

## APPLICATION FOR CREDIT FACILITY

Wavebreak Capital No.1 Pty Ltd T/A  
 SupaCut ABN 71 623 476 157  
 PO Box 1255  
 Browns Plains Qld 4118  
 Phone: 07 3800 4619  
 Fax: 07 3800 7773  
[www.supacut.com.au](http://www.supacut.com.au)  
 email: sales@supacut.com.au

			<b>Date of Application</b> / /	
Trading Name (to be completed by a <b>business, partnership or sole trader</b> )			ABN:	
Address			Work Phone	
City/Town		Postcode	Facsimile	
Registered Company Name, ACN & ABN (to be completed by <b>Pty Ltd or Limited company</b> )				
ACN:		ABN		
Trading Name			Phone	
Registered Office Address			Fax	
City/Town		Postcode	E-mail Address	
Business Address				
City/Town		Postcode		
<b>DETAILS OF ALL PROPRIETORS/PARTNERS/DIRECTORS</b>				
Full Name and Position (i.e. proprietor, partner or director):			Mobile:	
Residential Address:			Phone:	
City/Town		Postcode:	D.O.B.:	
Driver's Licence Number (photocopy of licence to be attached to this Application)				
Full Name and Position (i.e. proprietor, partner or director):			Mobile:	
Residential Address:			Phone:	
City/Town		Postcode:	D.O.B.:	
Driver's Licence Number (photocopy of licence to be attached to this Application)				
Full Name and Position (i.e. director, partner, proprietor of business):			Mobile:	
Residential Address:			Phone:	
City/Town		Postcode:	D.O.B.:	
Driver's Licence Number (photocopy of licence to be attached to this Application)				

Do you act as Trustee of a Trust? YES / NO (circle)		If YES, please state Full Name of Trustee and Full Name of the Trust	
Is it an ESTABLISHED or NEW BUSINESS?		If ESTABLISHED, How Long?	
MEMBER OF ANY BUYING GROUP:			
EMAIL ADDRESS FOR PROMOS:		FAX NO. FOR PROMOS:	
WE WOULD LIKE TO RECEIVE MONTHLY SPECIALS BY EMAIL (Please circle): Yes / No			
WE WOULD LIKE TO RECEIVE MONTHLY STATEMENTS BY EMAIL (Please circle): Yes / No			
\$ VALUE of Estimated Monthly Credit (for Credit Limit Assessment):			
CONTACT FOR ACCOUNTS PAYABLE (REQUIRED):			
Name:	Phone:	Fax:	Email:
WE WOULD LIKE TO RECEIVE STATEMENT OF ACCOUNT BY EMAIL. (Please circle): Yes / No			
<b>BUSINESS/TRADE REFERENCES</b>			
Name of First Reference:		Phone:	
Contact Person's Name:		Fax:	
Name of Second Reference:		Phone:	
Contact Person's Name:		Fax:	
Name of Third Reference:		Phone:	
Contact Person's Name:		Fax:	
Bank Name & Branch		Bank Contact Name:	

**GUARANTOR(S)**

Name of Guarantor in full	Address of Guarantor

The terms and conditions of this Agreement are agreed to, and accepted by, the Customer, and the person who signs warrants that they have authority to bind the Customer:

***If the Customer is a company***

(This Agreement is to be executed by (i) 2 directors of the company; or (ii) a director and secretary of the company; or (iii) a sole director who is also the sole company secretary)

**EXECUTED** in accordance with section 127 of the )  
Corporations Act 2001 (Cth) by )

**Co. Name**..... )  
 )

**ACN**..... )  
 )  
 )  
 )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

***If Customer is an individual or individuals***

**SIGNED** by )  
[**name in full**]..... in the )  
presence of: )

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
Print Name

**SIGNED** by )  
[**name in full**]..... in the )  
presence of: )

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
Print Name

**SIGNED** by )  
[**name in full**]..... in the )  
presence of: )

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
Print Name

## CREDIT ACCOUNT CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 **SupaCut** means Wavebreak Capital No.1 Pty Ltd ABN 71 623 476 157, and its subsidiaries, successors, assigns, associated entities, connected entities and related entities, and their servants and/or agents, and when used, the words “we”, “us”, and “our” are references to Wavebreak Capital No.1; **this Agreement** means the Credit Account Application, these Credit Account Conditions, the Conditions of Sale, any Purchase Agreement and all Collateral Documents; **Collateral Documents** means any Sale Delivery Dockets, Orders, quotations, invoices, guarantees or other documents which form or describe the subject matter of an agreement entered into in accordance with this Agreement, but does not include any descriptions, illustrations and performances contained in catalogues, price lists and advertising material; **Conditions of Sale** means any terms and conditions of quotation, supply and or sale of Wavebreak Capital No.1 that are notified by Wavebreak Capital No.1 to the Customer (whether in a Collateral Document or otherwise) and include the conditions of sale found at Schedule 1 to these Credit Account Conditions; **Customer** means the customer set out in the Credit Account Application, and when used, the words “you” and “your” are references to the Customer; **Event of Default** means (i) the Customer fails to pay for Products in accordance with this Agreement; (ii) the Customer is in breach of its obligations under this Agreement; or (iii) there is an Insolvency Event; **Guarantor** means the person or persons stated in the Credit Account Application and/or any party who provides a guarantee to Wavebreak Capital No.1 in relation to the Customer’s performance of its obligations in this Agreement; **Insolvency Event** means for the Customer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Customer or any of the Customer’s property, being taken under section 459F(1) of the Corporations Act 2001 to have failed to comply with a creditor’s statutory demand, being unable to pay the Customer’s debts as and when they fall due and payable, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer’s own affairs for any reason, taking any step that could result in the Company becoming insolvent, entering into a compromise or arrangement with any of the Customer’s members or creditors, or any analogous event; **Interest Rate** means the rate of 15% per annum; **Officer** means each director, secretary, credit manager and authorised representative of Wavebreak Capital No.1; **Order** means a purchase order or offer from the Customer which has been accepted by Wavebreak Capital No.1 but excludes any terms and conditions of the Customer that may be on the Order or offer to purchase or any other documentation of the Customer associated with any Order; **Payment Date** means within 30 days of the date of statement from Wavebreak Capital No.1 to the Customer, or as Wavebreak Capital No.1 may otherwise notify the Customer of in writing; **Products** means any products of Wavebreak Capital No.1 being IT consumables and IT hardware including without limitation printers, photocopier, scanners, monitors, inkjet cartridges, Laser toner cartridges, copier toner, Thermal transfer films, Imaging and transfer units, Inkjet and laser paper, Mono and Colour laser printers, P-Touch laminated tapes, CD and DVD media, Data storage media, USB flash drives and Compact flash / SD cards, and other products as supplied and or distributed from time to time by Wavebreak Capital No.1 to the Customer, or ordered by the Customer but not yet supplied, and includes the Services; **Sale Delivery Docket** means, if applicable, Wavebreak Capital No.1 docket provided upon Delivery; **Services** means any service supplied by Wavebreak Capital No.1 to the Customer, being IT consumables and hardware supply and distribution services.

