



**HOSHIZAKI**  
**LANCER**

## Hoshizaki Lancer Pty Ltd

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## Hoshizaki Lancer Limited

Company No 848864

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### Terms and Conditions of Sale

These terms and conditions are used by all customers of Hoshizaki Lancer Pty Ltd and Hoshizaki Lancer Limited. For Credit Account customers these Terms and Conditions of Sale are to be read together with the Company's Australian or New Zealand Credit Application and Security Agreement documentation.

#### 1. Application

The following terms and conditions of sale (**Terms**) apply to each contract arising for the supply of goods or services (**Goods**) by Hoshizaki Lancer Pty Ltd in Australia, Hoshizaki Lancer Limited in New Zealand, or any of their related companies (**the Company**) to the customer (**the Customer**). These Terms supersede any previous written or oral agreements or understandings (if any) entered into between the Company and the Customer in connection with the supply of Goods.

**Please read these Terms carefully as they contain important information regarding the Customer's rights and obligations under this agreement and the Company's acceptance of any Customer Order is on the express understanding that the Order is subject to these terms.**

#### 2. Offers and Acceptance

- 2.1 Every quotation is an estimate only and is subject to withdrawal, correction or alteration at any time prior to the Company's acceptance of the Customer's Order.
- 2.2 Unless otherwise agreed in writing, all quotations given by the Company are valid for thirty (30) days only.
- 2.3 These Terms constitute the entire agreement between the parties regarding the supply of Goods, unless otherwise agreed in writing between the parties.
- 2.4 These Terms take precedence over any terms and conditions which may be contained in any document provided by the Customer.
- 2.5 The Company may, at their sole discretion, agree to provide credit to the Customer on terms set out in the Company's Credit Application and Security Agreement documentation. The Customer is deemed to have accepted any credit terms set out in the Company's Credit Application and Security Agreement documentation where they place any further orders after the initial execution of those terms.

#### 3. Prices

- 3.1 All prices, which are set out in the material supplied by the Company (as varied from time to time) and accepted in the Customer Order charged are subject to the Customer's order being for the whole quantity specified in the quotation, unless otherwise agreed in writing between the parties.
- 3.2 Prior to the acceptance by the Company of the Customer's Order the Company reserves the right to vary prices at any time by giving notice by any means to the Customer to reflect those increased supply costs or changes in exchange rates, duties and like charges which are incurred by the Company.
- 3.3 Unless otherwise expressly stated, the quoted price excludes the costs of transportation to the Customer's point of delivery.

#### 4. Variations

- 4.1 Any requested variations, alterations or modifications to Goods ordered by the Customer must be put to the Company in writing.
- 4.2 The Company in its absolute discretion may decide to accept or reject the variation, alteration or modification and shall notify the Customer of its decision by any means.
- 4.3 Where the Company rejects any requested variations, alterations or modifications, and has undertaken, ordered or prepared the Goods, the Customer will be required to accept the Goods and pay the Company in accordance with the original quotation.
- 4.4 Where any requested variation, alteration or modification is accepted, the original price quoted will be amended to reflect any consequent adjustment to the price of the Goods.
- 4.5 Clauses 3 and 4 will not be invalid by reason of the Company not stipulating the precise manner in which any variation in price is to be calculated.

## 5. Delivery and Storage/Risk

- 5.1 Subject to clause 5.4, delivery of a Good occurs when the Good is delivered by the Company to the Customer or its agent, or to a storage location designated by the Customer, unless otherwise agreed in writing between the Parties.
- 5.2 Delivery dates are estimates only. The Company will not be liable for any loss or damage for failure to deliver Goods by the estimated delivery date.
- 5.3 The Customer must promptly supply The Company with all technical information and commercial documentation necessary to supply the Goods.
- 5.4 If for reasons outside the control of the Company it becomes necessary to place a Good or any component thereof in storage, the cost of storage will be charged to the Customer. In these circumstances, delivery of a Good will be deemed to have occurred at the time the Good is placed in storage.
- 5.5 If a Good is provided to a transport company by the Company for delivery to the Customer, the transport company will be deemed the Customer's agent under this clause.
- 5.6 Notwithstanding Retention of Title provisions as per Clause 20.5 and 21.5 hereof, the risk in Goods purchased will pass to the Customer upon delivery to the Customer or its agent.
- 5.7 If the Goods are damaged or destroyed prior to the title passing to the Customer, the Company is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods.
- 5.8 The Customer shall inspect the Goods upon delivery and will, within 24 hours, notify the Company of any defects to fulfil any quotation or order.
- 5.9 The Customer will, within a reasonable time following delivery, grant the Company access to the Goods in order to inspect for any alleged defect.
- 5.10 Should the Customer fail to notify the Company within the specified period then the Goods shall be deemed to be in compliance with the order and free from any defect whatsoever.

