

## TERMS AND CONDITIONS

### 1. DEFINITIONS

In this document, unless the context otherwise requires:

- 1.1 **“Australian Standards”** means any applicable Australian Standards and related documents as amended from time to time.
- 1.2 **“Contract”** means any contract or agreement, whether formal or informal, written, oral or partly written and partly oral, formed between the Client and ECO Test and Tag.
- 1.3 **‘Client’** refers to the individual, business, partnership or company entering into the Contract with ECO Test and Tag, and includes the Client receiving the Goods and/or Services as agent of any entity.
- 1.4 **‘ECO Test and Tag’** means Hayden Brokenshire trading as ECO Test and Tag.
- 1.5 **“Electrical Appliance”** means any single phase or three phase Electrical Equipment that requires or consumes electricity in order to operate, including but not limited to kettle, television, fridge, power supply, battery charger, computer, microwave and similar appliances.
- 1.6 **“Electrical Equipment”** includes electrical appliances, leads, power boards, residual-current devices, emergency lights, and exit lights.
- 1.7 **“Fire Equipment”** includes emergency lights, exit lights, fire extinguishers, fire blankets, and fire hose reels.
- 1.8 **“Goods”** means any goods supplied by ECO Test and Tag to the Client pursuant to a Contract including Electrical Equipment, signage, brackets, and other goods in connection with the Services.
- 1.9 **“Goods and/or Services”** refers to any Goods supplied by ECO Test and Tag to the Client pursuant to a Contract and/or any Services supplied by ECO Test and Tag to the Client pursuant to a Contract.
- 1.10 **‘Guarantor’** means the guarantors or guarantors specified in the Deed of Guarantee annexed hereto, if any.
- 1.11 **“Law”** means legislation, regulations, by-laws, or standards in relation to the Goods and/or Services, and any orders made by any governmental or other public body, statutory authority, local authority or other authority of any kind having authority or jurisdiction over or in relation to the Goods and/or Services.
- 1.12 **“Minor Repairs”** refers to minor repairs of electrical equipment or fire equipment, including but not limited to:
  - replacement of batteries in smoke alarms; and
  - plug top, socket replacement and lead repairs for electrical appliances.
- 1.13 **‘Notice’** refers to a notice in accordance with clause 19.
- 1.14 **‘Party’** means each party to the Contract, including ECO Test and Tag and the Client, and **‘Parties’** has a corresponding meaning.
- 1.15 **‘Price’** has the meaning stated in clause 6.1.
- 1.16 **‘Price List’** means the price specified for testing various items of electrical equipment, fire equipment, and Goods and/or Services as published in ECO Test and Tag’s Document Number 1056-2028, and as amended by ECO Test and Tag from time to time.
- 1.17 **‘Services’** means ECO Test and Tag’s testing of electrical equipment, testing of fire equipment, and similar services for the purpose of assessing compliance with Australian Standards, and minor repairs of electrical equipment and fire equipment pursuant to the Contract, including:
  - Testing and tagging of electrical appliances, leads, and power boards
  - Microwave leakage testing
  - Three phase testing
  - Residual-Current Device testing,
  - Testing of emergency lights and exit lights

1.18 **'Terms and Conditions'** means the terms and conditions set out herein subject to any amendments expressly made by ECO Test and Tag pursuant to clause 20.1.

## 2. **OPERATION**

- 2.1. Any Contract between the Client and ECO Test and Tag shall be upon these Terms and Conditions and shall be read in conjunction with these Terms and Conditions. These Terms and Conditions shall operate to the exclusion of any terms or conditions to the contrary effect expressed in or implied by any of ECO Test and Tag's quotes, any document forming part of a Client enquiry, specification, order or agreement, or other documentation, and shall supersede all prior agreements.
- 2.2. The continued operation of these Terms and Conditions shall not be affected by any repudiation of any Contract or transaction relating to the supply of Goods and/or Services between ECO Test and Tag and the Client.

## 3. **SUPPLY OF GOODS AND/OR SERVICES**

- 3.1. ECO Test and Tag agrees to provide the Goods and/or Services to the Client subject to these Terms and Conditions. These Terms and Conditions apply in respect of all Contracts, offers to sell, quotes and other commercial transactions for the supply of Goods and/or Services by ECO Test and Tag to the Client.
- 3.2. If an item of Electrical Equipment or Fire Equipment is found not to meet Australian Standards or any Law, ECO Test and Tag shall not be responsible to repair or replace the item.

