

## Customers Acknowledgments and Warranties to Power Crank Batteries Pty Ltd (ACN 092 577 412) as the Trustee for the Powercrank Trust (ABN 68 092 577 412)

The Customer (Customer means the customer specified above and includes any natural person, company, partnership or other entity which enters into this Agreement with the Company). The Customer will abide by Power Crank Batteries Pty Ltd ACN 092 577 412 as the Trustee for the Powercrank Trust ABN 68 092 577 412 (Power Crank Batteries) Standard Terms and Conditions of Trade which may be varied from time to time by Power Crank Batteries giving the Customer notice of Power Crank Batteries's new Standard Terms and Conditions of Trade. All orders accepted or offers made by Power Crank Batteries after the notification of the new Power Crank Batteries Standard Terms and Conditions of Trade are accepted or offered only on the basis that the Customer has agreed to the new Power Crank Batteries Standard Terms and Conditions of Trade. The Customer:

- (a) warrants that all information provided in the application form is complete, true and correct;
- (b) agrees that Power Crank Batteries may grant, limit, cancel or withdraw current and further supplier credit at any time without notice and without liability to the Customer for damages or compensation;
- (c) grants permission to Power Crank Batteries before, during or after the provision of Goods or services to receive and report information about the Customer, its directors, officers and the Guarantors from and to, any credit reporting body, credit provider, bank or financial institution or any other corporation, association or person in accordance with the law;
- (d) agrees to provide such updated and regular financial and trading information as Power Crank Batteries may reasonably require from time to time;
- (e) The Customer acknowledges and agrees that the following Power Crank Batteries Standard Terms and Conditions of Trade applies to and forms part of any contract for the supply of Goods and/or Services by Power Crank Batteries to the Customer and that the Power Crank Batteries Standard Terms and Conditions of Trade take precedence over any terms and conditions which may be contained in any document provided by the Customer. Any request from the Customer to Power Crank Batteries for the supply of Goods and / or Services shall constitute acceptance of these terms and conditions.

## Power Crank Batteries Standard Terms and Conditions of Trade

1. These terms and conditions shall apply to and form part of any transaction for the supply of goods, products and materials and the provision of related and other services by Power Crank Batteries and its agents, servants and employees, to a Customer, who shall include the person, persons, company, entity or business entity to whom Power Crank Batteries sells or supplies, or proposes to sell or supply, the said Goods and/or services. These terms and conditions (which shall only be waived in writing signed by the Power Crank Batteries General Manager) shall prevail over all conditions of the Customer's quote/order to the extent of any inconsistency.

### Definitions

2. In these terms and conditions:

"Additional Charge" means fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Power Crank Batteries's then current prices and expenses incurred by the Power Crank Batteries, at the Customer's request or reasonably required as a result of the Customer's conduct;

"Power Crank Batteries" means Power Crank Batteries Pty Ltd (ACN 092 577 412) as the Trustee for the Powercrank Trust (ABN 68 092 577 412) which is the supplier of the Goods & services;

"Customer" means the person, persons, company or entity to whom Power Crank Batteries agrees, sells or supplies, or proposes to agree, sell or supply, the said Goods and services and includes the Customer's agents and permitted assigns;

"Goods" shall mean all goods and/or services supplied by Power Crank Batteries to the Customer, or ordered by the Customer but not yet supplied, and includes goods described on any quotation, invoice, purchase order or any other document. This also includes any recommendations and advice over which Power Crank Batteries may intend to register a Security Interest;

"Loss", "Losses" includes, but is not limited to, costs (including party to party legal costs and the Power Crank Batteries's legal costs), expenses, lost profits, award of damages, personal injury and property damage;

"Order" means a purchase order for Goods or services placed by a Customer or a sales order accepted by the Customer;

"Price" shall mean the cost of the Goods as referred to in Battery Powers Centre's price lists, quotes and/ or specific arrangements and shall be subject to change from time to time without notice;

"services" means the services to be provided or provided by Power Crank Batteries to the Customer.

### General

3. These terms and conditions apply if Power Crank Batteries accepts any order for Goods or services or both from the Customer, or offers to supply any Goods or services to the Customer, whether for cash or credit. The Customer has no entitlement to credit unless in Power Crank Batteries's sole discretion Power Crank Batteries extends credit to the Customer. If in a particular case, Power Crank Batteries gives the Customer credit, Power Crank Batteries still reserves the right at any time and for any reason in Power Crank Batteries's sole discretion to refuse to supply any further Goods or services to the Customer and to refuse to supply any Goods or services or both to the Customer on credit terms. If Power Crank Batteries does decline to give the Customer further credit then that decision does not affect the credit terms which apply to any amounts the Customer then owes to Power Crank Batteries and the Customer will have no recourse to compensation, claim or damages in respect to the same.