## 6. Payment

- 6.1 At the Company's sole discretion:
  - 6.1.1 a deposit may be required prior to any supply.
  - 6.1.2 the Company may require the Customer to pay in cash.
  - 6.1.3 the Company may agree to supply credit and the supply of credit will subject to the Company's Credit Application and Security Agreement documentation ("Credit Account customers").
- 6.2 Where payments are made by credit card, a surcharge of 1.2% will apply to all payments made by Visa Card or Master Card whilst a rate of 1.6% will apply to American Express Card payments. However no surcharge will apply to payments made via EFT (Electronic Funds Transfer) directly to The Company's bank account.
- 6.3 Credit Account customers are required to pay all amounts for purchases, in full and with no deduction or set-off, within 30 days from the end of the month during which any given purchase is made, for domestic customers or 60 days from the date of invoice for any given purchase, for international customers (or as otherwise advised by the Company at their discretion).
- 6.4 In the event of a dispute, the complete un-disputed portion of the account must be paid in accordance with the Payment Terms.
- 6.5 In the event that the Customer fails to make any payment by the due date, all monies owing to the Company will become immediately due and payable, and the Company may in its discretion:
  - 6.5.1 refuse, change or withdraw the Credit Account for the Customer;
  - 6.5.2 cancel, or withhold delivery of, existing orders for Goods until all monies have been paid in full;
  - 6.5.3 exercise its rights under clause 11.
- 6.6 Where work is to be carried out over a period exceeding one month, then pro-rata progress payments may be claimed and invoiced by The Company.
- 6.7 Interest on overdue amounts may be charged at a rate of 1% per calendar month or part thereof and the Customer shall be liable for, and expressly undertakes to pay, all such interest.
- 6.8 Should it be considered necessary by the Company to incur legal and/or other expenses, including any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Customer, the Customer shall be liable for all such expenses. The Customer acknowledges that the Company is entitled to recover all costs actually incurred as well as an administrative rate on those expenses for having to incur the time and expense to recover capped at 5% of the costs incurred.
- 6.9 Amounts received by the Company may be applied first against interest, charges and expenses.
- 6.10 Any payment made by or on behalf of the Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer's indebtedness and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.
- 6.11 The Customer shall be liable for, and expressly undertakes to pay, all fees (including an Administration Fee in an amount to be set from time to time by the Company) for all costs incurred as a result of any cheque or any electronic banking transaction being dishonoured for whatever reason.

