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## SSO Handling & Storage – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “SSO” means Jardem Pty Ltd T/A SSO Handling & Storage, its successors and assigns or any person acting on behalf of and with the authority of Jardem Pty Ltd T/A SSO Handling & Storage.
- 1.2 “Customer” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by SSO to the Customer at the Customer's request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between SSO and the Customer in accordance with clause 6 below.

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with SSO's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and SSO.

### 3. Electronic Transactions Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 4. Change in Control

- 4.1 The Customer shall give SSO not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by SSO as a result of the Customer's failure to comply with this clause.

### 5. Quotations

- 5.1 Quotations are based on:
  - (a) a suitable 240V AC power source for tools etc. required during installation;
  - (b) adequate lighting and space in the area of installation;
  - (c) the Customer ensuring that SSO has clear and free access to the work site at all times to enable them to undertake the Services. SSO shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of SSO;
  - (d) the Customer providing supervision where installations are to be made in restricted areas.
- 5.2 Exclusions from the quotations include, but are not limited to:
  - (a) forklift or lifting equipment hire where the Customer is unable to provide access to suitable equipment;
  - (b) additional light sources that will be required to be hired where the Customer's existing lighting is inadequate;
  - (c) any electrical, fire or security work required or modification of these systems;
  - (d) any costs associated with approvals; or
  - (e) any required preparation to the installation site, including, but not limited to, demolition, wall removal, etc.

### 6. Price and Payment

- 6.1 At SSO's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by SSO to the Customer; or
  - (b) SSO's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 SSO reserves the right to change the Price if a variation to SSO's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as availability of stock, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to SSO in the cost of materials and labour) will be charged for on the basis of SSO's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 6.3 At SSO's sole discretion a deposit may be required.
- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by SSO, which may be:
  - (a) on delivery of the Goods, in particular for off the floor items;
  - (b) by way of instalments/progress payments in accordance with SSO's payment schedule;
  - (c) for certain approved Customers, thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (d) for government departments, thirty (30) days following the date of any invoice given to the Customer by SSO;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by SSO.

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- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Customer and SSO.
- 6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to SSO an amount equal to any GST SSO must pay for any supply by SSO under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 7. Delivery of Goods

- 7.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer’s nominated carrier takes possession of the Goods at SSO’s address; or
  - (b) SSO (or SSO’s nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.
- 7.2 At SSO’s sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 7.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then SSO shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.4 Any time or date given by SSO to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and SSO will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

### 8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If the Customer requests SSO to leave Goods outside SSO’s premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer’s sole risk.

### 9. Specifications

- 9.1 The Customer acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in SSO’s or the manufacturer’s fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by SSO;
  - (b) while SSO may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that SSO has given these in good faith, and are estimates based on industry prescribed estimates and under normal operating practices.
- 9.2 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 9.3 Engineered loads are specified on beam level loads and positions as specified. Changing any of the following may alter the stated load carrying capacity;
- (a) increasing the load on any beam level;
  - (b) increasing the distance between the floor and the lowest beam level;
  - (c) increasing the distance between beam levels;
  - (d) removing beam levels; and
  - (e) placing unevenly distributed loads on any beam level.
- 9.4 As per requirements under AS4084, safe working load and maintenance signs will be attached as required on proposed racks. Each safe working load sign shall show the bay, beam and pallet loadings for that particular run of bays.

### 10. Compliance with Laws

- 10.1 The Customer and SSO shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
- 10.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.
- 10.3 The Customer agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

### 11. Title

- 11.1 SSO and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid SSO all amounts owing to SSO; and
  - (b) the Customer has met all of its other obligations to SSO.
- 11.2 Receipt by SSO of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 11.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to SSO on request.

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- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for SSO and must pay to SSO the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for SSO and must pay or deliver the proceeds to SSO on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of SSO and must sell, dispose of or return the resulting product to SSO as it so directs.
- (e) the Customer irrevocably authorises SSO to enter any premises where SSO believes the Goods are kept and recover possession of the Goods.
- (f) SSO may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of SSO.
- (h) SSO may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### **12. Personal Property Securities Act 2009 (“PPSA”)**

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to SSO for Services – that have previously been supplied and that will be supplied in the future by SSO to the Customer.
- 12.3 The Customer undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SSO may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, SSO for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of SSO;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of SSO;
  - (e) immediately advise SSO of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.4 SSO and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by SSO, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer must unconditionally ratify any actions taken by SSO under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### **13. Security and Charge**

