

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

## Customer's Details

<input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:		
Legal Name		Trading Name (if different from above)
Physical Address		State      Postcode
Physical Address		State      Postcode
Email Address	Phone No	Mobile No

## Business Details

ABN	ACN	Date Established (current owners)
Nature of Business		
Paid Up Capital (\$)	Estimated Monthly Purchases (\$)	Credit Limit Required (\$)
Principal Place of Business is <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged (to whom)		

## Directors / Owners / Trustee

(1) Full Name		D.O.B.	
Physical Address		State	Postcode
Driver's Licence No	Phone No	Mobile No	
(2) Full Name		D.O.B.	
Physical Address		State	Postcode
Driver's Licence No	Phone No	Mobile No	
(3) Full Name		D.O.B.	
Physical Address		State	Postcode
Driver's Licence No	Phone No	Mobile No	
(4) Full Name		D.O.B.	
Physical Address		State	Postcode
Driver's Licence No	Phone No	Mobile No	

## Account Details

Account Terms <input type="checkbox"/> 7 Days <input type="checkbox"/> 15 Days <input type="checkbox"/> COD		
Bank Name		Branch Name
Account No	BSB No.	Accounts Contact
Accounts Email Address		

## Trade References

(please provide companies that are willing to do trade references)

Name	Address	Phone	Email

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Bluecel Pty Ltd T/A Armor Cases which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

<b>Customer Signature</b>		Name: _____
		Position: _____
		Date: _____
<b>Bluecel Signature</b>		Name: _____
		Position: _____
		Date: _____

## Office Use Only

Account / Ref. No.		Credit Limit:	
Approved By:			
Data Inputted		Date	

IN CONSIDERATION of Blucel Pty Ltd T/A Armor Cases and its successors and assigns ("Blucel") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to \_\_\_\_\_ ("the Customer")

[Insert Company Name In Box Provided]

**I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:**

1. **GUARANTEE** the due and punctual payment to Blucel of all monies which are now owing to Blucel by the Customer and all further sums of money from time to time owing to Blucel by the Customer in respect of goods and services supplied or to be supplied by Blucel to the Customer or any other liability of the Customer to Blucel, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with Blucel, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to Blucel the Guarantor will immediately on demand pay the relevant amount to Blucel. In consideration of Blucel agreeing to supply the goods to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to Blucel registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints Blucel and each director of Blucel as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which Blucel may reasonably require to:
  - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (b) register any other document required to be registered by the PPSA or any other law; or
  - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** Blucel on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, Blucel in connection with:
  - (a) the supply of goods and/or services to the Customer; or
  - (b) the recovery of monies owing to Blucel by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to Blucel's nominees contract default fee and legal costs; or
  - (c) monies paid by Blucel with the Customer's consent in settlement of a dispute that arises or results from a dispute between, Blucel, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by Blucel to the Customer.

**I/WE FURTHER ACKNOWLEDGE AND AGREE THAT**

3. I/We have received, read and understood Blucel's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to Blucel by the Customer and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on Blucel's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to Blucel, each Guarantor shall be a principal debtor and liable to Blucel accordingly.
6. If any payment received or recovered by Blucel is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and Blucel shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, the obligations and agreements on the part of the Guarantor, shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to Blucel.**
9. I/we irrevocably authorise Blucel to obtain from any person or company any information which Blucel may require for credit reference purposes. I/We further irrevocably authorise Blucel to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with Blucel as a result of this Guarantee and Indemnity being actioned by Blucel.
10. The above information is to be used by Blucel for all purposes in connection with Blucel considering this Guarantee and Indemnity and the subsequent enforcement of the same.

**Guarantor-1**

Signed: \_\_\_\_\_  
Full Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Signature of Witness: \_\_\_\_\_  
Name of Witness: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Present Address: \_\_\_\_\_  
EXECUTED as a Deed this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

**Guarantor-2**

Signed: \_\_\_\_\_  
Full Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Signature of Witness: \_\_\_\_\_  
Name of Witness: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Present Address: \_\_\_\_\_  
EXECUTED as a Deed this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

**Note:** 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).  
2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member  
**WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT**



## ARMOR CASES - TERMS & CONDITIONS OF TRADE

### 1. DEFINITIONS

- 1.1 "Blucel" means Blucel Pty Ltd T/A Armor Cases, its successors and assigns or any person acting on behalf of and with the authority of Blucel Pty Ltd T/A Armor Cases.
- 1.2 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Blucel to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) If there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) If the Customer is a partnership, it shall bind each partner jointly and severally; and
  - (c) If the Customer is a part of a trust, shall be bound in their capacity as a trustee; and
  - (d) Includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services (including consultation, manufacturing and/or installation services) supplied by Blucel to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.6 "Intended Use" means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with a building.
- 1.7 "Non-Conforming Product" means products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) The product is not, or will not be, safe; or
  - (b) Does not, or will not, comply with the relevant regulatory provisions; or
  - (c) The product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.8 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Blucel and the Customer in accordance with clause 6 below.
- 1.9 "Site" means the address nominated by the Customer to which the Materials are to be supplied by the Supplier.