## 7. Warranty

- 7.1 The Company warrants that Goods supplied shall be of merchantable quality provided that the Goods are used for their intended purpose. To the extent permitted at law (both in Australia and New Zealand as applicable,) where the Good is used contrary to any reasonable instructions provided by the Company the warranty is excluded.
- 7.2 Without limiting clause 7.1, and to the extent permitted at the respective laws as set out in clauses 20.1 and 21.1 (being Australia and New Zealand as applicable,) the Company expressly excludes all statutory guarantees (as applicable in Australia) and equivalent warranties (as applicable in New Zealand) ("Warranties") including but not limited to all Warranties relating to title, defects or conformity of the Goods.
- 7.3 Any defects that arise in the Goods during any warranty period specified by the Company for those Goods will be replaced or repaired in accordance with this clause 7.
- 7.4 The Company excludes all other Warranties, conditions and warranties except any implied statutory guarantees (as applicable in Australia) and conditions or warranties (as applicable in New Zealand) the exclusion of which would contravene any Federal or State legislation (in Australia or New Zealand as applicable) or cause any clause of this agreement to be void (Non-excludable Condition).
- 7.5 The Warranties referred to in this clause and clause 7.3 specifically will not apply:
- 7.5.1 unless notice of any defect and any claim in respect thereof is given in writing to the Company within the warranty period;
- 7.5.2 if any serial number or identification or instalment plate attached to the relevant Goods has been altered, rendered illegible or removed;
- 7.5.3 if the Goods have been:
- (a) subject to misuse, abuse, negligence or accident otherwise than by the Company;
  - (b) connected to improper, inadequate or faulty power, water or drainage services or operated using incorrect, insufficient or contaminated lubricants, coolants, refrigerants, or additives;
  - (c) installed, maintained or operated otherwise than in accordance with the instructions of the Company;
  - (d) damaged by foreign objects;
  - (e) serviced, repaired, altered or moved otherwise than by the Company or its nominees or using non Company approved replacement parts.
- 7.5.4 if the Goods are used for any purpose or subjected to any operating conditions varying from that for which it was specifically supplied by the Company; or
- 7.5.5 if damage to the Goods arose from corrosion, or physical or chemical properties of water, steam or chemical compounds unless the Goods were supplied by the Company for a purpose which contemplated these contributing elements and in respect of which there was specific and detailed prior disclosure by the Customer.
- 7.6 The Company's liability to the Customer in respect of the Warranties, any warranty referred to in clause 7.3, breach of any Non-excludable Condition, breach of contract or any negligent act or omission, is limited at The Company's option, to:
- 7.6.1 in the case of Goods, replacement or repair of the Goods, or any part thereof, or the supply of equivalent Goods; and
- 7.6.2 in the case of Services, the re-supply of the Service, or the cost of re-supply of that Service.
- 7.7 The Customer will be responsible for, and must meet all charges in respect of:
- 7.7.1 making the Goods accessible for service including the removal, dismantling or reinstatement of any equipment to which the Goods may be connected or from premises where the Goods are installed;
- 7.7.2 labour, transportation, travelling or communication expenses necessarily incurred in the provision of services or repairing Goods at locations other than the Company's branches or other nearer premises nominated by the Company; and
- 7.7.3 any surcharge applicable in respect of the provision of services or repairing Goods outside normal working hours.
- 7.8 In no circumstances will the Company be liable for any loss or damage, including any consequential loss or damage, arising from any delay in delivery or failure to deliver any Goods or Service, either whole or in part, due to circumstances beyond its control or any direct loss in connection with these Terms to the extent that any direct loss is caused or contributed to by the action of the Company.
- 7.9 To the extent permitted at law, any costs associated with the return of the Goods for the purpose of a warranty claim shall be the responsibility of the Customer.

## 8. Intellectual Property Indemnity

- 8.1 All intellectual property created by or on behalf of the Company in relation to the Goods supplied by the Company will be and remain the sole property of the Company. The Customer does not acquire any rights in the Company's intellectual property under these Terms, other than the right to use such intellectual property within its business, and will not exploit, replicate, reverse-engineer or use for any other purpose the Company's intellectual property or any materials or documents in which the intellectual property is recorded.
- 8.2 The Customer warrants that the Company will not breach any third party's intellectual property or other rights in consequence of manufacturing or supplying the Goods or providing the Services in accordance with directions, instructions, drawings, designs or specifications provided by the Customer. The Customer indemnifies the Company

against all liabilities, claims, losses, damages or costs (on a full indemnity basis and whether incurred by or awarded against the Company) that the Company may incur as a direct or indirect result of a breach of this warranty.

- 8.3 The Customer acknowledges that all technical information, advice, know-how, drawings, designs and samples submitted to the Customer by the Company are confidential and the proprietary information of the Company. The Customer will keep all such information secret and confidential and will not disclose it or any part thereof to any person without the express written authority of the Company.

## 9. Marketing Materials

- 9.1 The Customer grants to the Company the right to:

- 9.1.1 take photographs, film, videotape or other images of Goods installed in or otherwise located at the Customer's premises, and to use, reproduce, publish, edit, modify, dispose of or otherwise deal with those images; and
- 9.1.2 reproduce and publish the Customer's name and trademarks, and disclose the fact that the Company has provided Goods and/or Services to the Customer,

In the Company's brochures and other marketing, promotional and the Company material, without the need for any further consent from the Customer

## 10. Confidentiality

- 10.1 The Customer must keep confidential all confidential information (Confidential Information) of the Company that comes into the Customer's possession or control in connection with these Terms or otherwise (including without limitation the intellectual property and proprietary information referred to in clause 8).
- 10.2 The Customer may only use the Company's Confidential Information for the purposes of these Terms, and may only disclose the Confidential Information to those of its officers and employees who:
- 10.2.1 have a need to know for the purposes of these Terms (and only to the extent that each has a need to know) and,
- 10.2.2 have agreed in writing to keep the Confidential Information confidential.
- 10.3 The obligations of confidentiality under these Terms do not extend to information that:
- 10.3.1 is rightfully known to or in the possession or control of the Customer and not subject to an obligation of confidentiality;
- 10.3.2 is public knowledge (otherwise than as a result of a breach of these Terms).
- 10.3.3 is required by law to be disclosed.
- 10.4 The Customer must promptly return to The Company all Confidential Information upon request.

