and invoice address;
 - b. the address to which the Products are to be delivered, or at which the Services are to be performed; and
 - c. the details of the Products and/or Services to be provided, including the Purchase Price, the amount of the deposit payable upon acceptance of the Quotation, the payment process, and the date for delivery of Products or performance of Services;
 - (ii) any Quotation issued is subject to these Terms and Conditions;
 - (iii) any Quotation issued shall remain valid for thirty (30) days from the date of issue; and
 - (iv) any verbal quotation made by an employee, representative or agent of Sunbather is subject to written confirmation in the form of a Quotation.
- 2.3 Upon receipt of a Quotation from Sunbather, the Buyer may:
 - (i) reject the Quotation; or
 - (ii) accept the Quotation by:
 - a. signing and dating the Quotation; and
 - b. unless the Buyer is a Trade Buyer, making full payment in clear funds of the deposit in accordance with the Quotation,and, for the avoidance of doubt, if the Buyer is a Trade Buyer, that Trade Buyer must pay for the Products and Services in accordance with the Credit Terms (including any deposit as may be required from time to time).
- 2.4 For the avoidance of doubt:
 - (i) no Quotation shall be binding on Sunbather until the Buyer accepts the Quotation in accordance with Clause 2.3(ii);
 - (ii) Sunbather may in its sole discretion include in any Quotation any discount, rebate or commission offered or given by Sunbather to the Buyer; and
 - (iii) if a Quotation would result in the Trade Buyer exceeding the credit limit under the Credit Terms Sunbather may at its sole discretion reject or withdraw the Quotation.
- 2.5 Upon the Buyer's acceptance of a valid Quotation, these Terms and Conditions, together with the Quotation and the Credit Terms (if applicable), shall constitute the entire understanding and agreement between Sunbather and the Buyer in relation to the supply of the Products and/or Services, and shall supersede all prior representations and understandings, whether oral or written.

CLAUSE 3 - PAYMENT AND INTEREST

- 3.1 The Buyer must make payment for the Products and/or Services in accordance with:
 - (i) the terms of the Quotation; or
 - (ii) to the extent that the Buyer is a Trade Buyer, the Credit Terms, and otherwise in accordance with the remainder of this Clause 3.
- 3.2 Subject to Clause 3.1, and unless otherwise stated, all amounts under this Agreement are expressed to exclude delivery fees (if applicable), any applicable taxes and other imposts, including but not limited to, GST and duties.
- 3.3 The Buyer must pay interest on any outstanding amount at the rate that is 2% above the prevailing rate imposed by the Penalty Interest Rates Act 1983 (Vic), and such interest shall accrue daily from:
 - (i) the day that the amount becomes outstanding under the Quotation; or
 - (ii) to the extent that the Buyer is a Trade Buyer, the day that the amount becomes outstanding under the Credit Terms,until the outstanding amount and any applicable interest has been paid in full.
- 3.4 To the extent that the Credit Terms also impose interest on any outstanding amounts, these Terms and Conditions shall apply for the purposes of calculating the interest payable on any outstanding amounts and, for the avoidance of doubt, there shall be no double recovery of interest payable on any outstanding amounts.

CLAUSE 4 - GST

- 4.1 Capitalised terms used in this Clause 4 but not otherwise defined shall have the meaning given to them in the GST Law.
- 4.2 Subject to Clause 4.3, if GST is imposed on any Supply made by Sunbather to the Buyer under or in accordance with this Agreement, then:
 - (i) the Buyer must pay to Sunbather an additional amount equal to any GST payable by Sunbather on or for the Taxable Supply; and
 - (ii) payment of the additional amount must be made by the Buyer at the same time and in the same manner as payment for the Taxable Supply.
- 4.3 Sunbather's right to payment of the additional amount under this Clause 4 is subject to Sunbather issuing a valid tax invoice to the Buyer at or before the time of payment.