4. The Customer acknowledges that where the Customer consists of more than one party or entity, liability shall be joint and several.

5. These terms and conditions, including any credit limits set by Power Crank Batteries, are effective from the date of acceptance by the Customer and may be amended or superseded from time to time by notice given by Power Crank Batteries by any means.

6. Power Crank Batteries may alter the range of Goods or services on offer, without notice to the Customer.

7. Power Crank Batteries reserves the right to supply an order in full or only in part.

8. Time is not "of the essence" in respect of any transaction entered into by the Customer with Power Crank Batteries other than in respect to payment.

9. The Customer acknowledges and agrees these terms and conditions as well as any Customer Credit Application and any Guarantee & Indemnity executed by or on behalf of the Customer apply to every sale transaction between Power Crank Batteries and the Customer.

### Orders/Offer

A contract is only concluded between Power Crank Batteries and Customer for the supply of Goods or services when the order has been accepted by Power Crank Batteries in writing or the Power Crank Batteries offer has been accepted whether verbally or in writing by the Customer. The terms of this Clause apply to every quotation, order or offer by Power Crank Batteries for the supply of Goods. In the event that Power Crank Batteries accepts an order, such order remains subject to the availability of Goods or services and Power Crank Batteries shall be entitled to satisfy an order only in part or at a later time in accordance with the availability of the Goods or services ordered, and no liability shall be taken by Power Crank Batteries in respect of any unavailability of any Goods or services ordered at any time and from time to time. The Customer shall make all orders in writing. Power Crank Batteries reserves the right to accept or decline, in whole or in part, any order for Goods or services placed by a Customer at any time.

10. Power Crank Batteries may in its absolute discretion refuse to provide Goods or services for any reason, including where Goods are unavailable for any reason whatsoever, credit limits cannot be agreed upon or have been exceeded; or payment for Goods or services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Power Crank Batteries, associated with the Customer under the same or another supply contract, has not been received by the Power Crank Batteries.

11. An Order cannot be cancelled without the prior written consent of the Power Crank Batteries. Where an Order is cancelled, the Customer indemnifies Power Crank Batteries against any Losses incurred by Power Crank Batteries as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

#### **Invoicing**

12. Power Crank Batteries may in its absolute discretion, issue an invoice to the Customer in any manner it seeks fit after the Order has been accepted by ~~Battery Power Centre~~. The Customer must pay an invoice issued by Power Crank Batteries to Power Crank Batteries in accordance with the payment terms and conditions specified herein. If any invoice is due but unpaid, Power Crank Batteries may withhold the provision of Goods or services or any further Goods or services until overdue amounts are paid in full.

#### **Delivery**

13. The delivery dates and times made known to the Customer are estimates only and Power Crank Batteries is not liable for late delivery or non-delivery. Power Crank Batteries is not liable for any loss (including consequential loss or damage), damages or delay occasioned to the Customer or its customers arising from late, part or non-delivery or late installation of the Goods. If the Power Crank Batteries delivers any of the Goods by instalments, and any one of those instalments is defective for any reason: it is not a repudiation of the contract of sale formed by these conditions; and the defective instalment is a severable breach that gives rise only to a claim for repair, credit or replacement. The Goods shall be delivered to the address nominated by the Customer or as otherwise notified in writing to Power Crank Batteries at the time of the order. Alternatively, if Power Crank Batteries agrees, the Goods may be collected. Delivery is ex-Battery Powers Centres warehouse in the relevant State or Territory of Australia, unless otherwise specified. Delivery costs shall be an expense of the Customer. The Customer must inspect the Goods immediately upon delivery or collection and must within 48 hours give written notice to Power Crank Batteries with particulars of any claim that the Goods are damaged, defective, non-conforming or otherwise not in accordance with the agreement.

#### **Additional Charges**

14. The imposition of Additional Charges may occur as a result of cancellation by the Customer of an Order where cancellation results in Loss to the Power Crank Batteries, including: storage costs for Goods not collected from Power Crank Batteries within one week of the date on which the Goods are available for delivery; or any other occurrence which causes Power Crank Batteries to incur costs in respect of the Customer's Order additional to the quoted/ordered cost.

