

**Exsell Australia Pty Ltd**  
**ABN 65 146 728 323**  
**Unit 2/6 Wedgewood Road, Hallam, Victoria,**  
**Australia, 3803**  
**Phone: +61 3 9706 9500**

### **CREDIT APPLICATION FORM**

This Application is for a credit account to be provided by Exsell Pty Ltd ACN 146 728 323 to the applicant whose details appear below and consists of:

Parts 1 to 3 - Credit Application

Part 4 - Guarantee and Indemnity

Part 5 - Acknowledgements, Warranties and Authorisations – Credit Application and Privacy

Terms and Conditions of Sale

#### **HOW TO COMPLETE THIS CREDIT APPLICATION:**

1. Read all the documents carefully
2. If the customer is a sole trader or partnership, please complete Parts 1 to 3 and sign on page 6 of Part 5
3. If the customer is a company, please complete Parts 1 to 4 and sign on page 6 of Part 5. Each director of the company will also need to sign the guarantee and indemnity on page 5 of Part 4
4. **Press the tab key to move to each section. When there is a box use your mouse to click on the correct box.**
5. Return an original of the Credit Application by post to Exsell Accounts Receivable at the address listed on the header of this form and email a copy directly to [receivables@thepagroup.com.au](mailto:receivables@thepagroup.com.au)

If you do not understand any part of the documents, you should obtain legal and, if applicable, financial advice. For any queries relating to this Credit Application please contact the person who sent it to you.

### **1. BUSINESS DETAILS**

**TRADING NAME:**

**ABN:**

**BUSINESS STRUCTURE** (tick appropriate box):

Proprietary Company  Public Company  Incorporated Body  Sole Trader  Partnership

**DETAILS FOR DIRECTORS/PARTNERS/PROPRIETORS** (strike out which is inapplicable):

Name	Address
Phone No.	Email
Date of Birth	Driver's Licence No.
Name	Address
Phone No.	Email
Date of Birth	Driver's Licence No.
Name	Address
Phone No.	Email
Date of Birth	Driver's Licence No.

Name	Address
Phone No.	Email
Date of Birth	Driver's Licence No.

**DATE OF REGISTRATION OR COMMENCEMENT OF BUSINESS:**

**BUSINESS ADDRESS DETAILS:**

**Street Address** (unless you notify otherwise goods will be delivered to this address):

**Registered Office Address** (if the customer is a company):

**ACCOUNTS CONTACT PERSON:**

Name	Position
Phone No.	Email
Fax No.	

**SALES/PURCHASING CONTACT PERSON:**

Name	Position
Phone No.	Email
Fax No.	

**2. TRADE/PROFESSIONAL REFERENCES**

**SUPPLY 2 TRADE REFERENCES EQUAL OR GREATER IN VALUE TO THE CREDIT LIMIT BEING REQUESTED:**

Company Name	Account No.
Contact Person	Phone No.
Email	Fax No.
Company Name	Account No.
Contact Person	Phone No.
Email	Fax No.

**SUPPLY THE FOLLOWING PROFESSIONAL REFERENCES:**

**BANK:**

Name Position

Phone No. Email

**SOLICITOR:**

Name Position

Phone No. Email

**3. FINANCIAL DETAILS AND HISTORY**

**POSTAL/BILLING ADDRESS** (Invoices/statements are to be sent to):

Street Address  Registered Office Address  Other

**ANTICIPATED MONTHLY CREDIT REQUIRED: \$**

Have any been involved in a business that has failed or a company that has been wound up or dissolved or had a receiver, liquidator or any other insolvency administrator appointed or entered into an arrangement with creditors or had a mortgagee enter into possession of all or any part of their assets:  Yes  No

If yes, please provide or attach details:

**4. GUARANTEE AND INDEMNITY**

**IF THE CUSTOMER IS A COMPANY EACH DIRECTOR WILL NEED TO SIGN THIS GUARANTEE AND INDEMNITY**

TO: **Exsell Pty Ltd ACN 146 728 323** ("Exsell")

In consideration of Exsell at the request of:

(Name) \_\_\_\_\_ of (Address) \_\_\_\_\_

(Name) \_\_\_\_\_ of (Address) \_\_\_\_\_

(Name) \_\_\_\_\_ of (Address) \_\_\_\_\_

(Name) \_\_\_\_\_ of (Address) \_\_\_\_\_

as the guarantors ("Guarantor") agreeing to:

- supply or continue to supply goods and services to the customer named in the attached Credit Application ("**Customer**");
- provide credit to the Customer; and/or
- grant an indulgence to the Customer outside Exsell's agreed credit terms,

the Guarantor unconditionally and irrevocably:

1. guarantees to Exsell payment of all money payable by the Customer, and due and prompt observance and performance of all the Customer's obligations, under Exsell's Terms and Conditions of Sale (a current copy of which is attached to this Credit Application), whether now or in the future, and indemnifies Exsell against all loss, damage, costs and expenses suffered or incurred by Exsell in respect of any failure by the Customer to make any payment or perform any of its obligations under Exsell's Terms and Conditions of Sale ("**Guarantee and Indemnity**");
2. agrees that the Guarantee and Indemnity is not affected by:
  - a. any part payment of money or performance of obligations by the Customer;
  - b. Exsell granting any time, credit or indulgence to the Customer;
  - c. the liability of the Customer ceasing due to any cause;
  - d. any composition, compromise or arrangement made with Customer;
  - e. the release of the Customer or any Guarantor;
  - f. any change to Exsell's Terms and Conditions of Sale;
  - g. the death of the Customer or any Guarantor;
  - h. the Customer or any Guarantor becoming "bankrupt", "insolvent under administration" or an "externally administered body corporate" as each of these words and phrases are defined in the Corporations Act 2001 (Cth);
  - i. the Customer or any Guarantor becoming of unsound mind;
  - j. the transfer or sale of the Customer's business or shares in the Customer;
  - k. the Buyer entering into a composition or scheme of arrangement with its creditors;
  - l. any lack of power or defect in execution of this Deed by any Guarantor;
  - m. the availability to the Customer of any defence at law or in equity in respect of its liability under Exsell's Terms and Conditions of Sale and the Guarantor waives all such defences if any; or
  - n. Exsell for any reason not exercising all or any of its rights or powers against the Customer, or in respect of any other security or surety against which Exsell may claim to satisfy any liability of the Customer; or
  - o. anything which, but for this Clause 2, might determine, discharge or impair the Guarantee and Indemnity;
3. agrees that the Guarantee and Indemnity remains in force until all the Guarantor's obligations under this Deed have been satisfied;
4. agrees that Exsell may exercise its rights against the Guarantor at any time after the Customer fails to comply with its obligations under Exsell's Terms and Conditions of Sale, without Exsell first having to take any action or enforce any of its rights against the Customer;
5. agrees that, until the Customer has paid all money and performed all its obligations under Exsell's Terms and Conditions of Sale, the Guarantor will not:
  - a. prove in or against, or enforce any security held by the Guarantor against the Customer's estate or assets in competition with Exsell; or
  - b. deprive Exsell of any dividend or money it may receive or be entitled to receive as a creditor of the Customer;
6. agrees that the Guarantee and Indemnity :
  - a. is a principal obligation of the Guarantor;
  - b. is in addition to and not in substitution for any other rights which Exsell may have under Exsell's Terms and Conditions of Sale or otherwise at law or in equity;