### 2. APPLICATION OF CREDIT ACCOUNT CONDITIONS

- 2.1 The Customer must check all invoices and advise Wavebreak Capital No.1 of any errors or omissions within seven (7) days of receipt. Failing advice from the Customer that the invoice contains any errors or omissions, the invoice may be deemed accepted by Wavebreak Capital No.1.
- 2.2 Should the Customer not pay for the goods or services supplied by Wavebreak Capital No.1 in accordance with the credit terms as provided herein, or as agreed in writing by Wavebreak Capital No.1 and the Customer from time to time, after issuing a written demand to the Customer demanding payment within fourteen (14) days, Wavebreak Capital No.1 will be entitled to charge an administration fee of 10 percent of the amount of the invoice payable.
- 2.3 These Credit Account Conditions, the Conditions of Sale and any Collateral Documents apply to all dealings between Wavebreak Capital No.1 and the Customer under this Agreement.

- 2.4 No terms or conditions of the Customer are binding on Wavebreak Capital No.1 unless expressly agreed to in writing by Wavebreak Capital No.1.
- 2.5 Quotations made by Wavebreak Capital No.1 will not be construed as an offer or obligation to supply in accordance with the quotation. Wavebreak Capital No.1 reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by Wavebreak Capital No.1 of the Customer’s offer will complete a contract.
- 2.6 Placement of an order, either verbally or in writing, will imply acceptance of Our offer and this Credit Account conditions and the Conditions of Sale
- 2.7 Wavebreak Capital No.1, in its absolute discretion and without incurring any liability to the Customer, may, upon provision of 48 hours’ written notice:
- (a) suspend or withdraw credit;
  - (b) cease or suspend supply of Products under this Agreement; and/or
  - (c) amend the Credit Account Conditions by providing written notice of such amendment to the Customer.
- 2.8 If the Customer does not agree with the variations proposed by Wavebreak Capital No.1, they must notify Wavebreak Capital No.1 in writing within fourteen (14) days from receipt of the written notice that the variations are not agreed to. Wavebreak Capital No.1 and/or the Customer will then be at liberty to suspend/withdraw credit facilities if no agreement can be reached between the parties regarding the proposed variations. Absent notice from the Customer, the varied terms and conditions of trade may be deemed accepted. Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction without notification.
- 2.9 If an Event of Default occurs, all monies then outstanding to Wavebreak Capital No.1 become due and payable within seven (7) days and Wavebreak Capital No.1 may, without prejudice to its rights under this Agreement and its rights generally, call up all moneys owing to it by the Customer, retain all moneys paid on account and/or cease further supply.
- 2.10 Any credit limit is solely for the benefit of Wavebreak Capital No.1. The obligations of the Customer under this Agreement remain unchanged if the credit limit is exceeded or not specified at any time.

### 3. LIABILITY

- 3.1 Wavebreak Capital No.1 makes no express warranties in respect of the Products.
- 3.2 Wavebreak Capital No.1 is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond Wavebreak Capital No.1’ control.
- 3.3 In relation to the supply of goods, Wavebreak Capital No.1’ liability is limited to:
- (a) replacing the goods or supplying similar goods;
  - (b) repairing the goods
  - (c) providing the cost for replacing the goods or for acquiring equivalent goods; and
  - (d) providing the cost for having the goods repaired.
- 3.4 In relation to the supply of Services, Wavebreak Capital No.1’ liability is limited to:
- (a) supplying the service again; or
  - (b) providing for the cost of having the services supplied again.
- 3.5 Wavebreak Capital No.1 is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer as a result of the goods and/or services supplied under this agreement.

### 4. PAYMENT

- 4.1 Payment is accepted by Cheque, EFT, Visa, MasterCard, Amex and is due on or before the Payment Date, without deduction or set off.
- 4.2 Amounts received by Wavebreak Capital No.1 may be applied by Wavebreak Capital No.1 in its absolute discretion, including toward payment of interest, costs and expenses payable to Wavebreak Capital No.1 under this Agreement, before being applied against any amounts invoiced for Products which remain unpaid from time to time.
- 4.3 Invoices paid by credit card will incur a card fee, plus GST.
- 4.4 Returned cheques will incur a dishonour fee (excluding GST).

### 5. INTEREST

- 5.1 The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.