## 11. Cancellation

- 11.1 The Company may cancel or postpone the delivery of Goods at any time before delivery by giving reasonable notice to the Customer by any means.
- 11.2 The Company shall not be liable for any loss or damage, including any consequential loss or damage, as a result of any cancellation or postponement where reasonable notice is provided.
- 11.3 In the event that the Customer cancels or postpones delivery of Goods, the Customer shall be liable for any costs incurred by the Company up to the time of the cancellation or postponement including, but not limited to, any re-stocking, storage, transport, and bringing-on or standing down of staff.

## 12. Return of Goods

- 12.1 The Customer may seek approval from the Company within 30 days of purchasing Goods to return any unused Goods.
- 12.2 Returns will be accepted only if prior arrangements have been made with the Company and charges, including but not limited to re-stocking fees, may apply.
- 12.3 If a return is approved by the Company, the Customer must return the Goods within 14 days of the date of approval, and in the same packaging (as reasonably required) and condition as originally delivered to the Customer, marked clearly with the item number, customer name and invoice number.
- 12.4 The Customer is liable for freight and must ensure that the Goods are adequately packaged to ensure that there is no damage in transit. Where damages occurs, the Customer will be liable.
- 12.5 The Company may charge the Customer a handling and restocking fee equivalent to 15% of the value of the Goods returned, in consideration for accepting the return.
- 12.6 The value of the Goods returned must be a minimum of \$100.00.

## 13. Variations to Specifications

The Company is committed to a policy of continual product improvement and reserves the right to modify the specifications for any Goods sold to the Customer.

## 14. Insurance

The Customer is responsible for obtaining insurance, including for food and product loss and other consequential losses arising from breakdown of the Goods or failure to perform, as and from the date of delivery of the Goods by the Company or its agent.

## 15. Assignment

The Customer may not assign or transfer any of its rights or obligations under these Terms to any other person without the prior written approval of the Company which may be withheld by the Company in its absolute discretion.

## 16. Termination

16.1 These Terms will continue in force until the date of termination specified in the schedule at item 3, unless earlier terminated in accordance with these Terms.

16.2 The Company may terminate these Terms with immediate effect upon written notice to the Customer if:

16.2.1 the Customer suffers an insolvency event, including if a receiver/receiver and manager, liquidator, provisional liquidator, administrator, trustee in bankruptcy or other like person is appointed, or a scheme of arrangement is proposed or approved in respect of the Customer, or a deed of the Company arrangement is proposed or approved in respect of the Customer, or a mortgagee enters into possession of any of the Customer's assets or an application is made for the winding up or sequestration of the estate of the Customer;

16.2.2 the Customer breaches a term of this agreement, and fails to remedy that breach within 14 days of a written notice requiring it to do so.; or

16.2.3 the Customer does not agree with the Company's proposed variation to the Terms in accordance with clause 18.2.

16.3 Without in any way limiting clause 18.2, either party may terminate these Terms upon one month's prior written notice to the other party.

16.4 Upon termination of these Terms:

16.4.1 all monies owing to The Company will immediately become due and payable;

16.4.2 The Company may, in its discretion, exercise its rights under clause 11;

16.4.3 The Company will stop all work on all Goods not yet provided to the Customer at the date of termination;

16.4.4 the Customer will be required to reimburse the Company for all reasonable costs incurred by the Company, up until the date of termination, in connection with the supply of the Goods referred to in clause 16.4.3.

16.5 Termination of these Terms will not affect any accrued rights or remedies any party may have as at the date of termination.

16.6 The following clauses will survive termination of these Terms: clauses 8, 9, 10, 11, 16, 20 and 21.

## 17. Force Majeure

Neither the Company nor the Customer shall be liable for any breach of any provision of any contract between them arising from an act of their respective God, natural disaster, terrorism, war or any other, specified or un-specified, occurrence beyond the control of either party.

## 18. Variation of Terms

18.1 These Terms and Conditions may be amended or superseded from time to time by notice given by the Company by any means.

18.2 If the Customer does not agree to The Company's proposed variations, the contract between the Company and the Customer will terminate.

18.3 Where the Customer places a further Order after provision of the amended Terms and Conditions, the Customer is deemed to have accepted the proposed variations.