### 2. ACCEPTANCE

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that;

- (a) The supply of Goods on credit shall not take effect until the Customer has completed a credit application with Blucel and it has been approved with a credit limit established for the account;
- (b) In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, Blucel reserves the right to refuse Delivery;
- (c) Where the Customer does not elect to control their purchases by a Purchase Order and/or a Letter of Authority, then all purchases made by Customer and/or any other third party acting on behalf of the Customer to which the Goods are charged to the Customer's credit account, shall remain at all times payable by the Customer. All said notices of restrictions pertaining to purchases must be in writing and will remain in place until such time as the Customer revokes;
- (d) The Customer agrees to notify Blucel in writing immediately upon the departure of the Customer employee if an authorised account user. Failure to advise Blucel of such departures, then the Customer acknowledges they will be bound by all purchase orders made by that account user; and
- (e) Any advice, recommendation, information, assistance or service provided by Blucel in relation to Goods or Services supplied is given in good faith is based on Blucel own knowledge and experience and shall be accepted without liability on the part of Blucel and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.

### 3. ELECTRONIC TRANSACTIONS ACT

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW), the Electronic Communications Act 2000 (SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA), Section 226 of the Contract Commercial Law Act 2017 (NZ) (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 4. ERRORS AND OMISSIONS

- 4.1 The Customer acknowledges and accepts that Blucel shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) Resulting from an inadvertent mistake made by Blucel in the formation and/or administration of this Contract; and/or
  - (b) Contained in/omitted from any literature (hard copy and/or electronic) supplied by Blucel in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Blucel; the

Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

## 5. CHANGE IN CONTROL

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

## 6. PRICE AND PAYMENT

- 6.1 At Blucel's sole discretion, the Price shall be either:
- (a) As indicated on any invoice provided by Blucel to the Customer; or
  - (b) Blucel's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
- 6.2 Blucel reserves the right to change the Price:
- (a) If a variation to the Goods which are to be supplied is requested; or
  - (b) If a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) Where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, inclement weather, obscured Site defects, required prerequisite work not completed, limited access to the roof, etc.) which are only discovered on commencement of the Services; or
  - (d) If during the course of the Services, the Goods cease to be available from Blucel's third party suppliers, then Blucel reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
  - (e) As a result of an increase in Blucel's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Services, increases to Blucel in the cost of labour or Goods or due to relevant industry awards (e.g. Site allowance and severance pay), which are outside the control of Blucel.
- 6.3 Variations will be charged for on the basis of Blucel's quotation, and will be detailed in writing, and shown as variations on Blucel's invoice. The Customer shall be required to respond to any variation submitted by Blucel within ten (10) working days. Failure to do so will entitle Blucel to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Blucel's sole discretion, a non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Blucel, which may be:
- (a) On or before Delivery of the Goods;
  - (b) By way of instalments/progress payments in accordance with Blucel's payment schedule;
  - (c) Fifteen (15) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (d) The date specified on any invoice or other form as being the date for payment; or
  - (e) Failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Customer by Blucel.

- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Blucel.
- 6.7 Blucel may in its discretion allocate any payment received from the Customer towards any invoice that Blucel determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Blucel may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Blucel, payment will be deemed to be allocated in such manner as preserves the maximum value of Blucel's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Blucel nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Blucel an amount equal to any GST Blucel must pay for any supply by Blucel under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## 7. PROVISION OF THE SERVICES

- 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) The Customer or the Customer's nominated carrier takes possession of the Goods at Blucel's address; or
  - (b) Blucel (or Blucel's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 At Blucel's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 7.3 Subject to clause 7.4 it is Blucel's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.4 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Blucel claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Blucel's control, including but not limited to any failure by the Customer to:
- (a) Make a selection; or
  - (b) Have the Site ready for the Services; or
  - (c) Notify Blucel that the Site is ready.
- 7.5 Blucel may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time specified by Blucel for Delivery of the Goods is an estimate only and Blucel will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Blucel is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Blucel shall be entitled to charge a reasonable fee for redelivery and/or storage.