7. agrees that where 2 or more persons are named as the Guarantor, this Deed is enforceable against each of them jointly and severally;
8. charges (and where this Deed is executed by more than 1 person the Guarantors joint and severally charge) with payment of all money due under the Guarantee and Indemnity as beneficial owner all freehold and leasehold interests in land and personal property which it now has or may acquire and, on demand by Exsell, agree to immediately execute a mortgage or other instrument or security or consent to a caveat as required;
9. agrees that words and phrases not defined in this Deed will have the meaning given to them in Exsell's Terms and Conditions of Sale;
10. agrees that in this Deed the singular includes the plural and if there is more than one Guarantor, their obligations are joint and several;
11. agrees that this Deed will be deemed to be made in the State in which Exsell's registered office is located and the Guarantor agrees to submit to the jurisdiction of appropriate court in that State;
12. agrees to execute and deliver all such deeds, documents and instruments and do all such acts and things as are necessary to give full effect to all of the agreements and arrangements contemplated by this Deed and the rights and obligations of the parties under this Deed; and
13. appoints Exsell, as its attorney to sign all documents and do all things Exsell considers reasonably necessary to comply with the Guarantor's obligations under this Deed, where the Guarantor has failed to do so within the timeframe required by Exsell.

**Executed as a Deed**

**DATED :**

Signed Sealed and Delivered by

\_\_\_\_\_

in the presence of

\_\_\_\_\_

Witness

Signed Sealed and Delivered by

\_\_\_\_\_

in the presence of

\_\_\_\_\_

Witness

Signed Sealed and Delivered by

\_\_\_\_\_

in the presence of

\_\_\_\_\_

Witness

Signed Sealed and Delivered by

\_\_\_\_\_

in the presence of

\_\_\_\_\_

Witness

**9. ACKNOWLEDGEMENTS, WARRANTIES AND AUTHORISATIONS - CREDIT APPLICATION AND PRIVACY**

I/We are the Customer or a duly authorised representative of the Customer) and:

1. apply to Exsell to establish a credit account;
2. acknowledge that I/we have read and the Customer agrees to be bound by Exsell Terms and Conditions of Sale, a current copy of which is attached to this Credit Application;
3. warrant that all the information contained in this Credit Application is true and correct and indemnify Exsell from and against all damages, costs, actions, claims, liabilities and demands resulting from any misrepresentation in, or wilful omission from, this Credit Application;
4. warrant that the credit to be provided by Exsell to the Customer is to be applied wholly or predominantly for business purposes;
5. warrant that the trade references provided in this Credit Application relate to **commercial credit** obtained by the Customer;
6. acknowledge having received notice from Exsell that it may give a **credit reporting agency personal information** about us and this Credit Application in accordance with section 18E(8)(c) of the Privacy Act 1988 (Cth) ("**Act**");
7. authorise Exsell to obtain from a **credit reporting agency** a **credit report** containing personal information about us for the purpose of assessing our credit worthiness and collecting overdue payments;
8. authorise Exsell to give and obtain from **credit providers** named in a **credit report** issued by a **credit reporting agency** or named in this Credit Application or to give a person who is currently a guarantor or who is considering becoming a guarantor, information about our credit arrangements and understand that this information can include any information about our credit worthiness, credit standing, credit history or credit capacity that **credit providers** are allowed to give or receive from each other under the Act, including a **credit report**; and
9. acknowledge and consent to Exsell giving a **credit reporting agency personal information** about us and this Credit Application (eg. the fact that the Customer has applied for credit and the amount and/or the fact that Exsell is a **credit provider** to the Customer).

Words and phrases highlighted in bold and not defined in this Credit Application will have the meaning given to them in the Act.

**DATED:**

**SIGN HERE IF THE CUSTOMER IS A COMPANY:**

\_\_\_\_\_  
Director\*/Sole Director and Company Secretary\*

\_\_\_\_\_  
Director

\_\_\_\_\_  
Full Name (Print)

\* delete whichever does not apply

\_\_\_\_\_  
Full Name (Print)

**EACH DIRECTOR, PARTNER OR PROPRIETOR (IF CUSTOMER IS NOT A COMPANY) TO SIGN HERE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name (Print)

\_\_\_\_\_  
Full Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name (Print)

\_\_\_\_\_  
Full Name (Print)

## **TERMS AND CONDITIONS OF SALE**

### **Definitions**

In these Terms and Conditions of Sale:

- "Customer" means the person named as customer in the Credit Application for the Customer and, where applicable, includes any servant, agent, partner, contractor or employee of that person;
- "goods" means goods supplied by Exsell to the Customer;
- "services" means services provided by Exsell to the Customer;
- "Ethical Goods" means goods that are listed in the Standard for the Uniform Scheduling of Drugs and Poisons Schedule 2, 3, 4 and 8).
- "Exsell" means Exsell Pty Ltd ACN 146 728 323 and, where applicable, includes any servant, agent, contractor or employee of that company.