### ***Disconnecting and Reconnecting Equipment***

- 3.2A. The Client acknowledges that when ECO Test and Tag carries out testing Services, Fire Equipment or Electrical Equipment will become disconnected from their power source and the Client shall be solely responsible to ensure that:
  - 3.2A.1. there is no loss of data or damage to the Fire Equipment and/or Electrical Equipment when it is disconnected from their power source; and
  - 3.2A.2. power has been returned to all Fire Equipment and/or Electrical Equipment after testing and that the Fire Equipment and/or Electrical Equipment is operational.
- 3.2B. Without limiting the generality of clauses 14.1 and 14.2, the release of ECO Test and Tag's liability as provided in clause 14.1 and the Client's indemnity as provided in clause 14.2 applies in respect of the Client failing or refusing to meet its obligations under clause 3.2A above.

### ***Access***

- 3.3. ECO Test and Tag shall have uninhibited access to all appliances to be tested and to the area in which the Services are to be carried out or the Goods are to be delivered, subject to site permits or other conditions of access that are previously notified to and agreed to by ECO Test and Tag in writing.

The Client must take out any appliances to be tested by ECO Test and Tag from cupboards or boxes, and place them on a suitable surface such as a table where inspection and testing can be carried out.
- 3.3A. If ECO Test and Tag is not given uninhibited access to provide the Goods and/or Services pursuant to clause 3.3 ECO Test and Tag shall, at ECO Test and Tag's election, be entitled to:
  - 3.3A.1 a fair and reasonable extension of time in which to provide the Goods and/or Services, and ECO Test and Tag shall inform the Client of the period of extension required; or
  - 3.3A.2 terminate the Contract and clause 17.3.1 shall apply.

### ***Cancellation***

- 3.4. If the Client wishes to cancel a Service or delivery of any Goods, the Client must:
  - 3.4.1. call ECO Test and Tag on **0466 676 800**; and
  - 3.4.2. provide at least 7 days' notice of the cancellation prior to ECO Test and Tag's provision of the Service.

### ***Site Induction***

- 3.5. If the site where the Goods and/or Services are to be provided has a specific induction process or program ECO Test and Tag shall take part in that induction process or program.

## 4. **FAILED ITEMS**

- 4.1. If an item of Electrical Equipment or Fire Equipment does not pass testing and has a test status of "fail" it will be printed on the tag for that item and the Client:
  - 4.1.1. must remove the item from service immediately; and
  - 4.1.2. the items must not be placed back into service until it is repaired by an authorised and suitably qualified person.

- 4.2. The Client must check test status and test dates prior to using an item of Electrical Equipment or Fire Equipment to ensure the item is safe to use.

## 5. QUOTES AND TENDERS

- 5.1. ECO Test and Tag's written quotes are valid for 30 days from date of the quote and thereafter are subject to confirmation in writing by ECO Test and Tag before acceptance, unless otherwise stated on ECO Test and Tag's quote.
- 5.2. Any quotes given do not involve any obligations by ECO Test and Tag. The Client is solely responsible for checking that the details in ECO Test and Tag's quote are accurate in every aspect before acceptance.
- 5.3. All descriptions, specifications, or drawings of, or associated with, the Goods and/or Services are approximate only. Unless the accuracy of such descriptions, specifications, or drawings has been confirmed in writing by ECO Test and Tag in respect of a particular Contract, the Client cannot claim against ECO Test and Tag for any deviation in such descriptions, specifications, drawings, or particulars of weight or dimensions.

## 6. PRICE AND PAYMENT

- 6.1. The Client shall pay to ECO Test and Tag:
  - 6.1.1. the price for the Goods and/or Services as specified in:
    - a. ECO Test and Tag's quote for the Goods and/or Services if any; or
    - b. ECO Test and Tag's Price List as at the date the Goods and/or Services is supplied, if no quote was provided for the Goods and/or Services by ECO Test and Tag;
  - 6.1.2. any parking costs incurred by ECO Test and Tag or its employees, subcontractors, or agents in providing the Goods and/or Services;
  - 6.1.3. a call out fee of \$250 if the Goods and/or Services are provided outside of the Perth metropolitan area;
  - 6.1.4. the fees described in clauses 6.3 and 6.4 if any; and
  - 6.1.5. all taxes, credit card fees, and other charges in respect of the Goods and/or Services supplied.