CLAUSE 5 - TITLE AND PROPERTY IN GOODS

- 5.1 All risk in respect of the Products shall immediately pass to the Buyer from the time the Products leave Sunbather's warehouse (whether as a result of collection by the Buyer directly, or collection by a delivery services for delivery to the Buyer).
- 5.2 Title to the Products shall be retained by Sunbather and shall not pass to the Buyer until payment in clear funds of all amounts due to Sunbather in connection with this Agreement (including any retention sums, freight charges, taxes and interest).

- 5.3 Until title to the Products passes to the Buyer in accordance with Clause 5.2:
- (i) the Buyer must store or keep the Products in a manner which clearly identifies the Products as the property of Sunbather;
 - (ii) the Buyer must keep all Products insured against theft, damage and destruction on behalf of Sunbather (and if the Buyer fails to insure the Products, Sunbather may do so and the Buyer must pay the cost of insurance invoiced to the Buyer by Sunbather);
 - (iii) Sunbather may enter premises where the Products are stored to inspect them on reasonable notice; and
 - (iv) the Buyer acknowledges that it holds the Products as Sunbather's bailee.
- 5.4 The Buyer may on-sell the Products prior to payment in full of the Purchase Price as agent for Sunbather provided that the proceeds received from the on-sale are held in trust for Sunbather until payment in full of the Purchase Price and are not mixed with other funds of the Buyer until the Purchase Price is paid to Sunbather.

CLAUSE 6 - RETURNS AND SHORT SUPPLY

- 6.1 Except to the extent that Clause 7 applies, and to the extent permitted by law:
- (i) no return of any Product is allowed following delivery or collection from Sunbather's warehouse, unless with Sunbather's prior written approval;
 - (ii) Sunbather may at its sole discretion approve a return of a Product on any terms and conditions acceptable to it (including without limitation a requirement that the Buyer pay a reasonable fee, which, to the extent that the Product is a custom-manufactured Product, shall be an amount equal to 20% of the Purchase Price); and
 - (iii) the Buyer acknowledges and agrees that:
 - a. if Sunbather approves a return of a Product, Sunbather will issue the Buyer with a store credit, to be used in respect of future purchases, upon the Buyer's satisfaction of Sunbather's terms and conditions referred to in Clause 6.1(ii) (if any) (and for the avoidance of doubt, no refunds will be made to the Buyer in respect of any returned Products); and
 - b. the Buyer is responsible for all handling, storage fees, freight, duty, or other charges incurred or payable to return the Product to Sunbather's notified delivery point; and
 - c. any fees charged by Sunbather in accordance with this Clause 6.1 is a reasonable fee, having regard to the nature of the Products returned.
- 6.2 Except where an accepted Quotation has been varied by agreement of the parties, if the Products supplied do not meet the requirements set out in the Quotation:
- (i) within five (5) Business Days after the Products are delivered to or collected by the Buyer, the Buyer must provide to Sunbather written notice adequately identifying and providing details of the alleged issue with the supply, together with proof of purchase and any photographic or other evidence to support the claim (if required) (and for the avoidance of doubt, no claim under this Clause 6.2 shall be valid unless these notice requirements are complied with) ('Notice');
 - (ii) upon receipt of a Notice, Sunbather will assess the Buyer's claim and the Buyer must comply with any reasonable request for information made by Sunbather for the purposes of assessing the Buyer's claim (and the Buyer acknowledges that failure to comply with a reasonable request for information may result in the Buyer's claim being refused); and
 - (iii) if, and to the extent that, Sunbather determines there to have been an issue in complying with the Quotation, to the extent permitted by law Sunbather may at its election either:
 - a. supply additional Products or equivalent Products to meet the requirements set out in the Quotation; or
 - b. issue a store credit equivalent to the amount paid by the Buyer relating to the Products not received or the requirements in the Quotation not met.