## 19. General

19.1 Nothing in these Terms constitutes a relationship of employer and employee, partnership, principal and agent, or joint venture between the parties.

19.2 The whole or any part of any clause of these Terms that is illegal or unenforceable will be severed from these Terms and will not affect the continued operation of the remaining provisions of these Terms.

19.3 The failure of a party at any time to insist on performance of any obligation under these Terms is not a waiver of its right to insist on performance of that obligation or to claim damages unless that party acknowledges in writing that the failure is a waiver.

19.4 The Company accepts no responsibility for changes in any law which may affect supply.

19.5 The Customer agrees to notify the Company in writing at least fourteen (14) days prior to any change whatsoever in ownership structure and, further, indemnifies the Company against any loss or damage that may result from the Customer's failure to notify the Company of any such change.

19.6 The Customer acknowledges that all purchases are made relying solely upon the Customer's own skill and judgment.

## 20. Clauses applying to Goods sold from and out of Australia and/or Hoshizaki Lancer Pty Ltd in Australia

Where Goods or Services are sold out of Australia, the parties agree to be subject to the following provisions:

### 20.1 Jurisdiction

20.1.1 These Terms shall be read and construed in accordance with the laws of the State of South Australia and, where applicable, the Commonwealth of Australia and the Customer submits to the non-exclusive

jurisdiction of the courts of South Australia in respect of any dispute or any other matter arising out of these Terms.

20.1.2 Should a dispute arise between the Customer and the Company, either party may refer the dispute to mediation by the Australian Commercial Disputes Centre (ACDC) for resolution in accordance with the Guidelines for Commercial Mediation of the ACDC. Each party must bear its own costs of resolving a dispute under this clause and the parties must bear equally the costs of any appointed person and independent premises used for resolving or attempting to resolve a dispute.

20.1.4 If a dispute is not resolved under subclause 20.1.2 within 30 days, a party that has complied with this clause may terminate the dispute resolution process by giving notice in writing to the other party.

## 20.2 Retention of Title

20.2.1 Title in all the Goods supplied shall remain vested in the Company and shall not pass to the Customer until all monies owing to the Company by the Customer together with all collection, repossession and/or legal costs incurred have been paid in full. If any of the Goods are damaged or destroyed prior to the title passing to the Customer, the Company is entitled, without affecting any other rights and remedies under this agreement, to any insurance proceeds payable for the Goods in accordance with the PPSA Aus.

20.2.2 The Goods, whether as separate chattels or as components, and the proceeds from the use or sale of the Goods, shall be stored in such a manner as to be clearly identifiable and traceable as the property of the Company until title has passed to the Customer.

20.2.3 Where the Customer is liable for and has failed to pay for the Goods, the Company may demand at any time until title has passed to the Customer that the Customer returns the Goods or any part of them.

20.2.4 In the event that the Customer defaults in the payment of any monies owing to the Company, the Company and its employees or agents shall have the right to enter without notice upon the Customer's premises or any other premises where the Goods are known to be stored (and the Customer must ensure that the Company has the right to enter such premises at all times) to repossess the Goods and for this purpose the Customer shall grant reasonable access rights and the Company, its employees or agents shall be entitled to do all things required to secure repossession or render inoperative such Goods or associated equipment by the removal of some component, part or device there from.

20.2.5 The Company may, without notice to the Customer, resell any Goods it repossesses under this clause. In the event that The Company repossess and sells any Goods under this clause, The Company will repay to the Customer such amounts (if any), up to the amount paid by the Customer for the relevant Goods, remaining after deduction of all costs and expenses incurred by The Company in exercising its rights under this clause (including repossession, selling and storage costs, and revaluing the Good to ascertain its resale value). The amount payable by The Company under this clause will be reduced in accordance with any reduction in the value of the Good due to damage while in the possession or control of the Customer.

## 20.3 Taxes

20.3.1 Unless specifically described as 'GST inclusive', any consideration to be paid or provided for a supply by the Company to the Customer does not include any amount on account of goods and services tax, or any similar tax applicable in Australia ('GST'). Where any supply is subject to GST (other than a supply the consideration for which is specifically described as 'GST inclusive'), the Customer must, at the same time and in the same manner as the GST exclusive consideration is payable or to be provided for that supply, pay to the Company an amount equal to the GST payable by the Company in respect of that supply.

20.3.2 Other government charges are in addition to prices quoted and are payable by the Customer and if paid by the Company are refundable by the Customer to the Company.