## **6. WARRANTIES, REPRESENTATIONS, ACKNOWLEDGEMENTS AND INDEMNITY**

- 6.1 In signing this Agreement, the Customer warrants, represents, acknowledges and agrees that:
- (a) The Customer has read and understands and wishes to be bound by the full terms, conditions and effect of this Agreement;
  - (b) All purchases by the Customer under this Agreement are for commercial resale purposes only;
  - (c) The person(s) who signed this Agreement was authorised by the Customer to do so;
  - (d) The particulars contained in this Agreement are in all respects true and correct;
  - (e) The Customer has relied solely on the Customer's own skill and judgement in entering into this Agreement, and selecting the Products ordered by the Customer;
  - (f) Wavebreak Capital No.1 has not made any representation or promise to the Customer of any nature in respect of any matter arising out of this Agreement, including the entering into of this Agreement;
  - (g) This Agreement represents the entire agreement as concluded between Wavebreak Capital No.1 and the Customer, and supersedes any other agreement, terms and/or conditions between Wavebreak Capital No.1 and the Customer;
  - (h) No representations made by Wavebreak Capital No.1 or the Customer concerning the Products shall be an implied term of this Agreement or form the subject matter of a separate agreement, subsidiary or collateral with this Agreement; and
  - (i) The Customer has not been induced to enter into this Agreement by any representation, oral or otherwise, made for or on behalf of Wavebreak Capital No.1.
- 6.2 The Customer acknowledges that the credit to be provided to it by Us is to be applied wholly or predominantly for commercial purposes.
- 6.3 If the Customer is a corporation, the Customer warrants that all of its directors have signed this agreement and that all of its directors may be required to enter into a guarantee and indemnity with Wavebreak Capital No.1 in relation to the Customer's obligations to Wavebreak Capital No.1.
- 6.4 If the Customer is the trustee of a trust (whether disclosed to Wavebreak Capital No.1 or not), the Customer warrants to Wavebreak Capital No.1 that:
- (a) the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Customer has the right to be indemnified out of trust assets;
  - (c) the Customer has the power under the trust deed to sign this agreement; and
  - (d) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising Wavebreak Capital No.1.
- 6.5 The Customer must give Wavebreak Capital No.1 a copy of the trust deed upon request.
- 6.6 If the Customer enters into this agreement as partners, the Customer warrants that all of the partners have signed this agreement and that all of the partners may be required to enter into a guarantee and indemnity with Wavebreak Capital No.1 in relation to the Customer's obligations to Wavebreak Capital No.1.
- 6.7 If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising Wavebreak Capital No.1. In the case of a change of partners, Wavebreak Capital No.1 may ask for new guarantors to sign a guarantee and indemnity.
- 6.8 The Customer indemnifies Wavebreak Capital No.1 in respect of any claim, action, proceeding, judgment, damage, loss, expense or liability, including legal costs on a solicitor and own client basis, incurred or suffered by or brought or made or recovered against Wavebreak Capital No.1 in connection with a breach of any warranty, representation, acknowledgement or agreement contained in this clause, or by reason of any of them being in any way incorrect, inaccurate, misleading or deceptive.

## **7. TERMINATION**

- 7.1 The Customer or Wavebreak Capital No.1 may at any time by 48 hours' written notice served on the other and the Guarantor terminate this Agreement in respect of Orders which at time of service have not been accepted by Wavebreak Capital No.1. Termination shall not affect the

rights and liabilities of the parties in respect of this Agreement accrued as at the time of termination.

## **8. PROPRIETARY RIGHTS**

- 8.1 Wavebreak Capital No.1 will retain all copyright and other proprietary rights in any Wavebreak Capital No.1 confidential information and any Wavebreak Capital No.1 material, including documents, drawings, certifications and instructions provided to the Customer. The Customer must not use the Wavebreak Capital No.1 information or material or their contents for any purpose other than the purpose for which they were provided. The Customer must not disclose, transfer, transmit or otherwise make available to any third party in any manner or form, any material or their contents or any information relating to them or the Products without Wavebreak Capital No.1 written consent.

## **9. COSTS**

- 9.1 Stamp duty, registration and lodgement fees, taxes (including any goods and/or services taxes) or any other kinds of government charge or fee incurred as a result of the sale of the Products by Wavebreak Capital No.1 to the Customer under this Agreement shall be paid by the Customer.
- 9.2 The Customer will pay Wavebreak Capital No.1's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis.

## **10. GST**

- 10.1 In this clause:
- (a) "GST" means GST within the meaning of the GST Act;
  - (b) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (as amended); and
  - (c) Expressions used have the meanings given to them in the GST Act.
- 10.2 An amount payable by a party under this Agreement in respect of a taxable supply by the other party, unless expressed to represent the price of supply, represents the value of the supply and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply.
- 10.3 If this Agreement requires the Customer to pay, reimburse or contribute to an amount paid or payable by Wavebreak Capital No.1 in respect of a creditable acquisition from a third party, the amount for payment, reimbursement or contribution will be the value of the acquisition by Wavebreak Capital No.1 plus, if its recovery from the Customer is a taxable supply, the GST payable in respect of that supply.
- 10.4 If as a result of:
- (a) any legislation becoming applicable to the subject matter of this agreement; or
  - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
- Wavebreak Capital No.1 becomes liable to pay any tax, duty, excise, or levy in respect of the amounts received from the Customer, then the Customer must pay Wavebreak Capital No.1 these additional amounts on 48 hours' written demand.

## **11. TIME**

- 11.1 Subject to the terms of this Agreement, time shall be of the essence unless the parties agree in writing to any time requirements being extended or abridged in which event the time so extended or abridged shall be of the essence of this Agreement.

## **12. CHARGE**

- 12.1 The Customer hereby charges with payment of all moneys and compliance with all obligations owed by the Customer to Wavebreak Capital No.1 under this Agreement all beneficial interest (freehold and leasehold) in real property, held now or in the future by the Customer. The Customer agrees that if demand is made upon it, him or her by Wavebreak Capital No.1, the Customer will immediately execute a Wavebreak Capital No.1 mortgage in registrable form. The Customer unconditionally consents to lodging a caveat or caveats noting its interest pursuant to this equitable mortgage. The Customer irrevocably and by way of security appoints Wavebreak Capital No.1's Company Secretary to be its, his or her true and lawful attorney to execute and register such instruments, including and without limiting the generality of the foregoing, executing and registering a mortgage over any real property held now or in the future by the Customer even though the Customer may not have defaulted in carrying out its obligations hereunder, upon written notice and demand to the Customer (in the event that there is no default by the Customer in carrying out its obligations hereunder). The Customer authorises the attorney appointed

pursuant to this clause to enter into conflict transactions within the meaning of the *Powers of Attorney Act 1998*.

- 12.2 The Customer charges in favour of Wavebreak Capital No.1 all of its estate and interest in any personal property that the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- 12.3 Where the Customer has previously entered into an agreement with Wavebreak Capital No.1 by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the *Personal Property Securities Act 2009 (PPSA)*) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Customer under this agreement. Wavebreak Capital No.1 may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

