Terms of Supply

1. DEFINITIONS

In these Terms and in any contract to which these Terms apply, unless the context requires otherwise:
"Business Day" means a day other than a weekend or public holiday in the place where Goods are delivered;
"Contract" means the contract between the Supplier and the Customer for or in relation to the sale and purchase of Goods;
"Customer" means the person to whom Goods are supplied by the Supplier or who is named as purchaser in the relevant order form or sales invoice, or its agents or employees;
"Goods" are the goods being provided by the Supplier to the Customer and may include services;
"Supplier" means EH Operations Pty Ltd (ABN: 77 670 231 302), or its subsidiaries, related companies, agents or employees;
"Terms" means these standard terms.

2. GENERAL

2.1 These Terms govern all orders, supplies and related dealings between the Supplier and the Customer (the "Parties") and constitute a complete statement of the Contract between the Parties. These Terms supersede all previous communications between the Parties and override all terms to the contrary, including any different or additional terms specified in the Customer's order, unless agreed to in writing by the Supplier.

2.2 No other representations, warranties, terms or conditions, whether express or implied, are binding on the Supplier, with the exception of those which are agreed to in writing and signed by the Supplier, or those which are implied by law and cannot be excluded by express agreement.

2.3 Notwithstanding the above, any special conditions specified by the Supplier on a quotation or sales invoice will, to the extent they are inconsistent with these Terms, take precedence over these Terms.

2.4 If any of these Terms is invalid and does not go to the essence of these Terms, it will be read down to the extent necessary to make it valid or severed from these Terms without affecting any other Term.

2.5 By placing an order and/or accepting delivery of Goods, or by requesting that we deliver Goods directly to a third party on the Customer's behalf, the Customer unconditionally agrees to be bound by these Terms of Supply. This includes, without limitation, all terms and conditions relating to delivery, payment, liability, and intellectual property rights.

3.

3.1 ORDERS

3.2 The Supplier may decline to accept any orders in whole or in part. Orders are subject to availability of the Goods. No cancellation of an order will be valid without the Supplier's written consent.
The Customer acknowledges that any description of the Goods is given by way of identification only and no order placed pursuant to these Terms constitutes a sale by description or sale by sample.

4.

4.1 PRICES

The purchase price of Goods will be the amount quoted by the Supplier to the Customer in writing or, where no price has been quoted, the price as specified in the Supplier's current price list ("Purchase Price"). The Purchase Price is exclusive of goods and services tax ("GST") (unless otherwise specified) which **if applicable** must be paid by the Customer when payment for the Goods is due. Where payment is made by credit card, the Supplier may charge an administration fee.

4.2 The Supplier may vary the Purchase Price of future orders by giving written notice of variation to the Customer.

5. TERMS OF PAYMENT

5.1 The Customer authorises and consents to the Supplier obtaining credit and personal information about it from, and supplying such information to, any credit reference or collection agencies.

5.2 Payment to the Supplier for Goods is to be made in full within 30 days of date of invoice ("Due Date"), unless otherwise agreed.

5.3 If payment terms are not met or the Customer's credit rating changes, the Supplier may take any or all of the following actions:

(a) charge interest on all overdue amounts at the rate of 20% per annum, calculated monthly from the day after the Due Date until the date of payment (inclusive);
(b) suspend delivery of Goods the subject of the Contract or any other Goods until payment is made in full;
(c) review and amend the terms of payment for future orders by the Customer; or
(d) withdraw its credit facility to the Customer without informing the Customer in writing.

6. DELIVERY

6.1 The Supplier will select the mode of delivery unless the Customer requests otherwise. If the Customer elects to collect the Goods, it must do so within 5 Business Days of being notified that the Goods are ready for collection ("Collection Date"). The Customer will be liable for the cost of storing the Goods beyond the Collection Date.

6.2 The Customer must pay for delivery (regardless of the mode of delivery) unless otherwise agreed in writing.

6.3 The Supplier shall make reasonable efforts to arrange delivery of the Goods by the date for delivery specified in the order ("Delivery Date"), however the Delivery Date is an estimate only and is not a condition of the Contract.

6.4 If the Goods have not been delivered 5 Business Days after the Delivery Date (other than in the event of force majeure, see clause 15), the Customer may cancel the Contract and the Customer will have no claim against the Supplier for any damage, loss, cost or expense caused by the failure to deliver by the Due Date.