### **Orders**

The Customer, by ordering the goods or requesting the services, acknowledges and agrees that it is expressly contracting with Exsell on these Terms and Conditions of Sale and to be bound by the Terms and Conditions of Sale, unless otherwise agreed to by Exsell in writing and:

- these Terms and Conditions of Sale are current as at the date on which they are delivered to the Customer;
- Exsell may revise these Terms and Conditions of Sale and provide updated Terms and Conditions of Sale to the Customer; and
- any revisions of these Terms and Conditions of Sale will apply to orders or requests made by the Customer 28 days after the date of notice.

The Customer must comply with the procedure set by Exsell for the placing of orders or requests.

Exsell may, at its discretion, accept or refuse any order or request from the Customer.

Exsell will not be bound to supply any goods or provide any services to the Customer until Exsell raises an invoice.

### **Pricing and Payment**

Unless otherwise agreed in writing, all transactions are made at Exsell's price at the time of delivery of the goods or services, including goods placed on back order which may be subject to price variations between order and delivery.

Exsell may require the Customer to order a minimum quantity or value of goods per order.

Unless otherwise agreed in writing, the price of the goods or services quoted by Exsell or on Exsell's price list is exclusive of GST. In addition to the price payable for the goods or services, the Customer must pay to Exsell, on demand, the GST payable in respect of the supply of those goods or services. For the purposes of these Terms and Conditions of Sale, "GST" has the same meaning as that word is given in the A New Tax System (Goods and Services Tax) Act 1999 (as amended).

Unless otherwise agreed in writing all prices are strictly net and the Customer must pay the full purchase price of the goods or services without deduction, set-off, withholding or

counterclaim within 30 days of the end of the month in which the invoice is raised or otherwise as set out on Exsell's invoice, except for Ethical Goods, which Exsell agrees to supply to the Customer on the condition that the Customer authorises Exsell to directly debit the Customer's nominated bank account on the terms set out below:

- Ethical Goods account statement dates are from the 25th of the month to the 24th of the following month.
- The Customer's nominated bank account will be debited on the 7<sup>th</sup> day of the month following. For example: an Ethical Goods Statement dated 25<sup>th</sup> October to 24<sup>th</sup> November will be debited from the Customer's nominated bank account on the 7<sup>th</sup> December.
- It is at the discretion of Exsell to Direct Debit all funds deemed payable under these Terms and Conditions of Sale for Ethical Goods.

### **Delivery**

The Customer will provide reasonable and proper access to the location specified for delivery of goods or services.

A completed drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced. If the delivery location is unattended, delivery of goods will be deemed to have been made in accordance with the Customer's order by leaving the goods at the location with a delivery docket, at which point the Customer becomes responsible for the goods.

Exsell will in all cases be entitled to choose the method of transport of the goods and the Customer authorises Exsell to subcontract delivery in its absolute discretion.

Where a delivery date is specified, Exsell will endeavour to deliver the goods or services on the due date. Exsell may unilaterally delay or suspend any delivery for any period or deliver the goods ordered or services requested in parts (in which case each part is considered a separate agreement for the supply of goods or services) or cancel any agreement for the supply of goods or services without any liability whatsoever.

The Customer will not reject delivery of any goods or services due to a delay in their delivery or if delivered in parts.

No purported cancellation or suspension of an order or request or any part by the Customer is binding on Exsell after that order or request has been accepted by Exsell.

To the extent permitted by law, the Customer must notify Exsell of any shortages in orders of goods within 7 days of delivery, otherwise the Customer will be deemed to have accepted the order.

### **Risk and Insurance**

The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately on the goods being despatched from Exsell's premises.

The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the

Customer, or third parties arising out of the use or possession of any of the goods or services supplied by Exsell, whether such goods are used singularly, or in combination with other goods, substances, or any process.