### 13. TITLE AND PROPERTY

- 13.1 Title in the goods does not pass to the Customer until the Customer has made payment in full for the goods and, further, until the Customer has made payment in full of all the other money owing by the Customer to Wavebreak Capital No.1 (whether in respect of money payable under a specific contract or on any other account whatsoever).
- 13.2 Whilst the Customer has not paid for the goods supplied in full at any time, the Customer agrees that property and title in the goods will not pass to the Customer and Wavebreak Capital No.1 retains the legal and equitable title in those goods supplied and not yet sold.
- 13.3 Until payment in full has been made to Wavebreak Capital No.1, the Customer will hold the goods in a fiduciary capacity for Wavebreak Capital No.1 and agrees to store the goods in such a manner that they can be identified as the property of Wavebreak Capital No.1, and will not mix the goods with other similar goods.
- 13.4 The Customer will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to Wavebreak Capital No.1, the Customer will sell as agent and bailee for Wavebreak Capital No.1 and the proceeds of sale of the goods will be held by the Customer on trust for Wavebreak Capital No.1 absolutely.
- 13.5 The Customer's indebtedness to Wavebreak Capital No.1, whether in full or in part, will not be discharged by the operation of clause 13.4 hereof unless and until the funds held on trust are remitted to Wavebreak Capital No.1.
- 13.6 The Customer agrees that whilst property and title in the goods remains with Wavebreak Capital No.1, Wavebreak Capital No.1 has the right, with prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the goods of Wavebreak Capital No.1 and to repossess the goods which may be in the Customer's possession, custody or control when payment is overdue.
- 13.7 The Customer will be responsible for Wavebreak Capital No.1's reasonable costs and expenses in exercising its rights under clause 13.6. Where Wavebreak Capital No.1 exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against Wavebreak Capital No.1, its employees, servants or agents.
- 13.8 The Customer agrees that where the goods have been retaken into the possession of Wavebreak Capital No.1, Wavebreak Capital No.1 has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Customer on those goods, and the Customer hereby grants an irrevocable licence to Wavebreak Capital No.1 to do all things necessary to sell the goods bearing the name or trademark of the Customer.
- 13.9 For the avoidance of doubt, Wavebreak Capital No.1's interest constitutes a 'purchase money security interest' pursuant to the PPSA.
- 13.10 The Customer must immediately upon request by Wavebreak Capital No.1, execute any documents, provide all necessary information and do all things required by Wavebreak Capital No.1 to ensure that Wavebreak Capital No.1 may register any security interest under the PPSA granted by the Customer including that Purchase Money Security Interest.
- 13.11 The Customer must not enter into any security agreement that allows any other person to have or to register a security interest in relation to the Products or any proceeds of sale of the Customer of the Products until Wavebreak Capital No.1 has a perfected security interest and if applicable, a perfected purchase money security interest.

- 13.12 Subject to clauses 13.13 and 13.15 herein, the Customer's payment will be applied by Wavebreak Capital No.1 as follows.

- (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clause 13.7 and 9.2.
- (b) Secondly, in payment of any interest incurred in accordance with clause 5.1.
- (c) Thirdly, in payment of the outstanding invoice(s).

- 13.13 In circumstances where Wavebreak Capital No.1 seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Customer will be allocated in a manner at Wavebreak Capital No.1's absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which Wavebreak Capital No.1 seeks to enforce its purchase money security interest.

- 13.14 To the extent that payments have been allocated to invoices by Wavebreak Capital No.1 in its business records, Wavebreak Capital No.1 may, in its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at Wavebreak Capital No.1's absolute discretion, including in a manner inconsistent with clause 13.13 herein.

- 13.15 Payments allocated (and/or reallocated) under clause 13.13 and/or 13.14 will be treated as though they were allocated or reallocated, respectively, in the manner determined by Wavebreak Capital No.1 on the date of receipt of payment.

### 14. MISCELLANEOUS

- 14.1 The Customer acknowledges and agrees that any contract for the supply of goods or services between Us and the Customer is formed at our address.
- 14.2 This Agreement shall be governed by and construed in accordance with the laws of and applicable to the State of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland. Further, the Customer submits to the non-exclusive jurisdiction of Brisbane central registries of the Courts of the State of Queensland, the Federal Circuit Court of Australia and the Federal Court of Australia as the proper and correct registries for Wavebreak Capital No.1 to commence any proceeding in relation to this Agreement.
- 14.3 The Customer undertakes to comply with any request by Wavebreak Capital No.1 to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.
- 14.4 The Customer must notify Wavebreak Capital No.1 of any change in its structure or management, including any change of director, secretary, shareholder, partner, trustee and business address.
- 14.5 All notices and other written communications provided for in this Agreement shall be given or served by mail with postage pre-paid, by hand delivery or by facsimile transmission as follows:-
- (a) if to Wavebreak Capital No.1, to us at 66-72 Alexandra Place Murarrie QLD 4172 or by fax to Fax: 07 3344 9977 and
- (b) if to the Customer, to you at any address nominated in this application or any other address as notified to Us by the Customer or the Customer's authorised representative and the Customer agrees to accept service of any document to be served, including any notice under this Agreement or the PPSA or any Originating process in that manner.
- 14.6 Where the Customer comprises more persons than one, the provisions of this Agreement with respect to such party shall bind all of those persons severally and jointly. In any claim arising out of a breach of this Agreement or any Purchase Agreement, proportionate liability will not be pleaded in defence by the Customer as between those persons and each of those persons comprising the Customer shall be regarded as wholly liable to Wavebreak Capital No.1 in respect of any such breach.
- 14.7 Any waiver by us of any default by you in the strict and literal performance of or compliance with any provision, condition or requirement in this Agreement, or any delay by us in exercising any remedies available to us under this Agreement, will not constitute a variation or waiver of any provision, condition or requirement of this Agreement, or remedy available to us. A waiver of any provision or breach of this agreement by Wavebreak Capital No.1 must be made by an authorised officer of Wavebreak Capital No.1 in writing. A waiver of any provision or breach of this agreement by the Customer must be made by the Customer's authorised officer in writing.
- 14.8 If any term or provision of this Agreement are found to be to be invalid, illegal or unenforceable, such term or provision is to be severed from the remainder of the terms and provisions of this Agreement and is to be

deemed never to have been part of this Agreement, with the remainder of the terms and provisions of this Agreement subsisting and remaining in full force and effect unless the basic purpose or purposes of this Agreement would thereby be defeated.