## 8. ON-LINE ORDERING

- 8.1 The Customer acknowledges and agrees that:
- (a) Blucel does not guarantee the website's performance;



- (b) Display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Blucel
  - (c) On-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
  - (d) There are inherent hazards in electronic distribution, and as such Blucel cannot warrant against delays or errors in transmitting data between the Customer and Blucel including orders, and you agree that to the maximum extent permitted by law, Blucel will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
  - (e) When making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences;
  - (f) If the Customer is not the cardholder for any credit card being used to pay for the Goods, Blucel shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 8.2 Blucel reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Blucel's business, or violated these terms and conditions.

## 9. RISK

- 9.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Blucel is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Blucel is sufficient evidence of Blucel's rights to receive the insurance proceeds without the need for any person dealing with Blucel to make further enquiries.
- 9.3 If the Customer requests Blucel to leave Goods outside Blucel's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 9.4 The Customer acknowledges and agrees that:
  - (a) Although Blucel Goods includes the original manufacturer's standard lighting and power protection, there is no guarantee provided against damage due to either of these sources. However, additional protection is available upon request by the Customer to Blucel;
  - (b) Any work required to be done to the existing building structure/s for the Services to commence or Goods to be delivered, shall be carried out by others and shall be the Customer's responsibility to organise and pay for. Blucel quotation does not provide for changes to a firewall, chasing, drilling or making good, painting or any other building works unless specified in writing and agreed between Blucel and the Customer;
  - (c) Where Blucel is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Blucel shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused

- or arising in connection with the installation and work incidental thereto;
- (d) Any IT/data systems installed by Blucel must not be modified by others. Blucel will interface to IT systems installed by other third parties where agreed to between Blucel and the Customer. Blucel will use their best endeavours to provide functionality however; Blucel will not accept any responsibility or liability for the performance of such systems.

- 9.5 Blucel will accept no liability whatsoever for system design and performance where the design had been authored or undertaken by others. Whilst Blucel will use the best endeavour to provide a fully functional and operating system. In the event of any rectifying work required as a result of inaccurate or incorrect design issues authored by others, this will result in additional costs being imposed which shall become immediately due and payable to Blucel.

## 10. ACCESS

- 10.1 The Customer shall ensure that Blucel has clear and free access to the Site at all times to enable the Services to be undertaken. Blucel shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Blucel. Once Blucel staff is on Site and access is denied by the Customer and/or the Customer's third party contractor, Blucel shall be entitled to claim for this unscheduled stand down time period based on Blucel's standard hourly rate.
- 10.2 The Customer acknowledges and agrees that where applicable, it is the responsibility of the Customer to ensure that regulated, clean 240AC power and an insulated ground are provided to Blucel.
- 10.3 It shall be the Customer's responsibility to ensure that the workspace has an operating environment suitable for the specified equipment. Equipment racks or cabinets as well as joinery modifications are not included unless specified and agreed to by Blucel.
- 10.4 The Customer agrees to be present at the Site when and as reasonably requested by Blucel and its employees, Blucel's and/or agents.

## 11. HIDDEN SERVICES

- 11.1 Prior to Blucel commencing any Services the Customer must advise Blucel of the precise location of all underground services on the Site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on Site.
- 11.2 Whilst Blucel will take all care to avoid damage to any underground services the Customer agrees to indemnify Blucel in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.

## 12. COMPLIANCE WITH LAWS

- 12.1 The Customer and Blucel shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any work health and safety (WHS) laws relating to construction sites and any other relevant safety standards or legislation.
- 12.2 The Customer shall obtain (at the expense of the

Customer) all licenses and approvals that may be required for the Services.

12.3 Both parties acknowledge and agree:

- (a) To comply with the National Construction Code of Australia (NCC) and Building Products (Safety) Act 2017, in respect of all workmanship and products to be supplied during the course of the Services; and
- (b) Those Services will be provided in accordance with any current relevant Australian/New Zealand Standards where applicable.

### 13. CONFIDENTIALITY

- 13.1 Each party agrees to treat all information and ideas communicated by the other party confidential and each agrees not to divulge it to any third party, without the other party's written consent.
- 13.2 The proposal or quotation and any information contained therein provided by Blucel to the Customer is done so on a "commercial in confidence" basis thereby, the Customer agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of Blucel.