CLAUSE 7 - WARRANTY

- 7.1 Except as expressly provided in this Agreement (including Clause 8), all other terms, conditions, warranties and guarantees whatsoever, whether express or implied, are hereby excluded from this Agreement to the maximum extent permitted by law.
- 7.2 Subject to Clause 9, Sunbather warrants that:
- (i) all Products provided under this Agreement will be of acceptable quality and meet the intended design and performance criteria as stated in the relevant product specification published by Sunbather or the manufacturer of the Product, if any; and
 - (ii) all Services provided under this Agreement will be executed with appropriate skill and diligence and are free from defective workmanship and materials.
- 7.3 To the extent Sunbather is able to do so, Sunbather assigns to the Buyer any warranty received from the manufacturer of the Product.
- 7.4 Unless otherwise provided in a manufacturer's warranty assigned to the Buyer, the warranties in Clause 7.2 shall be enforceable solely by the Buyer, shall not be enforceable against Sunbather by any third party and shall be valid in accordance with Sunbather's warranty documentation (located on its website www.sunbather.com.au).
- 7.5 Subject to Clauses 7.8 and 7.10, if the Buyer wishes to make a warranty claim under this Clause 7, including under Sunbather's warranty documentation (located on its website www.sunbather.com.au), or at law:
- (i) the Buyer must (at its own expense) deliver to Sunbather written notice of the claim adequately identifying and describing the basis on which the claim is being made as well as the circumstances giving rise to the claim, together with proof of purchase and any photographic or other evidence supporting the claim, within thirty (30) days of the date of delivery or collection of the Products or performance of the Services (as applicable) or otherwise within the applicable warranty period set out in Sunbather's warranty documentation (and for the avoidance of doubt, no warranty claim shall be valid unless these notice requirements are complied with); and

- (ii) upon receipt of the warranty claim made under Clause 7.5(i), Sunbather will assess the Buyer's claim and the Buyer must comply with any reasonable request for information made by Sunbather for the purposes of assessing the Buyer's claim (and the Buyer acknowledges that failure to comply with a reasonable request for information may result in the Buyer's claim being refused).
- 7.6 Subject to Clause 7.7 and Clause 9, if Sunbather determines that the Buyer's warranty claim is valid, then to the extent permitted by law, Sunbather may, at its sole discretion, elect to:
- (i) in relation to any Products supplied:
 - a. replace the Products subject of the claim or provide equivalent Products;
 - b. repair the Products subject of the claim; or
 - c. provide a store credit for the Products subject of the claim;
 - (ii) in relation to any Services supplied:
 - a. re-supply the Services subject of the claim; or
 - b. provide a store credit for the Services subject of the claim.
- 7.7 If Sunbather elects to replace a Product or provide equivalent Products:
- (i) Sunbather is under no obligation to provide the new Product until the original Product is returned; and
 - (ii) the Buyer shall be responsible for all handling, storage fees, freight, duty or other related charges for the return of the original Product to Sunbather's notified delivery point.
- 7.8 To the extent permitted by law and without limitation to Clause 9, Sunbather will not be liable for breach of this Agreement or any warranty provided if the Buyer has:
- (i) misused the Product (including by using the Product for an abnormal purpose or a purpose that they were not designed or intended to be used for, or using the Product in an abnormal manner or manner inconsistent with any Product specifications published by Sunbather or the relevant manufacturer);
 - (ii) modified or otherwise changed the Products; or
 - (iii) not followed all required inspection and maintenance requirements as specified by the manufacturer or Sunbather.
- 7.9 The Buyer indemnifies Sunbather against any and all Liability suffered or incurred by Sunbather as a result of or in connection with any of the circumstances described in Clause 7.8.
- 7.10 For the avoidance of doubt and without limitation to Clause 9, it is the Buyer's responsibility to satisfy itself that the Products are suitable for the purpose for which they are purchased and, to the extent permitted by law, Sunbather shall not be liable in any way for any Liability (including direct, indirect, or consequential) arising from the failure of the Buyer to so satisfy itself.
- 7.11 Subject to Clause 7.1 and Clause 9, the benefits given to the Buyer in this Clause 7 are in addition to the rights or remedies available to the Buyer at law, to the extent that those rights or remedies cannot be excluded.