- 14.9 To the extent of any inconsistency in this Agreement, these Credit Account Conditions prevail, and the other terms and conditions in all Collateral Documents are to be construed so as to give paramount effect to the Credit Account Conditions.
- 14.10 The Customer agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
- 14.11 The Customer irrevocably grants to Wavebreak Capital No.1 the right to enter upon the Customer's property or premises, with notice, and without being in any way liable to the Customer or to any third party, if Wavebreak Capital No.1 has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Customer shall indemnify Wavebreak Capital No.1 from any claims made by any third party as a result of such exercise.
- 14.12 Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions of the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.
- 14.13 Until ownership of the goods passes, the Customer waives its rights it would otherwise have under the PPSA (unless otherwise agreed to in writing by Wavebreak Capital No.1 and the Customer):
- (a) under section 95 to receive notice of intention to remove an accession;
  - (b) under section 118 to receive notice that Wavebreak Capital No.1 intends to enforce its security interest in accordance with land law;
  - (c) under section 121(4) to receive a notice of enforcement action against liquid assets;
  - (d) under section 129 to receive a notice of disposal of goods by Wavebreak Capital No.1 purchasing the goods;
  - (e) under section 130 to receive a notice to dispose of goods;
  - (f) under section 132(2) to receive a statement of account following disposal of goods;
  - (g) under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
  - (h) under section 135 to receive notice of any proposal of Wavebreak Capital No.1 to retain goods;
  - (i) under section 137(2) to object to any proposal of Wavebreak Capital No.1 to retain or dispose of goods;
  - (j) under section 142 to redeem the goods;
  - (k) under section 143 to reinstate the security agreement; and
  - (l) under section 157(1) and 157(3) to receive a notice of any verification statement.
- 14.14 If the Customer becomes insolvent, the Customer remains liable under this agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this agreement even if Wavebreak Capital No.1 received a dividend or payment as a result of the Customer being insolvent.
- 14.15 All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by Wavebreak Capital No.1 and the Customer in writing. Any reasonable requests to set-off or withhold amounts outstanding, will be considered by Wavebreak Capital No.1.
- 14.16 Any amount due to Wavebreak Capital No.1 from time to time may be deducted from any monies which may be or may become payable to the Customer by Wavebreak Capital No.1.

## 15. VARIATION

- 15.1 The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of Wavebreak Capital No.1 at any time by written notice to the Customer. The Customer will be provided with fourteen (14) days to accept the variation/s, failing which the variations may be deemed accepted by Wavebreak Capital No.1.
- 15.2 Any proposed variation to these terms and conditions by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
- 15.3 Variations requested by the Customer will only be binding upon Wavebreak Capital No.1 if they are accepted in writing.

## 16. ENTIRE AGREEMENT

- 16.1 This agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by Wavebreak Capital No.1 and the Customer in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
- 16.2 Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Customer and Wavebreak Capital No.1, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.

## 17. PRIVACY ACT

- 17.1 The Customer agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document.

## PRIVACY STATEMENT

1. This privacy statement encompasses consents, notifications and disclosures under or in relation to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*) (Act).
2. The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
3. For the purpose of this statement, the terms “personal information”, “sensitive information”, “credit eligibility information”, “credit information”, “commercial credit purpose”, “credit guarantee purpose”, “consumer credit purpose”, “credit reporting body”, “credit provider”, “credit reporting information”, “credit reporting code” carry the same meaning as under the Act and the term “Information” means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
4. The Supplier may collect personal information about the Applicant and/or Guarantor(s) for the Supplier’s primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.
5. The Applicant and/or Guarantor(s) consent to the Supplier collecting, using and disclosing personal information (including sensitive information) for both their primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
6. The Supplier may collect, and may already have collected, Information from the Applicant and/or Guarantor(s), other credit providers, credit reporting bodies and other third parties for the purposes of its functions and activities including, but not limited to, credit, sales, marketing and administration. If the Information was not collected by the Supplier it may restrict or impede upon the Supplier trading with, extending credit to, continuing to extend credit to or extending further credit to the Applicant and/or Guarantor(s) or their related bodies corporate.
7. The Applicant and/or Guarantor(s) consent to the Supplier obtaining and making disclosure of Information about the Applicant and/or Guarantor(s) from and to a credit reporting body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose. The Supplier notifies the Applicant and/or Guarantor(s) that it may use and/or disclose credit eligibility information under section 21G of the Act.
8. The Supplier may provide personal information about the Applicant and/or Guarantor(s) to any or all of the credit reporting bodies nominated below. The Supplier intends to disclose default information to any or all of the credit reporting bodies listed below. The Applicant and/or Guarantor(s) consent to such disclosure. The Supplier’s credit reporting policy contains a statement of notifiable matters in accordance with s21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what the Supplier may disclose and the Applicant’s and/or Guarantor(s)’ right to request limitations to the use of their information.

Veda Advantage	Creditor Watch	NCI	Dun & Bradstreet	Experian
Level 15, 100	Level 13, 109 Pitt	Level 2, 165	Level 2, 143	Level 6, 549 St
Arthur Street	Street	Grenfell St	Coronation Drive	Kilda Road
NORTH SYDNEY	SYDNEY NSW	ADELAIDE SA	MILTON QLD	MELBOURNE VIC
NSW 2060	2000	5000	4064	3004
Tel: 1300 921 621	Tel: 1300 501 312	Tel: 1800 882 820	Tel: 07 3360 0600	Tel: 03 9699 0100

9. The Supplier may disclose Information to, and about them and the Applicant and/or Guarantor(s) hereby acknowledge that they consent to the disclosure of such information to the Supplier’s employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective credit providers of the Applicant and/or Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit, and/or overseas recipients and recipients who do not have an Australian link in countries including New Zealand.
10. By reason of the Applicant’s and/or Guarantor(s)’ consent to the disclosure to overseas recipients hereunder, APP 8.1 will not apply to the Supplier’s dealing with the Applicant’s and/or Guarantor(s)’ Information.
11. A full copy of the Supplier’s privacy policy and credit reporting policy can be obtained from the Supplier’s website (details above) or by making a request in writing directed to the Supplier’s privacy officer. The Supplier’s privacy policy and credit reporting policy contain information about how to access and seek correction of Information, or how to complain about a breach of the Act, APP, code(s) and how the Supplier will deal with any such complaint.
12. The Applicant and/or Guarantor(s) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to the Supplier within 14 days of receipt of this statement that its terms are not accepted, continuing to trade with the Supplier after receipt of this Statement or, if the Applicant and/or Guarantor(s) are directors or guarantors of a customer, by not taking steps to prevent the customer from continuing to trade with the Supplier after receipt of this statement.



## DEED OF GUARANTEE AND INDEMNITY

To: Wavebreak Capital No.1 Pty Ltd

- A. The Guarantor acknowledges that (insert the Customer's name)..... ACN..... ("the Customer") and the Guarantor have requested that Wavebreak Capital No.1 agree to enter into an agreement with the Customer to provide products on credit to the Customer through an account to be held by Wavebreak Capital No.1 in the Customer's name, and that Wavebreak Capital No.1 has agreed to do so on condition (among other things) that the Guarantor execute this Deed of Guarantee and Indemnity ("this Guarantee").
- B. In this Guarantee, **Wavebreak Capital No.1** means Wavebreak Capital No.1 Pty Ltd ABN 71 623 476 157.