#### **Implied Terms**

15. Except as provided in these terms and conditions, all express and implied warranties, guarantees and conditions under statute or law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded to the full extent permitted by law. Power Crank Batteries to the full extent permitted by law, is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Power Crank Batteries's negligence or in any way whatsoever.

16. The Customer acknowledges that it does not rely, and it is unreasonable for the Customer to rely, on the skill or judgment of Power Crank Batteries as to whether the Goods supplied are reasonably fit for any purpose for which they are being acquired, and that the sale is not a sale of Goods by description or sample. The Customer shall take the Goods at its own risk as to their state, quality, condition or sufficiency and fitness for any purpose. Under no circumstance will Power Crank Batteries's liability exceed the purchase price.

17. To the extent possible, Power Crank Batteries will pass on to the Customer any manufacturer's or supplier's warranty in respect of the Goods.

#### **Statutory Guarantees and Warranty**

18. Except when the Customer is a "consumer" for the purposes of the Australian Consumer Law and the conditions, warranties and rights implied by that law cannot be excluded, restricted or modified, all representations, promises, statements, warranties and conditions (whether statutory, express or implied) regarding any Goods supplied or services performed by or on behalf of Power Crank Batteries are expressly excluded. No claim can be made by the Customer against Power Crank Batteries unless the Customer notifies Power Crank Batteries in writing of the facts or matters which form part of any such claim within 14 days of the Customer becoming aware of the same. Power Crank Batteries's liability for any and all loss or damage resulting from any cause whatsoever, including alleged negligence, will be limited (at Power Crank Batteries's discretion) to:

(A) in the case of Goods, any one or more of the following:

- (a) the replacement of the Goods or the supply of equivalent Goods;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
- (d) the payment of the cost of having the Goods repaired; or

(B) in the case of services:

- (e) the supplying of the services again; or
- (f) the payment of the cost of having the services supplied again.

19. Where the Customer is a "consumer" under the Australian Consumer Law and the Goods or services are subject to guarantees under the Australian Consumer Law that cannot be excluded, restricted or modified the Customer may be entitled to a replacement or refund and for compensation for any other reasonably foreseeable loss or damage. The Customer may also be entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

20. To the fullest extent permitted by law, Power Crank Batteries will not be liable to the Customer in contract, tort, law or otherwise for a) any loss of profit, hire, business contracts, revenues or anticipated savings, financial or economic loss, loss of opportunity; b) for damage to the Customer's reputation or goodwill; c) any loss resulting from any claim made by any third party; or d) any special, indirect or consequential loss or damage of any nature whatsoever, and none of these shall be included in any claim by the Customer.

21. Power Crank Batteries shall not be liable in any circumstances for a) any defects or damage caused in whole or in part by misuse, abuse, neglect, electrical or other overload, non-suitable lubricant, improper installation repair or alteration (other than to the extent caused by Power Crank Batteries); b) any transport, installation, removal, labour or other costs; c) Goods not manufactured or services not performed by it but Power Crank Batteries will endeavour to pass on to the Customer the benefit of any claim made by Power Crank Batteries and accepted by the manufacturer of such Goods and/or services under a warranty given by the manufacturer provided that nothing contained in this sub-paragraph shall limit the rights of the Customer to proceed against Power Crank Batteries pursuant to the Australian Consumer Law; or d) technical advice or assistance given or rendered by it to the Customer whether or not in connection with the supply of Goods or performance of services for or to the Customer provided always that Power Crank Batteries has rendered such services with due care and skill and that any materials supplied in connection with those services are reasonably fit for the purpose for which they are supplied.

22. The Customer must take reasonable steps to mitigate any loss or damage it suffers or incurs.

23. The Customer indemnifies Power Crank Batteries, regardless of any negligence on the part of Power Crank Batteries, against: a) all losses incurred by Power Crank Batteries; b) all liabilities incurred by Power Crank Batteries; and c) all costs actually payable by Power Crank Batteries to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by Power Crank Batteries in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal); arising directly or indirectly as a result of or in connection with the supply of Goods by Power Crank Batteries to the Customer. The Customer must pay to Power Crank

Batteries all liabilities, costs and other expenses referred to in this clause, whether or not Power Crank Batteries has paid or satisfied them.

24. This indemnity remains in force after the termination of these terms and conditions of trade.

#### **Prices**

25. Unless otherwise stated all prices quoted by Power Crank Batteries are net, exclusive of Goods and Services Tax (GST). Prices quoted are those ruling at the date of issue of quotation/order and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of water, cost of materials and other charges affecting the cost of production ruling on the date is made. If the Power Crank Batteries makes any alterations to the price of the Goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Customer's account.