CLAUSE 8 - CONSUMER GUARANTEES

- 8.1 Capitalised terms used in this Clause 8 but not otherwise defined shall have the meaning given to them in the Competition and Consumer Act 2010 (Cth).
- 8.2 Sunbather's Products and Services come with guarantees that cannot be excluded under the Australian Consumer Law, whereby:
- (i) for Major Failures with the Service, the Buyer is entitled:
 - a. to cancel the Buyer's Agreement with Sunbather; and
 - b. to a refund for the unused portion, or to compensation for its reduced value;
 - (ii) for Major Failure with Products, the Buyer is also entitled to choose a refund or replacement for the Products;
 - (iii) if a failure with the Products or a Service does not amount to a Major Failure, the Buyer is entitled to have the failure rectified in a reasonable time, and if this is not done the Buyer is entitled to a refund for the Products and to cancel the Agreement for the Service and obtain a refund of any unused portion; and
 - (iv) the Buyer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Products or Service.
- 8.3 Notwithstanding Clause 8.2, to the extent permitted by law:
- (i) Sunbather's liability for a breach of any guarantee that cannot be excluded under the Australian Consumer Law is hereby limited to the lowest of the remedy available to the Buyer under the Australian Consumer Law; and
 - (ii) this Clause 8.3 shall apply to the extent of any inconsistency with the Credit Terms (if applicable)

CLAUSE 9 - LIMITATION OF LIABILITY

- 9.1 To the maximum extent permitted by law, Sunbather shall not be liable to the Buyer for any Liability in the nature of consequential or indirect loss (including any indirect, special, punitive or exemplary damages, loss of anticipated or actual revenue or profits, or loss of opportunity or a failure to realise anticipated savings or time costs) arising under, or in connection with, this Agreement and its performance.
- 9.2 Except as expressly provided in these Terms and Conditions, and to the extent permitted by law, Sunbather will have no Liability to the Buyer, however arising and under any cause of action including without limitation in tort or for breach of contract, in respect of any Liability attributable solely to any act, neglect or default on the part of the Buyer or to the extent that the Liability has been increased as a result of any act, neglect or default on the part of the Buyer.
- 9.3 To the extent permitted by law, Sunbather's total aggregate liability arising under this Agreement in respect of any single claim is limited to the Purchase Price actually received by Sunbather in connection with the relevant Quotation that is the subject of the claim.
- 9.4 Nothing in this Agreement shall be construed as a limitation or exclusion of any right or remedy available to Sunbather at law.

CLAUSE 10 - PRE-EXISTING EQUIPMENT AND INFRASTRUCTURE.

10.1 For the avoidance of doubt, Sunbather is not responsible for and has no liability for the condition of or fit for purpose of or repair works of any and all pre-existing equipment and infrastructure; including pool related pipework, filtration and chlorination systems, cleaners, pipework leaks, detection & repair works, existing roof or framework damage, rusted roofs, or damaged tiles. If any of the existing pool related equipment, infrastructure, roof infrastructure or pipework prevents or inhibits (the pool heating system) installed by Sunbather from subsequently working effectively, the consumer must still pay and will still be liable to Sunbather for the total invoiced amount for the installed system.

It is solely the responsibility of the homeowner to source and provide spare roof tiles if any are damaged during installation and known old or brittle tiles are to be reported to Sunbather prior to Installation.

CLAUSE 11 - RESALE

11.1 This Clause 11 shall apply to the extent that the Buyer is a Reseller.

11.2 The Reseller must not:

- (i) advertise for sale on the Reseller's website, or any other website, any Products purchased from Sunbather, unless the Reseller first obtains written permission from Sunbather who may at its absolute discretion, refuse, amend the terms of permission or withdraw permission at any time; or
- (ii) represent that Sunbather gives any warranty in relation to Products and/or Services other than the warranties contained in these Terms and Conditions or as otherwise specified in writing by Sunbather.

11.3 The Reseller warrants that it:

- (i) has, and at all times will, maintain adequate financial, physical and personnel resources, including personnel with appropriate skills, experience and qualifications in the resale of Products and the provision of Services; and
- (ii) will ensure that its personnel will perform Services and other work promptly and diligently to a high standard and in accordance with all instructions, guidelines, manuals or specifications provided by Sunbather in relation to the Products or the Services from time to time.