(together, "**the Price**").

- 6.2. ECO Test and Tag's Prices for testing electrical equipment or fire equipment is not inclusive of the Price for any Minor Repairs whatsoever.
- 6.3. If the Client fails to comply with clauses 3.3 or 3.4 then ECO Test and Tag shall be entitled to charge, and the Client shall pay, a fee of up to \$550, unless the Contract is terminated in which case clause 17.3.1 shall apply instead.
- 6.4. If ECO Test and Tag is required to take part in an induction process or program as described in clause 3.5 and the length of the induction process or program takes more than 15 minutes then ECO Test and Tag shall charge, and the Client shall pay, a fee of up to \$100 per hour for the entire duration of the induction process or program after the first 15 minutes.
- 6.5. ECO Test and Tag will issue an invoice to the Client for the Price when the Services are complete or the Goods have been delivered.
- 6.6. As a condition precedent to future supplies under the Contract pursuant to which the payments are due or under any other Contract, the Client agrees that payment of the Price must be received by ECO Test and Tag from the Client within 30 days following the date of the invoice provided by ECO Test and Tag for the Price, without any set off or deduction.
- 6.7. Time of payment is of the essence of the Contract.
- 6.8. ECO Test and Tag's Price List is subject to change without notice to the Client.
- 6.9. ECO Test and Tag reserves the right to vary the terms of payment of the Price for whatsoever reason, or to require payment of the Price in full prior to delivery.

## 7. COSTS RECOVERABLE

- 7.1. Should the Client default in the payment of any monies due to ECO Test and Tag under the Contract, then all monies due to ECO Test and Tag shall immediately become due and payable and shall be paid by the Client within 7 days of the date of demand.
- 7.2. ECO Test and Tag shall be entitled to charge the Client interest calculated at 12% per annum on the balance of all overdue accounts and invoices from the date of due payment until the date of actual payment.

- 7.3. Any expenses, costs or disbursements, including debt collection agency fees, commission and any fees paid to ECO Test and Tag's solicitors (on an indemnity basis), incurred by ECO Test and Tag in recovering any outstanding monies shall be paid by the Client on an indemnity basis.

## **8. SECURITY**

- 8.1. The Client hereby charges and mortgages in favour of ECO Test and Tag to secure the repayment of any debt and any monies which may become owed by the Client to ECO Test and Tag hereunder and under any Contract all of the Client's present and future estate and interest in all real property and personal property.

## **9. VARIATIONS**

- 9.1. Any variation to the Contract or the Goods and/or Services must be agreed to via the exchange of emails between the Parties, confirming the:

- 9.1.1. precise scope of the variation; and
- 9.1.2. the amount that the Client is to pay ECO Test and Tag for the variation.

The Client agrees that ECO Test and Tag may revise and amend the Price of the Works and charge an administration fee to the Client, if there are any such variations.

## **10. REPRESENTATIONS**

- 10.1. ECO Test and Tag shall not incur any liability, nor shall any right accrue to the Client by reason of any misrepresentation arising from either printing or clerical errors, statements in oral, written or any other form by third parties, or oral statements not confirmed by ECO Test and Tag in writing.
- 10.2. To the fullest extent permitted by law any prior representations, agreements and arrangements, including representations as to the suitability of the Goods and/or Services, and any descriptions, illustrations and material contained in any advertisement, website, catalogue, price list or brochure are excluded from, and do not form part of, the Contract unless specifically stated in the Contract to the contrary.

## **11. DELAY**

- 11.1. Should the provision of the Goods and/or Services be delayed by any of the following causes or conditions resulting therefrom:

- 11.1.1. ECO Test and Tag not having uninhibited access to provide the Goods and/or Services pursuant to clause 3.3;
- 11.1.2. On account of variations or extras;
- 11.1.3. By inclement weather or conditions resulting from inclement weather;
- 11.1.4. By reason of any civil commotion, or combination of workmen or strikes or lockouts affecting the Goods and/or Services or affecting the manufacture or supply of materials or equipment for the Goods and/or Services;
- 11.1.5. Any act, default or omission on the part of the Client;
- 11.1.6. By any other matter, cause or thing whatsoever beyond the control of ECO Test and Tag including unavailability of labour, materials, or equipment;

then in any such case, ECO Test and Tag shall be entitled to a fair and reasonable extension of time in which to provide the Goods and/or Services without notice to the Client.