## 20.4 Australian/Cth Legislation

20.4.1 The Customer warrants that the Goods are supplied by the Company to a Customer for the purposes of a business, and that the provisions of the National Credit Code contained in the National Consumer Credit Protection Act 2009 (Cth) do not apply.

20.4.2 If the Customer purchases any Goods from the Company for resupply as, or to incorporate any of the Company's Goods into goods ordinarily acquired for personal household or domestic use ("Consumer Goods") the Customer warrants that:

20.4.2.1 if a Customer supplies the Consumer Goods for resupply, the Customer will ensure that its terms and conditions of supply require the Customer's customer (and each person in the distribution chain) to include in their supply agreements or conditions of sale obligations requiring their customers to also exclude liability for any claims under all relevant legislation ; and

20.4.2.2 if the Customer supplies the Consumer Goods directly to an end user/consumer the Customer will do so using terms and conditions of supply which exclude liability for claims to the maximum extent permitted at law under all legislation and in accordance with these terms.

but only where the end user/customer acquires the Consumer Goods for business purposes.

20.4.3 Without limiting the preceding clauses, where the Customer purchases the Goods for resupply, the Customer indemnifies the Company to the maximum extent of the law for all claims arising from the resale and use by the Customer's purchaser.

20.5 Personal Property Securities Act 2009 (Cth)

20.5.1 For the purpose of these Terms and Conditions, as appropriate, any words contained in the subsequent clauses have the respective meanings as defined in the Personal Property Securities Act 2009 (Cth) ("PPSA Aus") and the parties acknowledge that:

20.5.1.1 the Customer is the grantor,

20.5.1.2 the Company is the secured party;

20.5.1.3 the Goods, which are commercial property, are the collateral; and

20.5.1.4 attachment occurs on acceptance of the Customer's Order.

20.5.2 The Customer agrees that where the Goods are supplied on credit by the Company then:

20.5.2.1 the Customer charges, and agrees to charge, all of the Goods with payment of all amounts owed in accordance with these Terms;

20.5.2.2 the Customer confirms that the Goods are held on trust for the Company;

And that the Customer holds the Goods subject to the powers and rights of the Company contained or implied in these Terms and the PPSA Aus.

20.5.3 The customer acknowledges these terms give rise to a Security Interest in favour of the Company, which the Company may, in its discretion, affect a registration on the PPSA Aus register (in any manner the Company deems appropriate) in relation to any security interest arising under or in connection with or contemplated by these Terms.

20.5.4 The Customer waives its right to receive notice of a verification statement in relation to any registration by the Company on the register.

20.5.5 The Customer agrees to:

20.5.5.1 promptly execute any documents;

20.5.5.2 provide all relevant information; and

20.5.5.3 fully cooperate with the Company

and do any other act or thing that the Company requires to ensure that the Company has a perfected security interest in, and has priority over any other security interests in, the Goods or otherwise.

20.5.6 In the event that the Customer does not provide the necessary details to complete a valid financing statement for the purposes of the PPSA Aus, then the Company can complete all such details.

20.5.7 The Customer agrees that, until all monies owing to the Company are paid in full, it shall not sell or grant any other security interest in the Goods including but not limited to:

21.5.7.1 not allowing the registration of financing change statement in respect of the Security Interest; or

21.5.7.2 not permitting, granting or agreeing to grant or create another Security Interest in the Goods;

without the Company's prior written consent.

20.5.8 If Chapter 4 of the PPSA Aus would otherwise apply to the enforcement of a security interest arising in connection with these terms, the Customer agrees that the following provisions of the PPSA Aus will not apply to the enforcement of these terms: section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Customer; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Customer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement).

20.5.9 Notices or documents required or permitted to be given to the Company for the purpose of the PPSA Aus must be given in accordance with the PPSA Aus.

20.5.10 The Company agrees with the Customer not to disclose information of the kind mentioned in subsection 275(1) of the PPSA Aus except in circumstances required by paragraphs 275(7)(b)-(e).

20.5.11 If the Company receives any notice in relation to the Customer under section 64 of the PPSA Aus, all outstanding monies may, at the Company's discretion, become immediately due and payable.

20.5.12 The Customer agrees to reimburse the Company, upon demand, for all costs and/or expenses incurred or payable by the Company in relation to registering or maintaining any financing statement, releasing in whole or in part the Company's security interest or any other document in respect of any security interest.