#### **Returns and Warranty**

Exsell warrants its goods to be free from defects in material and workmanship but, to the extent permitted by law:

- goods will only be accepted for replacement or return (if applicable) if:
  - the Customer notifies Exsell within 24 hours of delivery if goods supplied were not ordered or are not of merchantable quality or not fit for the purpose required (“defective goods”), with notice to be given in the form and manner and including the details required by Exsell; and
  - after examination by Exsell, the goods are deemed to be defective goods;
- otherwise the Customer will be deemed to have accepted the order;
- Exsell will not accept return of any specially ordered goods;
- if Exsell reasonably considers that goods returned by the Customer are not defective goods, the Customer must pay for their return to the Customer;
- if a dispute arises (including as to the quality of the goods), the Customer must accept and pay for the goods and settle any claim with Exsell at a later date;
- despite this clause, if the Customer rejects the goods then Exsell will be able to sell such goods without prejudice to any claim Exsell may have against the Customer for damages or any other rights or remedies of Exsell.

#### **Liability**

To the extent permitted by law:

- any advice, recommendation, information or representation provided by Exsell as to the quality or performance of the goods or services or their suitability for a particular purpose or otherwise in relation to the goods or services is given in good faith but without any liability or responsibility on the part of Exsell;
- the Customer acknowledges that it has not relied upon or been induced by any representation of Exsell;
- except as specifically set out in these Terms and Conditions of Sale, or contained in any warranty or statement provided with the goods or services, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded;
- replacement or repair of the goods or resupply of the services is the absolute limit of Exsell’s liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods or services by the Customer or any third party;
- Exsell is not liable for any indirect, consequential, special, economic or punitive losses or expenses suffered by the Customer or any third party, howsoever caused, including loss of turnover, profits, business or goodwill or any liability to any other party;

- Exsell will not be liable for any loss or damage suffered by the Customer where Exsell has failed to meet any delivery date or cancels or suspends the supply of goods or services.

Nothing in the Terms and Conditions of Sale is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any laws applicable to the sale of goods or provision of services which cannot be excluded, restricted or modified.

#### **Passing of Property**

Property in the goods will remain with Exsell and will not pass to the Customer until such time when the Customer pays all monies owing to Exsell by the Customer, on all accounts (which payments are not to any extent subsequently claimed or clawed back by any person standing in the place of or representing the Customer). While the goods remain the property of Exsell, the Customer agrees with Exsell that:

- the Customer holds the goods as fiduciary bailee and agent for Exsell;
- the Customer will keep the goods separate from its goods so that they are readily identifiable as the property of Exsell;
- the Customer will not dispose of the goods except with Exsell’s prior written consent or in the ordinary course of the Customer’s business;
- the Customer will hold the proceeds of any sale of the goods on trust for Exsell in a separate account however failure to do so will not affect the Customer’s obligation to deal with the proceeds as trustee and will pay such monies immediately on request to Exsell;
- the Customer will not cause the goods to lose their identifiable character or be intermingled with other goods, in any way, either by any process of its own or by a third party, except with Exsell’s prior written consent or in the ordinary course of the Customer’s business;
- the money received for the sale of any intermingled goods, which contain the goods of Exsell, will be held in trust for Exsell (to the maximum extent that such “trust” monies represent the total outstanding debt owed to Exsell on all accounts by the Customer (and will pay such monies immediately on request to Exsell);
- the Customer has no right or claim to any interest in the goods to secure any liquidated or unliquidated debt or obligation Exsell owes to the Customer;
- the Customer cannot claim any lien over the goods;
- the Customer will not create any absolute or defeasible interest in the goods in relation to any third party, except with Exsell’s prior written consent;
- pending payment in full for all amounts owed by the Customer to Exsell on all accounts, the Customer:
  - must not allow any person to have or acquire any security interest in the goods;
  - must insure the goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries on business;
  - must not remove, deface or obliterate any identifying mark or number on any of the goods.