- 13.1 In consideration of SSO agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies SSO from and against all SSO's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SSO's rights under this clause.
- 13.3 The Customer irrevocably appoints SSO and each director of SSO as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

### **14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 14.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify SSO in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The

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- Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow SSO to inspect the Goods.
- 14.2 The defect period applicable to pallet racking and compactus equipment shall be for four (4) weeks from installation.
- 14.3 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 14.4 SSO acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SSO makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. SSO's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.6 If the Customer is a consumer within the meaning of the CCA, SSO's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.7 If SSO is required to replace the Goods under this clause or the CCA, but is unable to do so, SSO may refund any money the Customer has paid for the Goods.
- 14.8 If the Customer is not a consumer within the meaning of the CCA, SSO's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by SSO at SSO's sole discretion;
  - (b) limited to any warranty to which SSO is entitled, if SSO did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 14.9 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 14.1; and
  - (b) SSO has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 14.10 Notwithstanding clauses 14.1 to 14.9 but subject to the CCA, SSO shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by SSO;
  - (e) fair wear and tear, any accident, or act of God.
- 14.11 SSO may in its absolute discretion accept non-defective Goods for return in which case SSO may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 14.12 Notwithstanding anything contained in this clause if SSO is required by a law to accept a return then SSO will only accept a return on the conditions imposed by that law.
- 15. Intellectual Property**
- 15.1 Where SSO has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of SSO.
- 15.2 The Customer warrants that all designs, specifications or instructions given to SSO will not cause SSO to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify SSO against any action taken by a third party against SSO in respect of any such infringement.
- 15.3 The Customer agrees that SSO may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which SSO has created for the Customer.
- 16. Default and Consequences of Default**
- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SSO's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Customer owes SSO any money the Customer shall indemnify SSO from and against all costs and disbursements incurred by SSO in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SSO's contract default fee, and bank dishonour fees).
- 16.3 Further to any other rights or remedies SSO may have under this contract, if a Customer has made payment to SSO by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by SSO under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 16.4 Without prejudice to any other remedies SSO may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions SSO may suspend or terminate the supply

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of Goods to the Customer. SSO will not be liable to the Customer for any loss or damage the Customer suffers because SSO has exercised its rights under this clause.

- 16.5 Without prejudice to SSO's other remedies at law SSO shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to SSO shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SSO becomes overdue, or in SSO's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 17. Cancellation

- 17.1 SSO may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice SSO shall repay to the Customer any money paid by the Customer for the Goods. SSO shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by SSO as a direct result of the cancellation (including, but not limited to, any loss of profits).

### 18. Privacy Act 1988

- 18.1 The Customer agrees for SSO to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by SSO.
- 18.2 The Customer agrees that SSO may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 18.3 The Customer consents to SSO being given a consumer credit report to collect overdue payment on commercial credit.
- 18.4 The Customer agrees that personal credit information provided may be used and retained by SSO for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 18.5 SSO may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 18.6 The information given to the CRB may include:
- (a) personal information as outlined in 18.1 above;
  - (b) name of the credit provider and that SSO is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and SSO has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of SSO, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.7 The Customer shall have the right to request (by e-mail) from SSO:
- (a) a copy of the information about the Customer retained by SSO and the right to request that SSO correct any incorrect information; and
  - (b) that SSO does not disclose any personal information about the Customer for the purpose of direct marketing.

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- 18.8 SSO will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 18.9 The Customer can make a privacy complaint by contacting SSO via e-mail. SSO will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### 19. Unpaid Seller's Rights

- 19.1 Where the Customer has left any item with SSO for repair, modification, exchange or for SSO to perform any other service in relation to the item and SSO has not received or been tendered the whole of any monies owing to it by the Customer, SSO shall have, until all monies owing to SSO are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 19.2 The lien of SSO shall continue despite the commencement of proceedings, or judgment for any monies owing to SSO having been obtained against the Customer.

### 20. Building and Construction Industry Security of Payments Act 1999

- 20.1 At SSO's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 20.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

### 21. General

- 21.1 The failure by SSO to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SSO's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which SSO has its principal place of business, and are subject to the jurisdiction of the courts of Queanbeyan in New South Wales.
- 21.3 Subject to clause 14, SSO shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by SSO of these terms and conditions (alternatively SSO's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by SSO nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.5 SSO may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 21.6 The Customer agrees that SSO may amend these terms and conditions at any time. If SSO makes a change to these terms and conditions, then that change will take effect from the date on which SSO notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for SSO to provide Goods to the Customer.
- 21.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.