- 11.2. The Client shall pay for ECO Test and Tag's extra costs necessarily incurred by reason of any delay.

## **12. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

- 12.1. In clause 12.2, '**Confidential Information**' means information belonging to ECO Test and Tag which is not available to the public which:
- 12.1.1. ECO Test and Tag has indicated is confidential;
  - 12.1.2. would be of commercial value to a competitor of ECO Test and Tag;
  - 12.1.3. relates to clients of ECO Test and Tag, including lists of clients and their requirements; or
  - 12.1.4. is found in ECO Test and Tag's policies and manuals;

- 12.2. The Client must:

- 12.2.1. keep the Confidential Information confidential;
- 12.2.2. take reasonable steps to ensure that any people employed by the Client do not disclose Confidential Information to a third party;

- 12.2.3. maintain proper and secure custody of Confidential Information;
  - 12.2.4. not use or reproduce in any form any Confidential Information without the written consent of ECO Test and Tag or as required by law; and
  - 12.2.5. take full and adequate measures to ensure that any Confidential Information which comes into their possession is not divulged to any unauthorised person before or after the termination of the Contract.
- 12.3. In clause 12.4 **'Intellectual Property'** refers to, but is not limited to, all trade secrets, know how, proprietary information and other data and information relating in any way to the Business and all ideas, improvements, inventions, innovations, processes, products, specifications, methods of manufacture, developments, discoveries, samples, research, technical data, designs, formulas, devices, patterns, concepts, schematic models, diagrams, drawings, flow charts, calculations, delivery systems, source codes, activation codes, pin numbers, plans for new or revised products, compilation of information, work in progress, and any and all revisions, improvements and enhancements relating to any of the trade secrets, know how, proprietary information and other data and information relating in any way to the Goods and/or Services.
- 12.4. All Intellectual Property provided, developed, or produced under or in connection with the Contract will be the property of ECO Test and Tag. ECO Test and Tag grants a limited use, non exclusive licence of Intellectual Property provided, developed, or produced under or in connection with the Contract to the Client.
- 12.5. Clauses 12.2, 12.4, and 12A.1 shall survive any termination of the Contract.

## **12A. NON-SOLICITATION**

- 12A.1 The Client agrees that the Client shall not, directly or indirectly, entice, persuade, encourage or otherwise induce or attempt to solicit, entice, persuade or otherwise induce an employee, subcontractor, or agent of ECO Test and Tag to become employed, subcontracted, or engaged by the Client or any other third party, without obtaining prior consent in writing from ECO Test and Tag.

## **13. DEFECTS, RETURNS AND WARRANTIES**

- 13.1. Within 7 days of ECO Test and Tag's provision of Goods and/or Services, the Client must provide notice of any alleged defects in the Goods and/or Services to ECO Test and Tag in writing.
- 13.2. ECO Test and Tag shall not be responsible or liable for any alleged defect in the Goods and/or Services unless it is reported in accordance with clause 13.1.
- 13.3. The Client must allow ECO Test and Tag (including a third party engaged by ECO Test and Tag) the rights to inspect any alleged defect reported in accordance with clause 13.1.
- 13.4. If the inspection under clause 13.3 reveals that the alleged defect was not caused by any act or omission of ECO Test and Tag, then the Client must pay all costs of ECO Test and Tag incurred in connection with the inspection.