#### **Payment**

Unless a Credit Account is held with Power Crank Batteries, payment terms are cash, credit card or electronic funds transfer prior to delivery or collection of Goods or provision of services. Where a Credit Account is held and if not specified in writing by Power Crank Batteries, payment of a Power Crank Batteries invoice must be made in full within the number of days specified by Power Crank Batteries (in the approval of the credit application) from the invoice date, even if any Goods have not been delivered or services rendered.

26. If the Customer does not pay Power Crank Batteries on time, Power Crank Batteries may: a) require that all future dealings be on the basis of cash, credit card or electronic funds transfer payments upon placing an order; b) without notice to the Customer, withdraw or vary any credit facilities Power Crank Batteries previously provided (if any); and/or c) Power Crank Batteries may withhold indefinitely any further deliveries/orders until full payment of outstanding monies has been made.

27. Payments by credit card attract surcharges (as specified by each credit card provider) added for each payment transaction. At the Power Crank Batteries sole discretion, a deposit may be required prior to any supply of Goods.

28. Credit Account Customers are required to pay all amounts for purchases, in full and with no deduction, discount or set-off.

29. Amounts received by the Company may be applied first against interest, charges and expenses.

30. Interest on overdue amounts may be charged at a rate of 13% per annum calculated daily and the Customer shall be liable for, and expressly undertakes to pay, all such interest.

31. Any payment made by or on behalf of a Customer which is later avoided by the application of any statutory provision shall be deemed not to discharge the Customer's indebtedness and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.

32. The Customer cannot deduct any amounts from moneys owing by it to Power Crank Batteries. Customer must pay Power Crank Batteries in full for Goods delivered and services provided, even if there has been a delay in the delivery of the Goods or services or Customer disputes the quality, quantity or condition of Supplies delivered or provided. The Customer shall not be entitled to withhold payment of any account by reason of any account query, dispute or set off.

#### **Risk**

33. Risk in relation to any Goods passes to the Customer on delivery of the Goods to the Customer or its agent or a carrier nominated by the Customer. Delivery of Goods will be at Battery Powers Centre's premises on collection of the Goods by the Customer, its employees, carrier, agent or contractors. If Power Crank Batteries has expressly agreed to ship the Goods, risk in the Goods passes immediately on delivery of the Goods to the Customer's designated place of delivery by the Power Crank Batteries or its agent. If any of the Goods are damaged or destroyed prior to the title passing to the Customer, Power Crank Batteries is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods.

#### **Retention of title**

34. Power Crank Batteries retains legal and equitable title in any Goods supplied to the Customer until payment in full for or in connection with the supply of the relevant Goods has been received by Power Crank Batteries. Until payment in full has been received, the following terms apply. Property

and title in Goods supplied to the Customer under these terms of trade does not pass to the Customer until all money (including money owing in respect of other transactions between Power Crank Batteries and the Customer) due and payable to Power Crank Batteries by the Customer have been fully paid.

35. Notwithstanding that title in the Goods remains with Power Crank Batteries until payment has been received in full, the Customer may sell such Goods in the ordinary course of the Customer's business. As between the Customer and the purchaser of any item of the Goods, the Customer sells as principal and not as agent of Power Crank Batteries.

36. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for Power Crank Batteries and the Customer is under a duty to account to Power Crank Batteries for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to Power Crank Batteries for Goods supplied.

37. Until Goods are sold, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of Power Crank Batteries, store them in such a way they are clearly identified as the property of Power Crank Batteries and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by Power Crank Batteries.

38. Power Crank Batteries is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Customer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid Seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, Power Crank Batteries and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by Power Crank Batteries and to indemnify Power Crank Batteries and its agents for any liability arising from any entry upon such third parties' premises or vehicles. Power Crank Batteries and its agents agree to take reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods.

39. Should the Customer default in payment for any goods by the due date then, without notice, Power Crank Batteries by its servants or agents may and is hereby irrevocably authorised to enter the Customer's premises (or any premises under control of the Customer) as agent of the Customer and to use reasonable force to take possession of the goods. Power Crank Batteries shall not be liable to the Customer (whether for negligence or otherwise) for any damage allegedly caused or arising out of the taking of Power Crank Batteries of the possession of the goods as aforesaid and the Customer hereby indemnifies Power Crank Batteries in respect to any such claims brought by any third party.