6.5 The Customer must provide any necessary particulars or instructions to the Supplier within a reasonable time to enable the Supplier to complete the Customer's order. A revised Delivery Date will be confirmed by the Supplier once such particulars or instructions are received.

6.6 The Supplier may make instalment deliveries and each instalment delivery will be deemed to be a separate Contract to which these Terms apply. Failure by the Supplier to deliver any instalment will not entitle the Customer to cancel the balance of the order.

7. INSPECTIONS AND ACCEPTANCE

The Customer must inspect all delivered Goods and give notice to the Supplier within 5 Business Days of delivery if the Goods are not in accordance with the Customer's order. Failing such notice and subject to any non-excludable condition implied by law, the Goods will be deemed to have been delivered to and accepted by the Customer.

8. RISK AND TITLE

8.1 The risk of loss or damage to the Goods will pass to the Customer when the Supplier delivers the Goods to a carrier for delivery or, where the Goods are to be collected, when the Supplier notifies the Customer that the Goods are ready for collection.

8.2 The Customer must insure the Goods from the time that risk passes to the Customer against all usual risks and, until the Supplier has been paid for them, holds any moneys received from any insurer relating to those Goods, on trust for the Supplier.

8.3 Property and title in the Goods will not pass to the Customer until all amounts owing by the Customer to the Supplier for the Goods ("Amounts Owing") have been paid in full.

9. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

9.1 The Customer grants the Supplier a security interest, as defined in the PPSA, in those Goods until payment of the Amounts Owing has been made. The Customer will not create any other security interests in the Goods until title passes to the Customer.

9.2 Subject to this clause 9 and the PPSA, the Customer may use or resell the Goods, including goods into which the Goods are incorporated, in the ordinary course of its business and the Customer holds the proceeds thereof on trust for the Supplier until the Amounts Owing are paid in full.

9.3 The parties agree to contract out of each of the provisions of the PPSA allowed by section 115 of the PPSA to the following extent:

(a) an exercise by the Supplier of any right, power or remedy will be taken not to be under a provision mentioned in that section of the PPSA if the right, power or remedy would be available under any other law or statute or under these Terms unless the Supplier so elects;
(b) any restriction of the exercise by the Supplier of a right, power or remedy, or any obligation of the Supplier to give notice, will not apply to the extent that that section so allows.

9.4 The Customer:

(a) consents to the Supplier registering a security interest on the personal property securities register under the PPSA in relation to the Goods and the Customer will provide all assistance reasonably required to facilitate this; and
(b) waives the right to receive notice of a verification statement pursuant to section 157 of the PPSA in relation to any registration on that register.

9.5 Neither party will disclose any information of the type specified in section 275(1) of the PPSA other than to their respective related bodies corporate, officers, employees or professional advisers on a need to know basis or with the other party's consent (such consent is not to be unreasonably withheld nor delayed), or as required by any law (other than section 275(1) of the PPSA) or any regulatory authority or stock exchange.

10. DEFAULT OF CUSTOMER

10.1 Without limiting clause 5, upon the happening of any of the following events ("Events of Default"):

(a) (where the Customer is a corporation) the Customer is or becomes insolvent or any order is made or resolution passed for the winding up of its business or a controller is appointed over all or any part of the Customer's assets; or
(b) (where the Customer is a natural person) the Customer is or becomes insolvent or commits an act of bankruptcy or makes an assignment for the benefit of creditors; or
(c) the Customer fails to make any payment to the Supplier when due; or
(d) any other of these Terms is breached by the Customer, or the Supplier reasonably believes that its Goods are at risk of being disposed of otherwise than in accordance with these Terms or its title to those Goods is being challenged; the Supplier may in its absolute discretion:
(e) decline to deliver any Goods which have not yet been delivered; and/or
(f) otherwise cease to perform any of its obligations to the Customer; and/or
(g) terminate the Contract or any other contract between the parties; and/or
(h) request that the Customer return any Goods for which there are Amounts Owing and (without prejudice to any of its other rights) immediately take possession, recover and retain or resell or otherwise dispose of those Goods without notice to the Customer and the Supplier may enter the Customer's premises for those purposes.

10.2 The Customer will pay the Supplier all costs and expenses (including legal fees) incurred by the Supplier or its agents in relation to enforcing its rights and in recovering any overdue amounts owing by the Customer to the Supplier.