## **RISK AND OWNERSHIP**

- 13.5. The Goods supplied by ECO Test and Tag to, or at the request of, the Client shall be at the Client's risk immediately upon delivery to the Client or into the Client's custody, whichever is sooner. Upon risk in the Goods supplied by ECO Test and Tag passing to the Client, the Client shall insure the Goods for their full insurable value against loss or damage by fire, theft, accident and other such risks.
- 13.6. Despite clause 13.5 above, ownership of Goods and/or Services shall not pass to the Client until the Client has paid for the Goods and/or Services in full.
- 13.7. Prior to full payment of the Price and all other sums owing by the Client to ECO Test and Tag in relation to the supply of Goods and/or Services:
  - 13.7.1. the Client shall have no right to sell or dispose of any or all of the Goods and/or Services;
  - 13.7.2. the title of the Goods and/or Services shall not pass to the Client; and
  - 13.7.3. the Client takes custody of the Goods and/or Services and shall retain them as the fiduciary agent and bailee of ECO Test and Tag.
- 13.8. Where any part of the Price for Goods and/or Services supplied by ECO Test and Tag remains owing, the following provisions apply:
  - 13.8.1. ECO Test and Tag shall retain legal title to all Goods and/or Services supplied;
  - 13.8.2. the Client must store the Goods in such a manner as to show clearly that they are the property of ECO Test and Tag;
  - 13.8.3. if the Client sells the Goods it shall do so as a fiduciary agent for ECO Test and Tag and the Client shall account to ECO Test and Tag for all proceeds from any sale;
  - 13.8.4. If such Goods and/or Services are used in some manufacturing process, construction process, or other process by the Client or some third party, even with loss of identity, the legal title to the resultant goods shall vest in ECO Test and Tag.

The proceeds of the sale of the Goods and/or Services or resultant goods shall be received by the Client as agent of ECO Test and Tag and such proceeds are to be kept in a separate account or are to be accounted for on demand.

#### **14. LIABILITY AND INDEMNITY**

- 14.1. ECO Test and Tag shall not be liable to the Client or any Guarantor in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, or for any claim for loss of profits and the Client agrees that ECO Test and Tag may plead these Terms and Conditions as a bar to any such claims whether they arise at law, in equity, under any statute, regulation, or other legislative instrument, or under any contract, deed, or any other instrument made or approved under any law.
- 14.2. The Client hereby releases and indemnifies and agrees to keep ECO Test and Tag indemnified from any and all costs (including all legal fees and costs) and any other legal or other expenses incurred by it in investigating or defending any action or threatened actions on an indemnity basis), damages, liabilities, penalties, fines, expenses or losses including indirect, incidental, consequential, punitive or exemplary loss or damage (including but not limited to loss of profit), whether resulting from breach of contract, tort, warranty, strict liability, statute or any other legal theory or otherwise that ECO Test and Tag may incur in relation to the Client or any third party, including where the cost, damage, liability, penalty, fine, expense or loss is caused by or contributed to by ECO Test and Tag in any way or for any reason whatsoever.
- 14.3. The Client is liable for all costs and disbursements incurred by ECO Test and Tag or its appointed agents on an indemnity basis in recovering payment of any outstanding monies or enforcing its rights under the Contract, including, but not limited to all legal fees and costs and any other legal or other expenses incurred by it in investigating or defending any action or threatened actions.
- 14.4. ECO Test and Tag makes no express warranties to the Client, except those expressly set out in writing in the Contract and these Terms and Conditions.

#### **15. LIABILITY FOR ADVICE**

- 15.1. ECO Test and Tag is only liable for expert advice which is:
  - 15.1.1. within the scope of the Contract;
  - 15.1.2. in writing; and
  - 15.1.3. accompanied by a written confirmation stating that ECO Test and Tag is qualified to give the advice.
- 15.2. The Client acknowledges that ECO Test and Tag is not able to provide expert advice outside the scope of the Contract.
- 15.3. ECO Test and Tag is not liable for any technical advice or assistance given in good faith, but which it is not contractually bound to provide and which does not fit the criteria set out in clause 15.1.

#### **16. FORCE MAJEURE**

- 16.1. ECO Test and Tag will not be liable for any breach of the Contract due to any matter or thing beyond ECO Test and Tag's control. Furthermore, ECO Test and Tag is excused from performing any term, covenant or condition required by the Contract during the time and to the extent that performance is prevented when such performance is prevented wholly or in part by circumstances beyond ECO Test and Tag's control.