40. This reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or commingled with other Goods.

#### **Security Interest**

41. The retention of title arrangement described above constitutes (at the sole and absolute discretion of Power Crank Batteries) the grant of a purchase money security interest by the Customer in favour of Power Crank Batteries in respect of all present and after-acquired Goods supplied to the Customer by Power Crank Batteries.

42. The Customer must immediately, if requested by Power Crank Batteries, sign any documents, provide all necessary information and do anything else required by Power Crank Batteries to ensure that Power Crank Batteries's purchase money security interest is a perfected security interest.

43. The Customer will not enter into any security or other agreement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods that would have priority over Power Crank Batteries's security interest in respect of the Goods or any proceeds from the sale of the Goods.

44. For any Goods supplied that are not Goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the Goods.

45. The Customer hereby waives any rights the Customer may otherwise have to: a) receive any notices the Customer would otherwise be entitled to

receive under ss 95, 118, 121, 130, 132 or 135; b) apply to a Court for an order concerning the removal of an accession under section 97; c) object to a proposal of the Customer to purchase or retain any collateral under ss 130 and 135; d) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest Power Crank Batteries may have in Goods supplied to the Customer from time to time.

46. For the purposes of these terms and conditions "PPSA" means the Personal Property Securities Act 2009. The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.

#### **Storage**

47. The Power Crank Batteries reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within fourteen days of a request by the Power Crank Batteries for such instructions. The parties agree that the Power Crank Batteries may charge for storage from the first day after the Power Crank Batteries requests the Customer to provide delivery instructions.

#### **Returned Goods**

48. The Power Crank Batteries is not under any duty or obligation to accept Goods returned by the Customer and will do so only if it consents in its sole and absolute discretion and the Customer indemnifies Power Crank Batteries against all damages and losses incurred as a result of the return. If the Power Crank Batteries agrees to accept returned Goods from the Customer, the Customer must return the Goods to the address nominated by Power Crank Batteries at the Customer's expense.

49. Warranty/Defective returns will be accepted only if Power Crank Batteries in its absolute discretion accepts the warranty/defect returns and prior arrangements have been made with Power Crank Batteries and charges, including but not limited to re-stocking fees, may apply. Any costs associated with the Warranty return of Goods for the purpose of a warranty claim shall be the responsibility of the Customer.

#### **Cancellation**

50. No order may be cancelled except with Power Crank Batteries written consent (which it will exercise in its sole and absolute discretion). In the event the Power Crank Batteries agrees to cancel an order at the request of the Customer, then the Customer indemnifies Power Crank Batteries against all damages and losses incurred as a result of the cancellation. Any Goods ordered on behalf of the Customer are payable by the Customer in full if the Customer decides to cancel or amend the order for any reason, at any time. Power Crank Batteries may cancel the delivery of Goods at any time before delivery by giving notice to the Customer by any means. Power Crank Batteries shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation.

#### **GST**

51. If Power Crank Batteries has any liability to pay Goods and Services Tax (GST) on the supply of any Goods or Services to the Customer, the Customer must pay to Power Crank Batteries an amount equivalent to the GST liability of Power Crank Batteries at the same time as the consideration is paid for the Goods or Services (unless the consideration for that supply is expressed specifically to be GST inclusive).

#### **Default**

52. Notwithstanding any other remedies available to Power Crank Batteries (either pursuant to these terms and conditions or at law) to recover any amount due and payable to it, if:

- (a) the Customer defaults in payment of the price (or any part thereof) for the supply of Goods and/or services;
- (b) in Power Crank Batteries's opinion, the Customer will be unable to meet its payment obligations to Power Crank Batteries as they fall due;
- (c) a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's assets;
- (d) any proceedings are instituted for the Customer's winding up;
- (e) the Customer enters into a deed of company arrangement;
- (f) the Customer becomes an externally-administered body corporate;
- (g) the Customer becomes insolvent;
- (h) a change occurs in the ownership of the Customer or the ownership of the Customer's business or in its directors; or
- (i) otherwise upon any default or breach of these terms and conditions;

then, without prejudice to the other rights of Power Crank Batteries:

(a) all amounts owing to Power Crank Batteries will, whether or not due for payment, become immediately payable by the Customer;

(b) the Customer's right to possess, use up, sell or otherwise deal with Goods in respect of which title has not passed to the Customer will cease;

(c) Power Crank Batteries may immediately cease or suspend the supply of further Goods and/or services and/or terminate or suspend any ~~Orders accepted by Battery Power Centre~~ that have not been performed; and