If the Customer fails to pay for any goods within the period of credit extended by Exsell to the Customer:

- Exsell may without notice and without incurring any liability to the Customer or any other person, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of Exsell, and for this purpose the Customer irrevocably licences Exsell to enter such premises and also indemnifies Exsell from and against all costs, claims, demands or actions by any party arising from such action; and
- if required, the Customer will assign to Exsell any rights of the Customer to any outstanding money relating to the re-supply of the goods. The Customer irrevocably appoints Exsell or its nominee as its attorney to sign all documents and do all things necessary to assign the debts to Exsell under this clause, where the Customer has failed to do so within 7 days of receiving written notice to do so, and ratifies any acts the attorney lawfully does or causes to be done with respect to any such assignment of debts.

### **Security**

The Customer by ordering the goods from Exsell, grants the Security Interest to Exsell and enters into the Security Agreement with Exsell, in which case:

- the Customer acknowledges and agrees that the goods are inventory;
- the Customer must, as and within the timeframe notified by Exsell, sign all documents and do all things necessary in order to:
  - enable Registration with respect to the Security Interest and for that Registration to continue until such time as all of the Customer's obligations under the Security Agreement have been satisfied, including providing the Customer's details and any serial numbers required for Registration;
  - ensure that the Security Interest has priority over all other security interests in the Personal Property, whether registered, perfected or otherwise and whether created or arising before or after the creation of the Security Interest, except those security interests which Exsell agrees will have priority over the Security Interest or which by law have priority over the Security Interest;
  - ensure that Exsell is able to Enforce the Security Interest until such time as all of the Customer's obligations under the Security Agreement have been satisfied and the Customer must not do anything which affects Exsell's ability to Enforce the Security Interest;
- Exsell may exercise its rights in relation to the Security Interest any time after the Customer fails to comply with its obligations under the Security Agreement;
- to the extent permitted by the PPSA, the Customer waives its rights to receive any notices, statements or forms required to be issued or which would ordinarily be issued, whether by Exsell or any other person, to the Customer under the PPSA;
- the Customer must pay to Exsell on request, all Exsell's expenses, including legal costs, stamp duty and registration fees, in connection with the Security Agreement and the grant of the Security Interest,

Registration with respect to the Security Interest and release of the Security Interest;

- where permitted under the PPSA or any other relevant law, the provisions contained in the Security Agreement will prevail over the PPSA or any other relevant law, to the extent of any inconsistency;
- the Customer irrevocably appoints Exsell, as its attorney to sign all documents and do all things Exsell considers reasonably necessary to comply with the Customer's obligations under the Security Agreement, where the Customer has failed to do so within the timeframe required by Exsell or the PPSA and ratifies any acts the attorney lawfully does or causes to be done under the Security Agreement;
- in these Terms and Conditions of Sale, unless the context otherwise requires:
  - "Enforce" means exercise all of Exsell's rights, under the Security Agreement or otherwise, in relation to the Security Interest;
  - "Personal Property" if the PPSA applies, means all the Customer's present and after-acquired Personal Property and includes all of the Collateral and any other assets, property and rights over which the Security Interest is permitted by law, and, where applicable, includes the proceeds from the sale of any of the Personal Property;
  - "PPSA" means the Personal Properties Securities Act 2009 (Cth) and the Personal Property Securities Regulations 2010 (Cth);
  - "Registration" means registration of the Security Interest on the Register to enable the Security Interest to have priority in accordance with the Security Agreement;
  - "Security Agreement" means the agreement between the Customer and Exsell that creates or evidences the Security Interest, including these Terms and Conditions of Sale;
  - "Security Interest" means a "security interest" (as defined in the PPSA) granted by the Customer in the Customer's Personal Property to Exsell under the Security Agreement to secure payment of all money by the Customer and performance of all the Customer's obligations under the Security Agreement and, includes a purchase money security interest; and
  - "Customer" includes the meaning given to "grantor" under the PPSA;
  - words and phrases not defined in these Terms and Conditions of Sale will have the meaning given to them in the PPSA.