#### **17. TERMINATION**

- 17.1. If the Client defaults in the due and punctual observance of all or any of its obligations or covenants under the Contract or these Terms and Conditions, dies, commits an act of bankruptcy, takes or shall have taken against it any action for its winding up, is placed under official management, administration or receivership, then ECO Test and Tag may without prejudice to any other right or remedies it has:
  - 17.1.1. treat as discharged all or any obligation arising from any Contract;
  - 17.1.2. retain any security given or monies paid by the Client and apply this in reduction of any sum of money owed or owing by the Client to ECO Test and Tag; and
  - 17.1.3. take such steps as ECO Test and Tag may deem necessary in its sole discretion to mitigate its damages suffered.
- 17.2. In addition to any other rights under the Contract, ECO Test and Tag may terminate the Contract by notice in writing to the Client immediately upon any one of the following events:
  - 17.2.1. Any deliberate and substantial prevention of or interference with the provision of the Goods and/or Services or progress thereof caused by the Client whether directly or indirectly;
  - 17.2.2. Substantial damage to or interference with the provision of the Goods and/or Services by any cause beyond the control of ECO Test and Tag including (but without limiting in any way the generality thereof) water, flood, fire, storm tempest, rioting, earthquake, civil commotion or industrial action;
  - 17.2.3. Any substantial breach of the Contract or these Terms and Conditions by the Client;

- 17.2.4. If the Client shall make any assignment for the benefit of or enter into any arrangement or composition with its creditors or go into liquidation (whether voluntary or compulsory except for the purpose of reconstruction or amalgamation) or have a receiver appointed or commit an act of bankruptcy or if a sequestration order is made against the Client's estate;
- 17.2.5. Any failure by the Client for 7 days after the due date hereof to pay any part of the Price.

17.3. If the Contract is terminated:

- 17.3.1. due to an act or omission of the Client or pursuant to clause 3.3A.2, then the Client shall pay ECO Test and Tag all amounts owing whether current or contingent to ECO Test and Tag under the Contract and damages suffered by ECO Test and Tag as a result of or in connection with the termination;
- 17.3.2. other than due to an act or omission of the Client or pursuant to clause 3.3A.2, then the Client shall pay ECO Test and Tag for all Goods and/or Services provided by ECO Test and Tag, all work done by ECO Test and Tag, and all goods or materials used or procured by ECO Test and Tag and properly chargeable to the date of termination.

## **18. ASSIGNMENT AND SUBCONTRACTING**

18.1. ECO Test and Tag may:

- 18.1.1. assign, sub-contract or sub-let any part of the Contract or the Goods and/or Services; and
- 18.1.2. transfer or assign to any person or corporation the whole or any part of the Client's or Guarantor's liabilities and obligations to ECO Test and Tag under any Contract, without seeking the consent of the Client.

18.2. The Client may not assign, sub-contract or sub-let any part of the Contract, or any of its rights, liabilities, or obligations under any Contract, without the prior written consent of ECO Test and Tag.

## **19. NOTICES**

19.1. A Party must give any notice required under these Terms and Conditions or the Contract in accordance with this clause 19.

19.2. A party must address a notice to the other party at its address set out in the Contract and must serve the notice at that address. A party may give notice of another address (within Australia) or electronic mail address to the other party and the new address or electronic mail address shall be the address for service of the party for the purposes of this clause.

19.3. A party may deliver a notice by hand, post, or by electronic mail. A party must give any notice in the English language and in writing.

19.4. If before 4 pm local time in the place of delivery, a party delivers a notice by hand or by electronic mail and the sending party completes the transmission, the notice will be taken to be given on the day of delivery or transmission, and in any other case on the next day.

19.5. If the party gives notice by post the notice will be taken as given on the 7<sup>th</sup> day in the place of delivery after the notice is posted.

## **20. MISCELLANEOUS**

### ***Amendment***

20.1. From time to time, ECO Test and Tag may review and amend these Terms and Conditions and the Client shall be bound by any amendment which shall apply to the supply of any Goods and/or Services following the effective date of the amendment.

### ***Waiver and Severance***

20.2. Any waiver by ECO Test and Tag must be in writing signed by ECO Test and Tag. Failure by ECO Test and Tag to enforce any right or remedy is not a waiver of any right or remedy, or a waiver in respect of a continuing breach.

20.3. If any provision contained in these Terms and Conditions is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions in these Terms and Conditions are not affected.

### ***Governing Law and Jurisdiction***

20.4. These Terms and Conditions and all Contracts are governed and is to be construed in accordance with the laws in force in the State of Western Australia.

20.5. These Terms and Conditions and all Contracts are subject to the exclusive jurisdiction of the courts of Western Australia.