(d) Power Crank Batteries may initiate proceedings for recovery at Power Crank Batteries sole and complete discretion and without incurring any liability to the Customer, without mediating, without giving the Customer notice and without affecting any other rights or remedies available to Power Crank Batteries;

(e) Power Crank Batteries may also enter onto any premises where the Goods in respect of which title has not passed to the Customer are stored, and take immediate possession of and re-sell any Goods for which payment remains outstanding. Power Crank Batteries is not liable to the Customer if it takes any such action. The Customer indemnifies Power Crank Batteries in respect of any claims or actions against, and costs, expenses and other liabilities incurred by Power Crank Batteries in relation to the removal, repossession, transportation, storage and sale of Goods pursuant to these terms and conditions, including without limitation any claims brought by third parties; and any of the matters set out above.

(f) Power Crank Batteries may report the Customer's outstanding monies to a Credit Reporting Agency (body).

53. The Customer is not entitled to any retention from any amount due to Power Crank Batteries.

54. Power Crank Batteries reserves the right to set off against, or deduct from, any monies it at any time owes to the Customer on any account, any monies the Customer owes to it, but shall not be obliged to do so. The Customer is not entitled to set off against or retain any monies from monies owed by the Customer to Power Crank Batteries.

#### **Termination**

55. In addition to the express rights of termination provided in these terms and conditions, a Power Crank Batteries may terminate this agreement by giving 24 hours written notice to the other party.

#### **Security**

56. As security for any amounts due to Power Crank Batteries from time to time, the Customer charges all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all Chattels, Personal and Real Property to Power Crank Batteries.

57. Without limiting the generality of the charge above, the Customer, agrees, on request by Power Crank Batteries, to execute any documents and do all things reasonably required by Power Crank Batteries, (including if a beneficial owner, as beneficial owner under the Conveyancing Act 1919 (NSW) or of any analogous implied term under the applicable governing law) to perfect the charge given, including registering a mortgage security over any Real Property. The Customer appoints Power Crank Batteries to be the Customer's lawful attorney for the purposes of executing and registering such documents and taking all such steps in that regard. The Customer indemnifies Power Crank Batteries on an indemnity basis against all costs and expenses incurred by Power Crank Batteries in connection with the preparation and registration of any such steps needed to perfect the security or prepare or register the mortgage documents.

58. The Customer consents unconditionally to Power Crank Batteries lodging a caveat or caveats noting its interest in any Real Property.

59. A statement in writing signed by an authorised officer of Power Crank Batteries or Power Crank Batteries setting out the moneys due or owing to Power Crank Batteries at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.

60. Power Crank Batteries acknowledges that any payment made to Power Crank Batteries for a debt owed to Power Crank Batteries is in full satisfaction of the debt owed to it, to the extent of the payment made.

**Privacy Disclosure and Consent**

61. The Customer authorises Power Crank Batteries to:

- (a) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in this document and from any other credit provider or credit reporting agency for the purpose of assessing this application for credit, or in connection with any guarantee given by the Customer
- (b) use, disclose or exchange with other credit providers and Power Crank Batteries Associated Companies information about the Customer's credit arrangements in order to assess any application for credit, monitor credit worthiness and collect overdue accounts, and

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(c) disclose the contents of any credit report on the Customer to Power Crank Batteries and other related bodies corporate of Power Crank Batteries, and any of their solicitors and mercantile agents.

62. Power Crank Batteries's Privacy Policy and Credit Reporting Policy sets out how Power Crank Batteries complies with the Privacy Act 1988 (Cth) (Privacy Act), the 13 Australian Privacy Principles (APPs) in the Privacy Act and the Credit Reporting Code (CR Code). These policies may be inspected at www.

63. The Customer, Guarantors and signatories on behalf of the Customer in their personal capacity, agree to the terms of the Privacy Statement pursuant to the Privacy Act 1988 (as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012) attached to this credit application.

#### Miscellaneous

64. These terms and conditions are governed by and is to be interpreted according to the laws in force in the state where the Goods are supplied or services performed and the parties submit to the non-exclusive jurisdiction of the courts operating in that state. The operation of the United Nations Convention on Contracts for the Sale of International Goods is hereby excluded.

65. If any part or parts of these terms and conditions shall be held unenforceable for any reason, the remainder of these terms and conditions shall continue in full force and effect. If any provision of these terms and conditions is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

66. No delay or failure on the part of any party hereto in exercising any right or remedy under these terms and conditions, and no partial or single exercise thereof, shall constitute a waiver of such right or remedy or of any other right or remedy. The rights and remedies provided in these terms and conditions shall be in addition to, and not in lieu of, any rights and remedies under the applicable law. The rights and remedies provided in these terms and conditions are intended to be consistent and cumulative.