### NOW THIS DEED WITNESSES:

1. The Guarantor:-
  - (a) guarantees punctual payment to Wavebreak Capital No.1 of all amounts which the Customer does now or may at any time in the future owe to Wavebreak Capital No.1;
  - (b) guarantees punctual and correct compliance with all obligations (including payment obligations) which the Customer owes now or may in the future owe to Wavebreak Capital No.1;
  - (c) indemnifies Wavebreak Capital No.1 against any loss it may suffer if the Customer does not meet any of its obligations.
2. This Guarantee creates a principal obligation from the Guarantor to Wavebreak Capital No.1 and it is in addition to any security which Wavebreak Capital No.1 holds from the Customer. This Guarantee may be enforced without Wavebreak Capital No.1 having to take any steps against the Customer or its security.
3. This Guarantee is not affected by and is still enforceable:-
  - (a) if any amount owing to Wavebreak Capital No.1 by the Customer is not recoverable by Wavebreak Capital No.1 for any reason at all;
  - (b) if Wavebreak Capital No.1 does not comply with any law or any contract with the Customer;
  - (c) if Wavebreak Capital No.1 grants any time, release or other concession to the Customer or the Guarantors or any one or more of the Guarantors;
  - (d) if one or more of the Guarantors or any other party does not execute this Guarantee and Indemnity;
  - (e) in the event of death, incapacity, administration, bankruptcy or insolvency of the Customer or of any of the Guarantors;
  - (f) if a payment by the Customer or by any Guarantor to Wavebreak Capital No.1 is set aside in bankruptcy, liquidation or official management of the Customer or of any Guarantor;
  - (g) if a Guarantor ceases to be director of or be involved with the Customer or the status or structure of the Customer changes at all;
  - (h) if Wavebreak Capital No.1 agrees to extend or increase, at any time any credit limit imposed on the Customer;
  - (i) if any other thing occurs which could otherwise limit the effect of this Guarantee.
4. This Guarantee is a continuing guarantee and indemnity and is not wholly or partially discharged until all credit arrangements between Wavebreak Capital No.1 and the Customer are ended, all amounts owing to Wavebreak Capital No.1 by the Customer are paid, and all obligations of the Customer to Wavebreak Capital No.1 are complied with in full.
5. Where there are two or more Guarantors, their obligations are joint and several and none of them shall be discharged from their obligations under this Guarantee if:-
  - (a) this Guarantee is not enforceable against one of them or the liability of one of them ceases;
  - (b) any Guarantor dies; or
  - (c) if one of them is unable to perform his or her other obligations under this Guarantee.
6. The Guarantor agrees to waive all rights inconsistent with the terms of this Guarantee.
7. In the event of the Guarantors and/or the other Guarantors making any payment in respect to an obligation of the Customer whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Customer unless and until Wavebreak Capital No.1 has been paid in full.
8. In the event of the Customer going into liquidation, the Guarantors will be prohibited from proving in competition with the Customer unless and until Wavebreak Capital No.1 has been paid in full.
9. The Guarantors charge in favour of Wavebreak Capital No.1 all of their estate and interest in any personal property that the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged.
10. The Guarantor agrees that Wavebreak Capital No.1 may seek from a credit reporting agency, a credit report containing personal information about the Guarantor to assess whether to accept the Guarantor as guarantor for credit applied for by the Customer to Wavebreak Capital No.1. The Guarantor authorises Wavebreak Capital No.1 to give a credit reporting agency and any of Wavebreak Capital No.1's subsidiaries, successors, assigns, associated entities, connected entities and related entities, information about the Guarantor relating to this Guarantee and the Customer's credit account with Wavebreak Capital No.1.
11. The Guarantor agrees that if Wavebreak Capital No.1 approves the Customer's application for account, this Guarantee remains in force until the credit facility covered by the Customer's application ceases.
12. In accordance with the Australian Privacy Principles in force at the date of signing this Guarantee, if Wavebreak Capital No.1 considers it relevant to:-
  - (a) accepting the Customer for credit applied for by the Customer to Wavebreak Capital No.1, the Guarantor consents to Wavebreak Capital No.1 obtaining from a credit reporting agency a credit report containing personal credit information about the Guarantor; and
  - (b) collecting overdue payments in respect of credit provided to the Customer, the Guarantor agrees to Wavebreak Capital No.1 receiving from a credit reporting agency a credit report containing personal information about the Guarantor.
13. If the Customer is a trustee of a trust, the Guarantor warrants that the Customer has full authority as trustee to enter into contracts for the supply to it of goods or services, or both, on credit.
14. The Guarantor enters into this Guarantee in the Guarantor's own capacity and as trustee of any trust the Guarantor is trustee of.
15. The Guarantor hereby charges with payment of all moneys and compliance with all obligations owed by the Guarantor to Wavebreak Capital No.1 under this Guarantee all beneficial interest (freehold and leasehold) in real property, held now or in the future by the Guarantor. The Guarantor agrees that if demand is made upon it, him or her by Wavebreak Capital No.1, the Guarantor will immediately execute a mortgage in registrable form. The Guarantor unconditionally consents to Wavebreak Capital No.1 lodging a caveat or caveats noting its interest pursuant to this equitable mortgage. The Guarantor irrevocably and by way of security appoints Wavebreak Capital No.1 or any Officer to be its, his or her true and lawful attorney to execute and register such instruments, including and without limiting the generality of the foregoing, executing and registering a mortgage over any real property held now or in the future by the Guarantor. The Guarantor authorises the attorney appointed pursuant to this clause to enter into conflict transactions within the meaning of the *Powers of Attorney Act 1998*.
16. The Guarantor shall pay all costs incurred by Wavebreak Capital No.1 arising out of or incidental to this Guarantee, including, without limiting the foregoing, expenses, damages, commissions, interest and solicitor and own client legal costs.
17. The Guarantors agree to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to Wavebreak Capital No.1 by the Guarantors or the Guarantors' authorised representative.
18. The Guarantors agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document.
19. If a notice or a demand is given to one of the Guarantors it will mean it has been given to all of them.
20. "Wavebreak Capital No.1" and "Customer" includes their subsidiaries, successors, assigns and associated companies and their servants and/or agents.