11.4 The Reseller indemnifies Sunbather against any and all Liability that Sunbather may sustain or incur as a result of, whether directly or indirectly, any third party warranty claim to the extent that the claim has arisen from the Reseller's conduct (including without limitation incorrect installation and failure to adhere to Sunbather's installation manuals and specifications) or relates to any warranties given by the Reseller above and beyond those that are mandated by law and which cannot be excluded.

11.5 The Reseller may request that Sunbather grant it a licence to use certain Intellectual Property Rights of Sunbather in connection with the resale of the Products.

11.6 If Sunbather, in its absolute discretion, agrees to the Reseller's request for the grant of a licence, then:

- (i) the licence granted to the Reseller shall be a revocable, non-exclusive, non-transferrable and royalty-free licence for use only in connection with the Products ('Licence');
- (ii) the Licence shall at all times be subject to Clauses 12.1 and 12.3 and any other terms and conditions that Sunbather may impose (including, without limitation, terms as to the scope of the Licence and its manner of use); and
- (iii) Sunbather may at any time in its absolute discretion:
 - a. amend the terms of the Licence; or
 - b. revoke the Licence.

CLAUSE 12 - INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

12.1 For the avoidance of doubt:

- (i) all Intellectual Property Rights subsisting in the Products and/or Services or otherwise owned by Sunbather shall remain the property of Sunbather;
- (ii) all Intellectual Property Rights created in connection with the supply of the Products and/or Services shall vest in Sunbather on its creation; and
- (iii) subject to Clause 11.6, nothing in this Agreement shall constitute a sale, assignment, transfer, license or similar of any Intellectual Property Right to the Buyer or any third party.

12.2 Subject to Clause 11.6, and unless with Sunbather's prior written consent, the Buyer must not:

- (i) disclose to any third party any information that is confidential to Sunbather or the manufacturers of Sunbather's Products, which shall include without limitation information concerning the Intellectual Property Rights of Sunbather or the manufacturers, except so far as it may be necessary to its agents or employees if required for the normal use and maintenance of the Products or if disclosure is required by law; and
- (ii) copy, modify, infringe or misappropriate any Intellectual Property Rights of Sunbather or the manufacturers.

12.3 The Buyer:

- (i) indemnifies Sunbather against any and all Liability that Sunbather may sustain or incur as a direct or indirect result of the Buyer's breach of the Intellectual Property Rights of Sunbather or a manufacturer, including breach of the terms of the Licence (if applicable); and
- (ii) acknowledges that failure to comply with this Clause 12 constitutes a material breach of the Agreement and may result in legal action being commenced by Sunbather against the Buyer in accordance with Clause 20.

CLAUSE 13 - PRIVACY

13.1 Sunbather's privacy policy (as updated from time to time) is incorporated into these Terms and Conditions by reference, and can be viewed at www.sunbather.com.au.

13.2 The Buyer acknowledges and agrees that:

- (i) Sunbather may use, collect and otherwise handle any personal information that the Buyer provides in connection with this Agreement and in accordance with its privacy policy; and

- (ii) where required, Sunbather may supply the Buyer's information to third parties for the purpose of registering any Security Interest it holds.

CLAUSE 14 - DEFAULT

14.1 The Buyer is in default if:

- (i) it fails to make a payment to Sunbather in accordance with this Agreement (in particular Clause 3);
- (ii) being a natural person, it commits an act of bankruptcy;
- (iii) being a corporation, it has an administrator, receiver, receiver and manager, provisional liquidator, liquidator or controller appointed over its assets or any resolution to wind up the company is passed; or
- (iv) it commits a material breach of this Agreement, including without limitation breach of its obligations under Clause 12 and Clause 18, each being an 'Event of Default'.