67. The Customer shall be responsible for payment of all taxes to which this terms and conditions is subject. The Customer agrees to indemnify and hold Power Crank Batteries harmless against any taxes, including penalties, duties and interest levied by any government.

#### Consignment

68. The terms and conditions of these clauses 68 to 75 to only apply to Goods expressly provided by Power Crank Batteries on consignment sale, to the Customer. Any reference to Goods sold in these Power Crank Batteries Standard Terms and Conditions of Trade shall be synonymous with Goods provided upon consignment in so far as it is not inconsistent with this clause. If Goods are consigned by Power Crank Batteries to the Customer these terms and conditions shall apply whether the Goods are held at the Customer's premises or at any other premises, whether in control of the Customer or not. The Customer shall as and when required by Power Crank Batteries carry out a regular stock-take of the Goods consigned and provide such details as may be required by Power Crank Batteries in respect of such Goods and do all such other things as may be required by Power Crank Batteries in relation to such Goods. In consideration of delivery of the Goods by the Power Crank Batteries to the Customer (receipt of which is hereby acknowledged) the consignee Customer agrees to use its best endeavours to sell the Goods. Within 30 days of date of sale of any Goods consigned, the Customer must remit payment in full for the Goods to the Power Crank Batteries.

69. All Goods which have not been sold by the consignee Customer within 90 days of the date of consignment shall be returned by the Customer to the Power Crank Batteries at the Customer's expense.

70. Title in the Goods will remain the Power Crank Batteries's until the first of the following occurs:

- (a) the Goods are sold by the Customer;
- (b) the Goods are lost or damaged (whether or not by the Customer or by any person for whom the Customer has legal responsibility);
- (c) the Customer approves or accepts the Goods;
- (d) the Customer performs any act which has the effect of adopting the transaction (including without limitation, re-selling the Goods or dealing with them as the consignee Customer's own property or making actual or constructive delivery of the Goods to any person for any purpose or transaction); or
- (e) the Customer does not give the Power Crank Batteries notice of rejection of the Goods and retains the Goods for longer than a reasonable time after they are delivered to the Customer.

71. Risk in the Goods passes to the Customer upon delivery of the Goods by the Power Crank Batteries to the Customer.

72. If any loss or damage to the Goods occurs after delivery of the Goods to the Customer and prior to return of the Goods to the Power Crank Batteries, this will be considered to be a sale of the Goods to the Customer entitling the Power Crank Batteries to payment.

73. The Customer must not:

- (a) remove, deface or cover up any marks of identification or ownership from the Goods;
- (b) misrepresent who is the owner of the Goods; or
- (c) in any way assign, charge, lease or otherwise deal with, or create a security interest over, the Goods except for the purposes of, and consistent with, this agreement.

74. If this agreement is a commercial consignment:

- (a) it does not secure payment or performance of an obligation;
- (b) Power Crank Batteries and the Customer both deal in the Goods consigned under this agreement in the ordinary course of business;
- (c) the interest of the Power Crank Batteries in the Goods and all proceeds is a security interest and this agreement is a security agreement;
- (d) the Customer consents to the Power Crank Batteries registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Power Crank Batteries to facilitate registration;
- (e) the Customer waives its right to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded;

(f) Power Crank Batteries and Customer agree that this agreement and all related information and document(s) are confidential (**Confidential Information**) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. The Power Crank Batteries and the Customer agree that the Power Crank Batteries will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA; and

(g) unless the Goods are used predominantly for personal, domestic or household purposes, the Power Crank Batteries and the Consignee Customer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of the Power Crank Batteries's security interest in the Goods or of this agreement:

- (i) any requirement for the Power Crank Batteries to give the Customer a notice of removal of accession;
- (ii) any requirement for the Power Crank Batteries to give the Customer a notice of the Power Crank Batteries's proposed disposal of the Goods;
- (iii) any requirement for the Power Crank Batteries to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
- (iv) any requirement for the Power Crank Batteries to give the Customer a statement of account if the Power Crank Batteries does not dispose of the Goods;
- (v) any right the Customer has to redeem the Goods before the Power Crank Batteries exercises a right of disposal; and

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- (vi) any right the Customer has to reinstate this agreement before the Power Crank Batteries exercises a right of disposal of the Goods.
- 75. Expressions defined in the PPSA have the same meaning when used in this agreement.