### ***Interpretation***

20.6. In these Terms and Conditions, unless the context otherwise requires:

- 20.6.1. the singular includes the plural and vice versa;
- 20.6.2. a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;

- 20.6.3. a reference to any gender includes all genders;
- 20.6.4. a reference to a recital, clause or schedule is to a recital, clause or schedule of or to these Terms and Conditions;
- 20.6.5. a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, restated or replaced from time to time;
- 20.6.6. a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- 20.6.7. a reference to a body, other than a Party to the Contract (including, without limitation, an institute, association or authority), whether statutory or not;
- 20.6.8. If a party comprises two or more persons, the covenants and Contracts on their part bind and shall be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them;
- 20.6.9. A reference to a party includes its executors, administrators, successors and permitted assigns;
- 20.6.10. No provision of these Terms and Conditions will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of these Terms and Conditions or that provision;
- 20.6.11. Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 20.6.12. All references to A\$, \$, dollar, \$, or to currency are references to Australian dollars;
- 20.6.13. "Including" and similar expressions are not and must not be treated as words of limitation; and
- 20.6.14. Headings are for ease of reference only and do not affect the meaning of these Terms and Conditions.

## **21. RECEIPT AND ADVICE**

- 21.1. The Client and Guarantor hereby acknowledge receipt of these Terms and Conditions and agree to be bound by them. The Client and Guarantor accept these Terms and Conditions in acknowledgement that they are legally binding and presently enforceable. The Client and Guarantor further acknowledge they have had the opportunity of obtaining independent legal advice and that the Client and Guarantor understand the Terms and Conditions above.



**DEED OF GUARANTEE**

I/ We the undersigned jointly and severally guarantee to Hayden Brokenshire trading as ECO Test and Tag (“**ECO Test and Tag**”) the performance of all of the Client’s obligations, and the due and punctual payment without deduction of all sums of money for goods and services supplied by ECO Test and Tag to the Client, and of all other sums of money as shall or may be at any time or times hereafter become due, owing or payable by the Client to ECO Test and Tag. I/We the undersigned further jointly and severally covenant and agree with ECO Test and Tag that:

1. This Guarantee is absolute and unconditional and shall not be abrogated, prejudiced or affected by any grant of time or other indulgence or forbearance to the purchasing entity or to us by any other act, default, omission, dealing or thing which might otherwise prejudicially affect this guarantee;
2. This Guarantee is irrevocable and shall remain in full force and effect until all money guaranteed has been paid in full;
3. This Guarantee is a principal obligation not in addition to or in substitution for any other security or agreement and ECO Test and Tag may treat us or any of us as a principal debtor;
4. ECO Test and Tag is not required to give us or the Client any notice before commencing proceedings;
5. I/We will indemnify ECO Test and Tag and keep it indemnified against any loss, damage, costs, charges or expenses whatsoever on an indemnity basis in consequence of non-payment by the Client even if ECO Test and Tag’s rights against the Client or any of us may be rendered unenforceable;
6. Where the Client is a trustee of any trust the assets of that trust shall be available to meet any payment owing to ECO Test and Tag;
7. This Guarantee and indemnity shall be binding upon our legal personal representatives, successors and assigns;
8. This Guarantee and indemnity shall be binding on each person who signs it notwithstanding any other person may not;
9. ECO Test and Tag may at any time without notice cease any further supplies to the Client;
10. The Guarantor/s hereby charge and mortgage in favour of ECO Test and Tag to secure the repayment of the debt and all monies which may become owing by the Client to ECO Test and Tag all the Guarantor/s estate and interest in all property both real and personal and present and future;
11. If ECO Test and Tag transfers or assigns the whole or any part of the Client’s or Guarantors’ liabilities and obligations to a third party:
  - a. the benefit of this Guarantee shall extend to the transferee or assignee; and
  - b. the benefit of this Guarantee shall continue to operate concurrently for the benefit of ECO Test and Tag notwithstanding any such transfer or assignment by it;
12. The Guarantor/s acknowledge having had the opportunity prior to the execution hereof to obtain independent legal advice as to the extent, implications, meaning and effect of executing this Guarantee and indemnity; and
13. I/We, the Guarantor/s, understand the terms of this Guarantee and indemnity.

Executed as a Deed the                      day of                      20

**GUARANTORS**

Full name and addresses

.....  
Full name (guarantor 1)                      Address (guarantor 1)                      Signature (guarantor 1)

.....  
Full name of witness                      Address of witness                      Signature of witness

.....  
Full name (guarantor 2)                      Address (guarantor 2)                      Signature (guarantor 2)

.....  
Full name of witness                      Address of witness                      Signature of witness