**21. Clauses applying to Goods sold from and out of New Zealand and/or Hoshizaki Lancer Limited in New Zealand**

Where Goods or Services are sold out of New Zealand, the parties agree to be subject to the following provisions:

21.1 Jurisdiction

21.1.1 These Terms shall be read and construed in accordance with laws of New Zealand and the Customer submits to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or any other matter arising out of these Terms.

- 21.1.2 Should a dispute arise between the Customer and the Company, either party may refer the dispute to mediation by the New Zealand Commercial Disputes Centre (NZCDC) for resolution in accordance with the Guidelines for Commercial Mediation of the NZCDC. Each party must bear its own costs of resolving a dispute under this clause and the parties must bear equally the costs of any appointed person and independent premises used for resolving or attempting to resolve a dispute.
- 21.1.3 If a dispute is not resolved under this clause 21.1.2 within 30 days, a party that has complied with this clause may terminate the dispute resolution process by giving notice in writing to the other party.
- 21.2 Retention of Title
- 21.2.1 Title in all the Goods supplied shall remain vested in the Company and shall not pass to the Customer until all monies owing to the Company by the Customer together with all collection, repossession and/or legal costs incurred have been paid in full. If any of the Goods are damaged or destroyed prior to the title passing to the Customer, the Company is entitled, without affecting any other rights and remedies under this agreement, to any insurance proceeds payable for the Goods in accordance with the Personal Property Securities Act 1999 (NZ) ("PPSA NZ").
- 21.2.2 The Goods, whether as separate chattels or as components, and the proceeds from the use or sale of the Goods, shall be stored in such a manner as to be clearly identifiable and traceable as the property of the Company until title has passed to the Customer.
- 21.2.3 The Company may demand at any time until title has passed to the Customer that the Customer returns the Goods or any part of them.
- 21.2.4 In the event that the Customer defaults in the payment of any monies owing to the Company, the Company and its employees or agents shall have the right to enter without notice upon the Customer's premises or any other premises where the Goods are known to be stored (and the Customer must ensure that the Company has the right to enter such premises at all times) to repossess the Goods and for this purpose the Customer shall grant reasonable access rights and the Company, its employees or agents shall be entitled to do all things required to secure repossession or render inoperative such Goods or associated equipment by the removal of some component, part or device there from.
- 21.2.5 The Company may, without notice to the Customer, resell any Goods it repossesses under this clause. In the event that The Company repossess and sells any Goods under this clause, The Company will repay to the Customer such amounts (if any), up to the amount paid by the Customer for the relevant Goods, remaining after deduction of all costs and expenses incurred by The Company in exercising its rights under this clause (including repossession, selling and storage costs, and revaluing the Good to ascertain its resale value). The amount payable by The Company under this clause will be reduced in accordance with any reduction in the value of the Good due to damage while in the possession or control of the Customer.
- 21.3. Taxes
- 21.3.1 Unless specifically described as 'GST inclusive', any consideration to be paid or provided for a supply by the Company to the Customer does not include any amount on account of goods and services tax, or any similar tax applicable in New Zealand ('GST'). Where any supply is subject to GST (other than a supply the consideration for which is specifically described as 'GST inclusive'), the Customer must, at the same time and in the same manner as the GST exclusive consideration is payable or to be provided for that supply, pay to the Company an amount equal to the GST payable by the Company in respect of that supply.
- 21.3.2 Other government charges are in addition to prices quoted and are payable by the Customer and if paid by the Company are refundable by the Customer to the Company.
- 21.4 New Zealand Legislation
- 21.4.1 Where any Goods are supplied by the Company to a Customer for the purposes of a business, the provisions of the New Zealand Consumer Guarantees Act 1993 ("Consumer Guarantees Act") will not apply.
- 21.4.2 If the Customer purchases any Goods from the Company for resupply as, or to incorporate any of the Company's Goods into goods ordinarily acquired for personal household or domestic use ("Consumer Goods") the Customer warrants that:
- 21.4.2.1 if a Customer supplies the Consumer Goods for resupply, the Customer will ensure that its terms and conditions of supply require the Customer's customer (and each person in the distribution chain) to include in their supply agreements or conditions of sale obligations requiring their customers to also exclude liability for any claims under the Consumer Guarantees Act; and
- 21.4.2.2 if the Customer supplies the Consumer Goods directly to an end user/consumer the Customer will do so using terms and conditions of supply which exclude liability for claims under the Consumer Guarantees Act,
- but only where the end user/customer acquires the Consumer Goods for business purposes.
- 21.4.3 The Customer warrants that it will indemnify the Company against any failure by the Customer, its customers or any person in the distribution chain to properly contract out of liability to business end users/consumers under the Consumers Guarantees Act.
- 21.5 Personal Property Securities Act 1999 (NZ)
- 21.5.1 The Customer acknowledges and agrees that these Terms constitute a security interest for the purposes of the PPSA NZ and that the Company may register a financing statement(s) to protect the Company's



security interest under these Terms in accordance with the PPSA NZ and as far as applicable in accordance with clause 20.5 without limiting that:

the Customer is the grantor,

21.5.1.2 the Company is the secured party;

21.5.1.3 the Goods, which are commercial property, are the collateral; and

21.5.1.4 attachment occurs on acceptance of the Customer's Order.