14.2 At any time there is an Event of Default subsisting, Sunbather may:

- (i) demand immediate payment of all outstanding amounts owed by the Buyer to Sunbather, including any interest under Clause 3.3 and any amounts which may not otherwise have been then due and payable; and
- (ii) without notice:
 - a. repossess any Products for which payment is outstanding, and for these purposes Sunbather is irrevocably authorised by the Buyer to enter the Buyer's premises (or any premises under the control of the Buyer as agent of the Buyer if the Products are stored at such premises) and use reasonable force to take possession of the Products without liability for the tort of trespass, negligence or any Liability to the Buyer or anyone claiming through the Buyer whatsoever;
 - b. disallow any discounts, rebates or commissions otherwise claimable by the Buyer in accordance with a Quotation;
 - c. recover any monies owed to it by the Buyer by setting off such amounts (together with interests and costs of collection) against any sum owed to the Buyer by Sunbather;
 - d. suspend or refuse any further delivery of Products and/or Services under any agreement (including this Agreement) between Sunbather and the Buyer; or
 - e. terminate this Agreement,

and the parties acknowledge and agree that Sunbather's rights under this Clause 14.2 are without limitation to any other rights or remedies available to Sunbather under this Agreement (including for the avoidance of doubt under Clause 5 and Clause 18) and at law.

CLAUSE 15 - INDEMNIFICATION

Without limitation to any other provision of this Agreement, the Buyer indemnifies and holds harmless Sunbather, its agents and/or employees, from and against any and all Liability (including any legal fees and recovery or enforcement costs) suffered or incurred by Sunbather, its agents and/or employees, as a result of or in connection with:

- 15.1 any Event of Default;
- 15.2 any breach or alleged breach of this Agreement by the Buyer;
- 15.3 with respect to the Products delivered under this Agreement, any handling, installation or use by the Buyer (including the Buyer's agents, employees or customers) in a manner that is inconsistent with usage instructions or directions provided by Sunbather or the original manufacturer, or that is contrary to recognised or accepted usage or standards; and
- 15.4 any claims, suits and actions brought against Sunbather, its agents and/or employees as a result of or in connection with any of the circumstances described above.

CLAUSE 16 - TERMINATION

16.1 Either party may terminate this Agreement immediately by giving written notice to the other party if the other party is or becomes insolvent.

16.2 The Buyer may terminate this Agreement for convenience by written notice to Sunbather any time prior to the earlier of the date that:

- (i) any Products are delivered to, or collected by the Buyer (if applicable); or
- (ii) any Services are due to be performed by Sunbather (if applicable).

16.3 Sunbather may terminate this Agreement for convenience at any time by giving at least five (5) Business Days' written notice to the other party.

16.4 In addition to any other rights to terminate Sunbather may have under this Agreement or otherwise at law, Sunbather may terminate this Agreement immediately by written notice to the Buyer if:

- (i) there is insufficient availability of the Products or resources required to supply the Services described in the Quotation;
- (ii) there is an Event of Default subsisting; or
- (iii) in Sunbather's absolute discretion, there are safety concerns in relation to the supply of a Product and/or Service.

16.5 Any termination of this Agreement will be without prejudice to the rights of a party against any other in respect of anything done or omitted under this Agreement prior to the date of such termination.

16.6 If this Agreement is terminated prior to the final delivery of the Products and/or Services and the Buyer has made full payment of the Purchase Price as at the date of termination, then Sunbather must:

- (i) supply the remainder of the Products and/or perform the remainder of the Services described in the Quotation; or
- (ii) to the extent that the Agreement was terminated by Sunbather under Clauses 16.4(i) or 16.4(iii), provide a store credit for the amount of the Purchase Price paid by the Buyer.

16.7 If this Agreement is terminated prior to the final delivery of the Products and/or Services and the Buyer has not made full payment of the Purchase Price as at the date of termination, then subject to Clause 16.8 and to the extent permitted by law, Sunbather:

- (i) may retain any deposit paid under and in accordance with a Quotation;

- (ii) may, at its election:
 - a. retake possession of; or
 - b. issue the Buyer with an invoice for any Products supplied or Services provided prior to the date of termination and which have not yet been paid for;
 - (iii) must provide a store credit or refund (at Sunbather's sole discretion) in respect of any monies received over and above the greater of the deposit paid or the value of the Products and Services provided to the Buyer prior to the date of termination.
- 16.8 The Buyer acknowledges and agrees that:
- (i) if Sunbather provides the Buyer with an invoice in accordance with Clause 16.7, then the Buyer must make full payment of the specified amount in clear funds by the date specified in the invoice, or otherwise within five (5) Business Days from the date of the invoice; and
 - (ii) if the Buyer fails to comply with Clause 16.8(i), then the Buyer indemnifies Sunbather for any and all Liability suffered or incurred by Sunbather in connection with recovering the amounts payable under the invoice or this Agreement.