11. LIMITATION OF LIABILITY

11.1 To the fullest extent permitted by law, all terms which might be implied by statute are excluded and:

(a) the Supplier's liability for any claim whatsoever relating to the Goods whether pursuant to contract, tort or statute law is limited to the replacement of the Goods or supply of equivalent goods by the Supplier; and
(b) the Supplier is not liable for any indirect or consequential loss or damage or loss of profit howsoever incurred by the Customer directly or indirectly in connection with the Goods or the supply or failure to supply the Goods.

12. CONSUMER GUARANTEES

12.1 Where the Customer is a consumer within the meaning of section 3 of the Australian Consumer Law ("ACL") the ACL provides certain guarantees in relation to the Goods that cannot be excluded however, in that case, where the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for breach of any condition, guarantee or warranty implied by the ACL is to the extent permitted by the ACL limited to:

(a) in the case of goods - to the repair of the goods, or, at Supplier's option, the replacement of the goods or the supply of equivalent goods or to the payment of the cost of repair, replacement or supply of equivalent goods; and
(b) in the case of services - to the resupply of those services or payment of the cost of having those services resupplied.

13. USAGE OF THE GOODS

The Customer will provide any product information supplied by the Supplier to end-users. The Supplier does not accept responsibility for results achieved by others over whose usage it has no control. The Customer must notify the Supplier as soon as it becomes aware of any product claims or injuries incurred as a result of use of the Goods.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 The Supplier retains all intellectual property rights in the Goods ("IPR") notwithstanding any contribution by the Customer (if any) and the Customer must not claim any IPR or the information supplied to it by the Supplier, make representations to any person, or do anything inconsistent with the IPR.

14.2 The Customer must notify the Supplier immediately if the Customer becomes aware of any actual, threatened or apparent infringement of any IPR; any action, claim or demand about the Goods or IPR by a third party; or any misleading or deceptive conduct relating to the Goods. If any of these situations arise, the Customer must take any action considered necessary, and as reasonably requested, by the Supplier to protect its IPR.

14.3 The Customer must not make any admission or take any action relating to any alleged infringement of any third party's rights without the written consent of the Supplier.

15. FORCE MAJEURE

15.1 If performance of any of the Supplier's obligations under these Terms is prevented, restricted or delayed by reason of an event of force majeure including any act or God, war, riot, fire, strike, lock out, industrial dispute, raw material shortage, plant or equipment breakdown, transport interruption or any other cause beyond the Supplier's reasonable control, the Supplier will give notice of the event to the Customer. The Supplier may, in such notice, elect to terminate the Contract or extend the Delivery Date for such period as may be reasonably necessary.

15.2 The Customer may cancel the order without liability if the event causes a delay exceeding 20 Business Days from the Delivery Date. The Customer shall have no claim for breach of contract or otherwise against the Supplier for loss or damage caused by an event of force majeure.

16. NOTICES

16.1 Any notice to be given under these Terms will be sufficiently delivered if:

(a) sent by prepaid mail to the recipient's last known address; or
(b) sent by facsimile, where the sender's facsimile machine confirms successful transmission of the entire notice.

17. DUTY TO ACT IN GOOD FAITH AND AVOID CONFLICTS OF INTEREST

17.1 The Customer must act in good faith when dealing with the Supplier and the Customer must take all reasonable steps to investigate and disclose to the Supplier whether any actual or potential conflict of interest (such as employment arrangements or family relationships) exists between itself or any of its employees and the Supplier or any of the Supplier's employees. The parties will use their best endeavours to resolve any conflict of interest which exists.

18. SUB-CONTRACTING

The Supplier reserves the right to sub-contract the production, manufacture or supply of the whole or any part of the Goods.

19. VARIATION, WAIVER, CANCELLATION OR ASSIGNMENT OF TERMS

19.1 The Supplier may, from time to time, vary these Terms by notice to the Customer and publication on the Supplier's website. The Customer will be deemed to have accepted the varied terms by ordering or accepting any Goods from the Supplier after the date of that notice.

19.2 No purported waiver, variation, cancellation or assignment of these Terms or of any rights or obligations under these Terms by the Customer will be binding on the Supplier unless agreed to in writing by the Supplier.

20. GOVERNING LAW

These Terms and any contracts to which these Terms apply are governed by and construed in accordance with the laws of the State of Victoria in Australia. The parties submit to the non-exclusive jurisdiction of the Courts of that State.

21. CONFIDENTIALITY

The parties will keep details of transactions between them confidential.