### 14. TITLE

- 14.1 Blucel and the Customer agree that ownership of the Goods shall not pass until:
  - (a) the Customer has paid Blucel all amounts owing to Blucel; and
  - (b) the Customer has met all of its other obligations to Blucel.
- 14.2 Receipt by Blucel of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 14.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 14.1:
  - (a) The Customer is only a bailee of the Goods and must return the Goods to Blucel on request;
  - (b) The Customer holds the benefit of the Customer's insurance of the Goods on trust for Blucel and must pay to Blucel the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) The Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Blucel and must pay or deliver the proceeds to Blucel on demand;
  - (d) The Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Blucel and must sell, dispose of or return the resulting product to Blucel as it so directs;
  - (e) The Customer irrevocably authorises Blucel to enter any premises where Blucel believes the Goods are kept and recover possession of the Goods;
  - (f) Blucel may recover possession of any Goods in transit whether or not Delivery has occurred;
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Blucel;
  - (h) Blucel may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 15. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Blucel to the Customer, and the proceeds from such Goods.
- 15.3 The Customer undertakes to:
  - (a) Promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Blucel may reasonably require to;
    - (i) Register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) Register any other document required to be registered by the PPSA; or
    - (iii) Correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
  - (b) Indemnify, and upon demand reimburse, Blucel for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) Not register a financing change statement in respect of a security interest without the prior written consent of Blucel;
  - (d) Not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Blucel;
  - (e) Immediately advise Blucel of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 15.4 Blucel and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by Blucel, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Customer must unconditionally ratify any actions taken by Blucel under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 16. SECURITY AND CHARGE

- 16.1 In consideration of Blucel agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer of its obligations

under these terms and conditions (including, but not limited to, the payment of any money).

- 16.2 The Customer indemnifies Blucel from and against all Blucel's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Blucel's rights under this clause.
- 16.3 The Customer irrevocably appoints Blucel and each director of Blucel as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.

## **17. DEFECTS, WARRANTIES AND RETURNS, COMPETITION AND CONSUMER ACT 2010 (CCA)**

- 17.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify Blucel in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Blucel to inspect the Goods.
- 17.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 17.3 Blucel acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Blucel makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Blucel's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Customer is a consumer within the meaning of the CCA, Blucel's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If Blucel is required to replace the Goods under this clause or the CCA, but is unable to do so, Blucel may refund any money the Customer has paid for the Goods.
- 17.7 If the Customer is not a consumer within the meaning of the CCA, Blucel's liability for any defect or damage in the Goods is:
- (a) Limited to the value of any express warranty or warranty card provided to the Customer by Blucel at Blucel's sole discretion;
  - (b) Limited to any warranty to which Blucel is entitled, if Blucel did not manufacture the Goods;
  - (c) Otherwise negated absolutely.
- 17.8 Subject to this clause 17, returns will only be accepted provided that:
- (a) The Customer has complied with the provisions of clause 17.1; and
  - (b) Blucel has agreed that the Goods are defective; and
  - (c) The Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) The Goods are returned in as close a condition to that in which they were delivered as is possible.
- 17.9 Notwithstanding clauses 17.1 to 17.8 but subject to the CCA, Blucel shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) The Customer failing to properly maintain or store any Goods;

- (b) The Customer using the Goods for any purpose other than that for which they were designed;
  - (c) The Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) The Customer failing to follow any instructions or guidelines provided by Blucel;
  - (e) Fair wear and tear, any accident, or act of God.
- 17.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Blucel as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Blucel has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 17.10.
- 17.11 Blucel may in its absolute discretion accept non-defective Goods for return in which case Blucel may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 17.12 Notwithstanding anything contained in this clause if Blucel is required by a law to accept a return then Blucel will only accept a return on the conditions imposed by that law.
- 17.13 Subject to clause 17.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

## **18. INTELLECTUAL PROPERTY**

- 18.1 Where Blucel has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Blucel. Under no circumstances may such designs, drawings and documents be used without the express written approval of Blucel.
- 18.2 The Customer warrants that all designs, specifications or instructions given to Blucel will not cause Blucel to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Blucel against any action taken by a third party against Blucel in respect of any such infringement.
- 18.3 The Customer agrees that Blucel may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Blucel has created for the Customer.

## **19. DEFAULT AND CONSEQUENCES OF DEFAULT**

- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Blucel's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes Blucel any money the Customer shall indemnify Blucel from and against all costs and disbursements incurred by Blucel in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Blucel's contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies Blucel may have under this Contract, if a Customer has made payment to Blucel, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Blucel under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention



to the Customer's obligations under this Contract.