CLAUSE 17 - FORCE MAJEURE

- 17.1 In the event that Sunbather's performance of its obligations under this Agreement is prevented or delayed, in part or in whole, by reason of fire, flood, typhoon, earthquakes or by reason of riots, wars, hostilities, acts of government, government restrictions, trade embargos, strikes, lockouts, labour disputes, boycotting of goods, ship shortage, manufacturer's bankruptcy, delays or damage in transportation or any other cause beyond Sunbather's control ('Force Majeure Event') or the consequences thereof, then the parties agree that:
- (i) any such default or delay will not constitute a breach by Sunbather of this Agreement for the duration of the Force Majeure Event;
 - (ii) both parties' rights and obligations under this Agreement shall be suspended for the duration of the Force Majeure Event; and
 - (iii) Sunbather shall not be liable to the Buyer (or any third party) for any Liability suffered or incurred by the Buyer as a result of any such default or delay.
- 17.2 Subject to Clause 17.3, upon the removal or cessation of the Force Majeure Event, Sunbather may, at its sole discretion, elect to either:
- (i) terminate the Agreement; or
 - (ii) complete the Agreement within a reasonable time, provided that the parties acknowledge and agree that if Sunbather elects to complete the Agreement, then:
 - (iii) Sunbather may by notice to the Buyer propose an adjustment to the Purchase Price to reflect any increase in the cost to Sunbather to provide the Products and/or Services (including without limitation the cost of materials, labour or equipment) occasioned by such delay;
 - (iv) the Buyer may accept or reject Sunbather's proposed Purchase Price adjustment by written notice to Sunbather within five (5) Business Days of the date of Sunbather's notice of the Purchase Price adjustment; and
 - (v) if the Buyer, within the specified time period:
 - a. accepts the Purchase Price adjustment, then the Buyer must pay the amount of the adjustment (in addition to the balance of the Purchase Price owing) at the same time and in the same manner as its payment of the balance owing; or
 - b. rejects the Purchase Price adjustment, then the Agreement will immediately terminate as at the date of the Buyer's notice (unless the parties otherwise reach an agreement in writing); or
 - c. fails to respond, then the Buyer will be deemed to accept the Purchase Price adjustment, and must make payment in accordance with Clause 17.2(v)a.
- 17.3 If the Force Majeure Event extends for a period of more than ninety (90) days, then either party may immediately terminate this Agreement by notice in writing to the other party.

CLAUSE 18 - PERSONAL PROPERTY SECURITIES ACT

- 18.1 Capitalised terms used in this Clause 18 but not otherwise defined shall have the meaning given to them in the PPSA.
- 18.2 The Buyer agrees to grant Sunbather a Security Interest in all Products in respect of which Sunbather retains title to under the terms of the Agreement ('Collateral').
- 18.3 The Buyer acknowledges and agrees:
- (i) that this Agreement constitutes a Security Agreement and creates a Security Interest in favour of Sunbather over the Collateral;
 - (ii) that Sunbather's Security Interest over the Collateral is a Purchase Money Security Interest under the PPSA to the extent that it secures payment of amounts owing in relation to the Collateral;
 - (iii) to Sunbather registering its Security Interest over the Collateral;
 - (iv) to take all steps reasonably required by Sunbather to enable Sunbather to register its Security Interests with the priority Sunbather requires and to maintain those registrations including by signing any documents and/or providing any information which Sunbather may require to:
 - a. register a Financing Statement or a Financing Change Statement; or
 - b. correct a defect in a Financing Statement;
 - (v) to keep and maintain the Collateral free of any charge, lien, or security interest except as created under this Agreement and not otherwise to deal with the Collateral in a way that will, or may, prejudice the rights of Sunbather under this Agreement or the PPSA;