AND where the Goods are supplied on credit by the Company then:

21.5.1.5 the Customer charges, and agrees to charge, all of the Goods with payment of all amounts owed in accordance with these Terms;

21.5.1.6 the Customer confirms that the Goods are held on trust for the Company;

and that the Customer holds the Goods subject to the powers and rights of the Company contained or implied in these Terms and the PPSA NZ.

21.5.2 The Customer waives its right to receive notice of a verification statement in relation to any registration by the Company on the register.

21.5.3 The Customer agrees to:

21.5.3.1 promptly execute any documents;

21.5.3.2 provide all relevant information; and

21.5.3.3 fully cooperate with the Company

and do any other act or thing that the Company requires to ensure that the Company has a perfected security interest in, and has priority over any other security interests in, the Goods or otherwise.

21.5.4 In the event that the Customer does not provide the necessary details to complete a valid financing statement for the purposes of the PPS NZ, then the Company can complete all such details.

21.5.5 The Customer agrees that, until all monies owing to the Company are paid in full, it shall not sell or grant any other security interest in the Goods including but not limited to:

21.5.5.1 not allowing the registration of financing change statement in respect of the Security Interest; or

21.5.5.2 not permitting, granting or agreeing to grant or create another Security Interest in the Goods;

without the Company's prior written consent.

21.5.6 The Customer agrees:

21.5.6.1 to do anything necessary to assist The Company to obtain and maintain a perfected security interest in the Goods in accordance with the PPSA NZ;

21.5.6.2 that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129 and 131-134 of the PPSA NZ will apply to these Terms;

21.5.6.3 to waive its right to receive a copy of any verification statement(s) under the PPSA NZ

21.5.6.4 to pay to the Company all costs and expenses in relation to compliance with any demand given by the Company, or in relation to any application for, or the obtaining of, a court order to maintain any registration in respect of any of the security interests created by the Company under these Terms and serving any such court order on the Customer or the Registrar of Personal Securities; and

21.5.6.5 Any terms and expressions that are defined in the PPSA NZ shall have the same meaning in these Terms as in the PPSA NZ.

## 22. Definitions

Unless the context otherwise provides:

22.1 Company means Hoshizaki Lancer Pty Ltd and Hoshizaki Lancer Limited as appropriate.

22.2 Credit Account means the provision of credit by the Company on terms reasonably required by the Company.

22.3 Customer means the party to this transaction who is deemed to have accepted these terms on provision of a Customer Order.

22.4 Customer Order means the order form supplied by the Company which the Customer identifies the Goods (and Services where applicable) being purchased from the Company in accordance with these terms.

22.5 Good means the goods supplied by the Company for the purpose.

22.6 PPSA Aus means Personal Property Securities Act 2009 (Cth) as varied and amended.

22.7 PPSA NZ means Personal Property Securities Act 1999 (NZ) as varied and amended.

22.8 Services means the services supplied by the Company.

**Hoshizaki Lancer Pty Ltd**

ACN 007 706 461 5 Toogood Avenue Beverley SA 5009 •Tel: +61 8 8268 1388 •Fax: +61 8 8268 1978

**Hoshizaki Lancer Limited**

Company No 848864 9 O'Rorke Street Onehunga New Zealand •Tel: +64 9 634 3612 •Fax: +64 9 634 1472

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**For agreements in Australia:**

**Executed by Hoshizaki Lancer Pty Ltd**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

**OR**

**For agreements in New Zealand:**

**Executed by Hoshizaki Lancer Limited**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

**For Customers who are individuals:**

Signed by \_\_\_\_\_ **(Insert full name of Customer)**  
in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Customer

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of Customer (print)

**OR**

**For Customers that are companies:**

**Company Name:**

\_\_\_\_\_

**ACN or NZ Company Number:**

\_\_\_\_\_

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)