19.4 Without prejudice to Blucel's other remedies at law Blucel shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Blucel shall, whether or not due for payment, become immediately payable if:

- (a) Any money payable to Blucel becomes overdue, or in Blucel's opinion the Customer will be unable to make a payment when it falls due;
- (b) The Customer has exceeded any applicable credit limit provided by Blucel;
- (c) The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## 20. CANCELLATION

- 20.1 Without prejudice to any other remedies Blucel may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Blucel may suspend or terminate the supply of Goods to the Customer. Blucel will not be liable to the Customer for any loss or damage the Customer suffers because Blucel has exercised its rights under this clause.
- 20.2 Blucel may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Blucel shall repay to the Customer any money paid by the Customer for the Goods. Blucel shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Blucel as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

## 21. DISPUTE RESOLUTION

- 21.1 Where a dispute arises between the parties, it will be referred to Blucel and the Customer's directors for resolution. Blucel and the Customer agree to solve any disputes amicably and in good faith and on a without prejudice basis and not begin court proceedings or mediation or arbitration proceedings until the dispute resolution channel provided in this clause has been exhausted.
- 21.2 The dispute resolution process will be as follows:
- (a) A party may give notice to the other party about the nature of the dispute (a "Dispute Notice") and the parties will seek to reach settlement amongst themselves within ten (10) Business Days of receipt of the Dispute Notice ("Negotiation Period"). Should the Parties fail to determine the dispute within the Negotiation Period, the Parties may seek within a further period of ten (10) Business Days (or such longer period as agreed in writing between the Parties) to reach agreement on:
    - (i) A mediation procedure out of courts and arbitration proceedings, (such as mediation, reconciliation or expert determination process);
    - (ii) The steps to be taken by each Party and the timing of those steps;

(iii) Who will be the independent person/body conducting the mediation process and who will pay for such independent person's/ body's professional fees and expenses; and

- (b) If the parties fail to solve the entire dispute or fail to reach agreement on any of the matters described above within twenty (20) days (or any other period agreed in writing) from the date of the Dispute Notice, either Blucel or the Customer may commence court proceedings or arbitration proceedings to resolve the dispute.

## 22. PRIVACY POLICY

- 22.1 All emails, documents, images or other recorded information held or used by Blucel is Personal Information, as defined and referred to in clause 22.3, and therefore considered confidential information. Blucel acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Blucel acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Blucel that may result in serious harm to the Customer, Blucel will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to Blucel in respect of cookies where the Customer utilises Blucel's website to make enquiries. Blucel agrees to display reference to such cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
  - (b) Tracking website usage and traffic; and
  - (c) Reports are available to Blucel when Blucel sends an email to the Customer, so Blucel may collect and review that information ("collectively Personal Information")
- If the Customer consents to Blucel's use of cookies on Blucel's website and later wishes to withdraw that consent, the Customer may manage and control Blucel's privacy controls via the Customer's web browser, including removing cookies by deleting them from the browser history when exiting the website.
- 22.3 The Customer agrees that Blucel may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) To assess an application by the Customer; and/or
  - (b) To notify other credit providers of a default by the Customer; and/or
  - (c) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) To assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 22.4 The Customer consents to Blucel being given a consumer

credit report to collect overdue payment on commercial credit.

22.5 The Customer agrees that personal credit information provided may be used and retained by Blucel for the following purposes (and for other agreed purposes or required by):

- (a) The provision of Goods; and/or
- (b) Analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (c) Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) Enabling the collection of amounts outstanding in relation to the Goods.

22.6 Blucel may give information about the Customer to a CRB for the following purposes:

- (a) To obtain a consumer credit report;
- (b) Allow the CRB to create or maintain a credit information file about the Customer including credit history.

22.7 The information given to the CRB may include:

- (a) Personal Information as outlined in 22.3 above;
- (b) Name of the credit provider and that Blucel is a current credit provider to the Customer;
- (c) Whether the credit provider is a licensee;
- (d) Type of consumer credit;
- (e) Details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) Advice of consumer credit defaults (provided Blucel is a member of an approved QAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Blucel has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) Information that, in the opinion of Blucel, the Customer has committed a serious credit infringement;
- (h) Advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

22.8 The Customer shall have the right to request (by e-mail) from Blucel:

- (a) A copy of the Personal Information about the Customer retained by Blucel and the right to request that Blucel correct any incorrect Personal Information; and
- (b) That Blucel does not disclose any Personal Information about the Customer for the purpose of direct marketing.

22.9 Blucel will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

22.10 The Customer can make a privacy complaint by contacting Blucel via e-mail. Blucel will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## 23. GENERAL

23.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales the state in which Blucel has its principal place of business, and are subject to the jurisdiction of the Sydney Courts in that state.

23.3 Subject to clause 17, Blucel shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Blucel of these terms and conditions (alternatively Blucel's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

23.4 Blucel may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.

23.5 The Customer cannot licence or assign without the written approval of Blucel.

23.6 Blucel may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Blucel's sub-contractors without the authority of Blucel.

23.7 The Customer agrees that Blucel may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Blucel to provide Goods to the Customer.

23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.

23.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.