Power Crank Batteries reserves the right to refuse a General Trade Account Application to any applicant without explanation.
I/we have read and understood this document and have been advised, and given a reasonable opportunity, to seek independent legal advice.
I/we warrant by signature below that the information given in support of this application is true and correct.
I/we further warrant that I/we am/are authorised to sign on behalf of the Customer and to bind the Customer in contract.

<b>Print Name</b>		<b>Signature</b>		<b>Date</b>
		<b>Position/Title</b>		

<b>Print Name</b>		<b>Signature</b>		<b>Date</b>
		<b>Position/Title</b>		

<b>Print Name</b>		<b>Signature</b>		<b>Date</b>
		<b>Position/Title</b>		

**THIS IS A LEGAL CONTRACT. DO NOT SIGN UNLESS YOU HAVE READ AND UNDERSTOOD THE DOCUMENT**

**PRIVACY STATEMENT**

1. This privacy statement encompasses consents, notifications and disclosures under or in relation to the Privacy Act 1988 (Cth) ("Act").
2. The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in this application, our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
3. The Customer consents to Power Crank Batteries Pty Ltd (ACN 092 577 412) as the Trustee for the Powercrank Trust (ABN 68 092 577 412) , (hereinafter referred to as "Power Crank Batteries") obtaining and making disclosure of information about the Customer from and to a credit reporting body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose.
4. Power Crank Batteries may collect personal information about the Customer for Power Crank Batteries's primary purposes which include the assessment of a general trade account application, credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.
5. The Customer consents to Power Crank Batteries collecting, using and disclosing personal information (including sensitive information) for both the primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
6. The Power Crank Batteries may collect, and may have already collected, information from the Customer, other credit providers, credit reporting bodies and other third parties for the purpose of its functions and activities including, but not limited to, credit, sales, marketing and administration. If the information was not collected by the Power Crank Batteries it may restrict or impede upon the Power Crank Batteries trading with, extending credit to, continuing to extend credit to or extending further credit to the Customer and/or Guarantor(s) or their related bodies corporate.
7. The Customer will be deemed to have acknowledged and accepted the terms of this privacy statement by signing this statement.
8. The Customer consents to the Power Crank Batteries obtaining and making disclosure of information about the Customer and/or Guarantor(s) from and to a credit reporting body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose. The Customer consents that Power Crank Batteries may use and/or disclose credit eligibility information under section 21G of the Act.
9. The Power Crank Batteries may disclose information to, and about them, and the Customer hereby acknowledge that it consents to the disclosure of such information to the Power Crank Batteries employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective credit



providers of the Customer or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit, and/or overseas recipients and recipients who do not have an Australian link.

10. By reason of the Customer's consent to the disclosure to overseas recipients hereunder, Australian Privacy Principles APP 8.1 will not apply to the Power Crank Batteries's dealing with the Customer's and/or Guarantor(s)' information.

11. A full copy of the Power Crank Batteries's privacy policy and credit reporting policy can be obtained from the Power Crank Batteries's website ([www.batterypowercentre.com.au](http://www.batterypowercentre.com.au)) or by making a request in writing directed to the Power Crank Batteries's privacy officer. The Power Crank Batteries's privacy policy and credit reporting policy contain information about how to access and seek correction of information, or how to complain about a breach of the Act, Australian Privacy Principles, Privacy code(s) and how the Power Crank Batteries will deal with any such complaint.

12. For the purpose of this privacy statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively. Power Crank Batteries may provide personal information about the Customer to any or all of the credit reporting bodies nominated below. The Power Crank Batteries intends to disclose default information to any or all of the credit reporting bodies listed below. The Customer consents to such disclosure. The Power Crank Batteries's credit reporting policy contains a statement of notifiable matters in accordance with the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what the Power Crank Batteries may disclose and the Customer's right to request limitations to the use of the information.

Equifax	Level 15, 100 Arthur Street, NORTH SYDNEY 2060	Tel 13 8332
Creditor Watch	Level 13, 109 Pitt Street, SYDNEY 2000.	Tel 1300 501 312
NCI	Level 2, 165 Grenfell Street, ADELAIDE 5000.	Tel 1800 882 820
Experian	Level 6, 549 St Kilda Road, MELBOURNE 3004	Tel 1300 783 684
AMPAC	Level 4, 50 Clarence Street, SYDNEY 2000	Tel 1300 426 722
Illion	PO Box 7405 St Kilda Rd Melbourne VIC 3004	Tel 1300 734 806

The Customer		
Director	Signature	Date
Director	Signature	Date

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