IN WITNESS WHEREOF this Deed has been executed by the parties.

<p>Date: .....</p> <p><b>SIGNED, SEALED and DELIVERED</b> by the Guarantor ) ..... ) Guarantor (sign) ) ..... In the presence of: Full name of Guarantor .....</p> <p>..... Witness (sign)</p> <p>..... Witness Name (Please Print) .....</p>	<p>Date: .....</p> <p><b>SIGNED, SEALED and DELIVERED</b> by the Guarantor ) ..... ) Guarantor (sign) ) ..... In the presence of: Full name of Guarantor .....</p> <p>..... Witness (sign)</p> <p>..... Witness Name (Please Print) .....</p>
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## SCHEDULE 1 - CONDITIONS OF SALE

### 1. DEFINITIONS & INTERPRETATION

- 1.1 **SupaCut** means Wavebreak Capital No.1 Pty Ltd ABN 71 623 476 157, and its subsidiaries, successors, assigns associated entities, connected entities and related entities, and their servants and/or agents, and when used, the words “we”, “us”, and “our” are references to Wavebreak Capital No.1; **Collateral Documents** means any Sale Delivery Dockets, Orders, quotations, invoices, guarantees or other documents which form or describe the subject matter of an agreement entered into in accordance with the Conditions of Sale, but does not include any descriptions, illustrations and performances contained in catalogues, price lists and advertising material; **Conditions of Sale** means any terms and conditions of quotation, supply and or sale of Wavebreak Capital No.1 that are notified by Wavebreak Capital No.1 to the Customer (whether in a Collateral Document or otherwise) and include these conditions of sale and any Purchase Agreement; **Customer** means the person who purchases the Products and when used, the words “you” and “your” are references to the Customer; **Event of Default** means (i) the Customer fails to pay for Products in accordance with the Conditions of Sale; (ii) the Customer is in breach of its obligations under the Conditions of Sale; or (iii) there is an Insolvency Event; **Insolvency Event** means for the Customer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Customer or any of the Customer’s property, being taken under section 459F(1) of the Corporations Act 2001 to have failed to comply with a creditor’s statutory demand, being unable to pay the Customer’s debts as and when they fall due and payable, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer’s own affairs for any reason, taking any step that could result in the Company becoming insolvent, entering into a compromise or arrangement with any of the Customer’s members or creditors, or any analogous event; **Interest Rate** means the rate of 15% per annum; **Officer** means each director, secretary, credit manager and authorised representative of Wavebreak Capital No.1 ; **Order** means a purchase order or offer from the Customer which has been accepted by Wavebreak Capital No.1 but excludes any terms and conditions of the Customer that may be on the Order or offer to purchase or any other documentation of the Customer associated with any Order; **Payment Date** means within 30 days of the date of statement from Wavebreak Capital No.1 to the Customer, or as Wavebreak Capital No.1 may otherwise notify the Customer of in writing; **Products** means any products of Wavebreak Capital No.1 being power tool accessories including without limitation auger bits, chucks and chuck keys, diamond cup wheels, plug cutters, drill doctors, drills, holesaw sets, holesaws, jigsaw blades, merchandisers, multi - function tools, polishing, protection, reciprocating blades, router bit sets, router bits, sanding, saw blades, saw bushes, spade bits, wire wheels and other products as supplied and or distributed from time to time by Wavebreak Capital No.1 to the Customer, or ordered by the Customer but not yet supplied, and includes the Services; **Sale Delivery Docket** means, if applicable, Wavebreak Capital No.1’ docket provided upon Delivery; **Services** means any service supplied by Wavebreak Capital No.1 to the Customer, being IT consumables and hardware supply and distribution services.

### 2. ORDERS

- 2.1 Each Order shall constitute an offer by you to purchase from us the Products specified in such order. If we decide to accept an Order, an agreement (“**Purchase Agreement**”) shall have been entered into between you and us in relation to the Products on the terms and conditions contained in the Conditions of Sale.
- 2.2 Orders must clearly state an order number, date of order and requested delivery date.
- 2.3 Wavebreak Capital No.1 reserves the right to amend the price of any Products the subject of the Order at any time up to Delivery.
- 2.4 Within a reasonable time after receipt of the Order and with the Customer being notified, Wavebreak Capital No.1 may, for any reason, decide not to supply the Products the subject of the Order.
- 2.5 Wavebreak Capital No.1 is not liable to the Customer for any loss or damage suffered as a result of the non-supply of any Products.
- 2.6 Wavebreak Capital No.1 may require the Customer to provide documents or further information as part of the Order, and if Wavebreak Capital No.1 does so it shall not be obliged to consider an Order until such documents and further information have been provided.
- 2.7 An Order may be revoked by the Customer at any time prior to acceptance by Wavebreak Capital No.1, but if written notice of revocation from the Customer is not actually received by Wavebreak

Capital No.1 prior to acceptance, the revocation shall be ineffective and the Customer shall be bound by the Conditions of Sale, and the Customer must pay to Wavebreak Capital No.1 any costs and expenses incurred by Wavebreak Capital No.1 of and incidental to such Order.

- 2.8 For the avoidance of doubt, no terms or conditions of the Customer are binding on Wavebreak Capital No.1 unless expressly agreed to in writing by Wavebreak Capital No.1.

### 3. DELIVERY

- 3.1 Delivery is taken to be when the Products leave Wavebreak Capital No.1’ premises, either by collection by you or by delivery pursuant to your specific request.
- 3.2 The Customer must pay all delivery charges incurred at cost plus sales tax / GST and other relevant charges prevailing at that time.
- 3.3 Wavebreak Capital No.1 is not responsible for the loading or transportation of the Products unless otherwise agreed to by Wavebreak Capital No.1.
- 3.4 The Customer bears all costs and risks involved in taking the Products from Wavebreak Capital No.1’ premises, irrespective of the type of Delivery.
- 3.5 Any timeframes for Delivery quoted by Wavebreak Capital No.1 are estimates only.
- 3.6 Delivery may, in Wavebreak Capital No.1’ absolute discretion, be by way of partial deliveries. Each partial delivery may be invoiced separately and will be a separate Purchase Agreement.
- 3.7 If Wavebreak Capital No.1 fails to deliver some or all of the Products pursuant to a Purchase Agreement and/or the Conditions of Sale, the Customer will not be entitled to cancel the Purchase Agreement or any other Order or Purchase Agreement.
- 3.8 If you take advantage of our shipment facilities please note that if Products have to be re-delivered because you are not available to accept the Products, Wavebreak Capital No.1 is charged for each additional attempt. You agree to reimburse us for all such additional delivery costs. We will invoice you on a separate invoice for these additional delivery costs, and you agree to pay any such invoices on or before the Payment Date or on the terms contained in the invoice, whichever is the earlier in time for payment.