### **Default**

If the Customer:

- fails to make any payment in accordance with these Terms and Conditions of Sale;
- fails to comply with any of these Terms and Conditions of Sale;
- being an individual, becomes bankrupt, dies or becomes mentally or physically incapable of managing their affairs;
- being a corporation, passes a resolution for winding up or liquidation or enters into any composition or arrangement with creditors or if a receiver including a

provisional receiver, or receiver and manager, trustee or administrator is appointed for any property or assets or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up;

- has execution levied against it; or
  - ceases or threatens to cease carrying on a business,
- then the Customer will be in default under these Terms and Conditions of Sale and Exsell may, without prejudice to any other remedy available to it under these Terms and Conditions of Sale or in law or equity do one or more of the following:
- charge the Customer interest on any sum due at the rate of 12%p.a., calculated daily, for the period from the due date until the date of payment in full;
  - immediately recover possession of any goods not paid for in full (and the Customer authorises, or will procure relevant authority for, Exsell or its agents);
  - where the Customer has authorised Exsell to directly debit the Customer's nominated bank account, debit any amount owing by the Customer to Exsell and payable under these Terms and Conditions of Sale;
  - charge the Customer for, and the Customer must indemnify Exsell from, all costs and expenses (including without limitation all legal costs and disbursements on an indemnity basis) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any goods;
  - cease or suspend for such period as Exsell thinks fit, supply of any further goods or services to the Customer;
  - by notice in writing to the Customer, suspend or terminate any contract with the Customer so far as unperformed by Exsell;
  - require the payment of cash before or on delivery of any further goods;
  - require that all money owing to Exsell, regardless of the due date, become immediately due and payable; and/or
  - sue the Customer for breach of contract, without effect on the accrued rights of Exsell under any contract.

#### **Miscellaneous**

The termination of any contract between Exsell and the Customer will not:

- relieve the Customer of their obligations to pay any money due under these Terms and Conditions of Sale; or
- affect any provision contained in these Terms and Conditions of Sale which expressly or by implication is to become operative or continue to operate after the contract is terminated.

The Customer agrees that all contracts made with Exsell will be deemed to be made in the State in which Exsell's registered office is located and the Customer agrees to submit to the jurisdiction of appropriate court in that State.

The provisions of these Terms and Conditions of Sale will be separate and severable from each other to the extent that if any provision or provisions are unenforceable they will be read down so as to be enforceable or, if it cannot be so read down, they will be severed from these Terms and Conditions of Sale without affecting the enforceability of the remaining terms.

Failure by Exsell to enforce any of these Terms will not be construed as a waiver of any of Exsell's rights.

All notices, requests, consents, approvals, reports, offers or other communications (**Communications**) given under these Terms and Conditions of Sale must be in writing and:

- delivered personally, by prepaid post, email or facsimile transmission to the party's last known street or postal address, email address or facsimile number; and
- will be considered to have been received if:
  - delivered personally, on delivery;
  - sent by prepaid post, on posting, notwithstanding that it may subsequently be returned through the Post Office unclaimed;
  - sent by facsimile transmission, on production of a transmission control report indicating transmission without error; or
  - sent by email, on receipt by the sender of confirmation on its computer that the message has been delivered.

Unless the context indicates otherwise, a reference in these Terms and Conditions of Sale to:

- the singular includes the plural and vice versa;
- any agreement, warranty, representation or obligation which binds or benefits 2 or more persons, binds or benefits those persons jointly and severally;
- a person includes corporations all bodies and associations corporate or unincorporated and vice versa;
- "includes" means "includes without limitation" or "including" means "including without limitation";
- "\$" or "dollars" is a reference to the lawful currency of Australia.

No agent, employee or representative of Exsell will have any authority whatsoever to bind Exsell to any affirmation, representation, warranty or condition concerning the goods sold under these Terms and Conditions of Sale unless such affirmation, representation, warranty or condition is specifically included in writing within these Terms and Conditions of Sale.

#### **Privacy**

Exsell is bound by the Privacy Act 1988 and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to Exsell in accordance with the Privacy Act.

Exsell requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by Exsell in connection with this Agreement.