- (vi) to notify Sunbather immediately in writing if the Buyer changes its name and address for service, contact details or if there are any changes to information required to register a Financing Statement under the PPSA in respect of this Agreement;
- (vii) to waive any right to receive any notice under the PPSA in respect of any Security Interest (including notice of any Financing Statement or Verification Statement), unless the requirement to provide the notice cannot be excluded;
- (viii) to irrevocably grant Sunbather the right to enter any premises or property of the Buyer without notice, and without being in any way liable for any Liability suffered or incurred by the Buyer (or any third party) as a result of such entry, if Sunbather has cause to exercise any of its rights under the PPSA (in particular section 123 of the PPSA); and
- (ix) to do anything else Sunbather reasonably requires for the purpose of ensuring that the Security Interest is enforceable and perfected and to enable Sunbather to exercise its rights in connection with its Security Interest.

18.4 The Buyer must not:

- (i) purport to dispose of, or grant any interest in, or give any form of security over the Collateral;
- (ii) accession or commingle the Collateral with other property;
- (iii) register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Collateral in favour of a third party without Sunbather's prior written consent; and
- (iv) disclose to an 'Interested Person' (as defined in section 275(9) of the PPSA) or any other person, any Information of the kind described in section 275(1) of the PPSA including the security agreement between the Buyer and Sunbather.

18.5 Any Security Interest arising under this Clause will be perfected by Sunbather prior to the Buyer obtaining possession on delivery of the Products and the parties confirm they have not agreed that any Security Interest arising under this Clause attaches at any later time.

18.6 To the extent permitted by law, sections 95, 120, 121(4), 125, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply to the enforcement of Sunbather's Security Interests.

18.7 The Buyer indemnifies Sunbather for any and all Liability suffered or incurred by Sunbather under this Clause 18 including, but not limited to, any enforcement costs.

CLAUSE 19 - ASSIGNMENT AND SUBCONTRACTING

- 19.1 Sunbather may in its sole discretion, and without prior notice to the Buyer, assign, transfer, subcontract or otherwise deal with any of its rights or obligations under this Agreement.
- 19.2 The Buyer may not assign, transfer or otherwise deal with any rights or obligations under this Agreement, without the prior written consent of Sunbather.
- 19.3 Any purported assignment of rights or obligations under this Agreement without Sunbather's prior written consent is ineffective and void.
- 19.4 If Sunbather consents to any proposed assignment or transfer by the Buyer:
- (i) such consent shall not be deemed to relieve the Buyer of its ongoing or accrued obligations under this Agreement (if any); and
 - (ii) to the extent applicable, this Agreement shall be and remain binding on the assignee.

CLAUSE 20 - DISPUTE RESOLUTION

- 20.1 If there is a dispute arising out of or in connection with this Agreement ('Dispute'), a party must not commence any legal proceedings relating to the dispute unless it has complied with this Clause 20, except where the party seeks urgent interlocutory relief.
- 20.2 If a Dispute arises between the parties:
- (i) the aggrieved party must give written notice with full particulars of the Dispute to the other party;
 - (ii) within fourteen (14) days of the date of the dispute notice, the parties agree to use good faith endeavours to resolve the Dispute;
 - (iii) if the Dispute is not resolved through good faith discussions within that period or such longer period as the parties may agree in writing, either party is thereafter at liberty to institute legal proceedings in respect of the Dispute.

CLAUSE 21 - APPLICABLE LAW AND VENUE

- 21.1 This Agreement and any Dispute (including non-contractual disputes or claims) are governed by and will be construed in accordance with the laws of Victoria, Australia.
- 21.2 The Buyer and Sunbather hereby irrevocably submit to the exclusive jurisdiction and venue of the Courts of Victoria, Australia in any legal action related to or arising under this Agreement.

CLAUSE 22 - ENTIRE AGREEMENT

- 22.1 To the extent that the Buyer, or any person on behalf of the Buyer, purports to impose or incorporate any additional or varied terms into this Agreement, any such additional or varied terms shall have no force or effect, unless otherwise agreed in writing by Sunbather.
- 22.2 Sunbather and the Buyer agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

CLAUSE 23 - SEVERABILITY

If any provision of this Agreement is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation it must be severed so that the validity and enforceability of the remaining provisions are not affected.