### 4. RISK

- 4.1 Notwithstanding any arrangements that may have been made, risk in the Products passes to the Customer on Delivery or upon collection by the Customer.

### 5. PAYMENT

- 5.1 Payment is due on or before the Payment Date, without deduction or set off.
- 5.2 Amounts received by Wavebreak Capital No.1 may be applied by Wavebreak Capital No.1 in its absolute discretion including first toward payment of interest, costs and expenses payable to Wavebreak Capital No.1 under these Conditions of Sale or any Purchase Agreement, before being applied against any amounts invoiced for Products which remain unpaid from time to time.
- 5.3 Payments by credit card will incur a surcharge (plus GST).
- 5.4 Returned cheques will incur a dishonour fee (excluding GST).

### 6. INTEREST

- 6.1 The interest rate on any outstanding debts is a fixed rate of 10 per cent.

### 7. CLAIMS, RETURNS AND CREDITS

- 7.1 Claims for shortages and breakages must be made immediately upon Delivery and must include Wavebreak Capital No.1’ invoice number and date, failing which the claim will not be accepted by Wavebreak Capital No.1.
- 7.2 Credits sought for returned Products are at Wavebreak Capital No.1’ discretion. Where accepted, Wavebreak Capital No.1 may charge a reasonable administration fee in respect of all returned Products. For the avoidance of doubt, no Products for which the shelf life has expired will be accepted for return.
- 7.3 Products, in respect of which a credit is sought and approved by Wavebreak Capital No.1, must be returned to Wavebreak Capital No.1’ premises within 14 days from date of invoice, freight free, in good and saleable condition, in the original containers and packaging in which they were supplied and accompanied by the number and date of Wavebreak Capital No.1’ supplying invoice.

### 8. LIABILITY

- 8.1 Wavebreak Capital No.1 makes no express warranties in respect of the Products.
- 8.2 To the extent permitted by law, Wavebreak Capital No.1 excludes all:
- (a) implied warranties in respect of the Products that would otherwise be implied by law into the Conditions of Sale; and
  - (b) liability to the Customer for any loss (including loss of profits and any direct, indirect, special or consequential losses), or for any damages to persons or property, or for death or injury caused by an act or omission (including negligent acts or omissions) by Wavebreak Capital No.1, its employees, contractors or agents and/or arising in any way out of the use of the Products, or delay in delivery or non-delivery.
- 8.3 Where the preceding paragraphs cannot legally operate and to the extent permitted by law, Wavebreak Capital No.1's liability for breach of any warranty or any term implied by law into the Conditions of Sale is limited to the lowest of the cost of replacing the Products, acquiring equivalent products or having the Products repaired.
- 8.4 The Conditions of Sale are not subject to the provisions of the *Sale of Goods Acts* in each jurisdiction of Australia, the operations of which are hereby expressly excluded.

## **9. WARRANTIES, REPRESENTATIONS, ACKNOWLEDGEMENTS**

- 9.1 In making an Order, the Customer warrants, represents, acknowledges and agrees as follows:
- (a) You have read and understand and wish to be bound by the full terms, conditions and effect of the Conditions of Sale;
  - (b) All purchases by you are for commercial purposes only;
  - (c) The person(s) who made the Order was authorised by you to do so;
  - (d) Any Purchase Agreement entered into pursuant to any Order shall be valid and binding on you, notwithstanding the making or serving of any such Order or purported Order was forged or fraudulent or was procured in excess of or without your authority;
  - (e) Your particulars provided to us are in all respects true and correct;
  - (f) You have relied solely on your own skill and judgement in entering into the Conditions of Sale and selecting the Products ordered by you;
  - (g) We have not made any representation or promise to you of any nature, regarding your rights under the Conditions of Sale or otherwise;
  - (h) The Conditions of Sale represent the entire agreement as concluded between us and you, and supersedes any other agreement, terms and/or conditions;
  - (i) No representations made by us or you concerning the Products shall be an implied term of the Conditions of Sale or form the subject matter of a separate agreement, subsidiary or collateral with the Conditions of Sale; and
  - (j) You have not been induced to enter into the Conditions of Sale by any representation, oral or otherwise, made by, for or on behalf of us.

## **10. GST**

- 10.1 Unless otherwise stated, an amount payable by a party under a Purchase Agreement in respect of a taxable supply represents the value of that supply (exclusive of GST), and the recipient must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply.

## **11. PROPRIETARY RIGHTS**

- 11.1 Wavebreak Capital No.1 will retain all copyright and other proprietary rights in any Wavebreak Capital No.1 confidential information and any Wavebreak Capital No.1 material, including documents, drawings, certifications and instructions provided to the Customer. The Customer must not use the Wavebreak Capital No.1 information or material or their contents for any purpose other than the purpose for which they were provided. The Customer must not disclose, transfer, transmit or otherwise make available to any third party in any manner or form, any material or their contents or any information relating to them or the Products without Wavebreak Capital No.1 written consent.

## **12. MISCELLANEOUS**

- 12.1 Time is of the essence.
- 12.2 The Conditions of Sale shall be governed by and construed in accordance with the laws of and applicable to the State of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland. Further, the Customer submits to the Brisbane central registries of the Courts of the State of Queensland, the Federal Magistrates Court of Australia and the Federal Court of Australia as the proper and correct registries for Wavebreak Capital No.1 to commence any proceeding in relation to the Conditions of Sale.

## **13. VARIATION**

- 13.1 The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of Wavebreak Capital No.1 at any time by written notice to the Customer. The Customer will be provided with fourteen (14) days to accept the variation/s, failing which the variations may be deemed accepted by Wavebreak Capital No.1.
- 13.2 Any proposed variation to these terms and conditions by the Customer must be requested in writing. The Supplier may refuse any such request upon providing reasons either orally or in writing.
- 13.3 Variations requested by the Customer will only be binding upon Wavebreak Capital No.1 if they are accepted in writing.

## **14. PRIVACY ACT**

- 14.1 The Customer agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*) contained in this document.