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Agreement

Between

[Customer]

(Customer)

And

Ashborn Pty Ltd

(Supplier)



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Execution Page

Schedule



## SUPPLY AGREEMENT

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**Date:**

**Parties:** [Customer] of [insert]

(Customer)

**And** Ashborn Pty Ltd ACN 085 511 799 of 502 Old Sturt Highway, Glossop SA 5344

(Supplier)

**Note :** Ashborn Pty Ltd is represented by the following entities –

Ashborn Industries – Glossop

Ashborn Industries – Adelaide

Ashborn Industries – Limestone Coast

Ashborn Industries – Griffith

### Recitals:

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- A The Supplier manufactures and supplies pallets, bins and crates.
- B The Customer wishes to purchase pallets, bins and crates from the Supplier on the terms and conditions of this Agreement.

### Operative Provisions:

#### 1 Products

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The Customer engages the Supplier to manufacture the **Products** as described in the Schedule to this Agreement

#### 2 Price

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2.1 The price of the Products and Services during the term of this Agreement is set out in the Schedule to this Agreement (**Fees**).

#### 3 Title and Risk

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3.1 Risk in the Products purchased by the Customer passes to the Customer from the Supplier at the point of delivery.

3.2 It is expressly agreed and declared that the Products delivered by the Supplier to the Customer remain the sole and absolute property of the Supplier as legal and equitable owner until all moneys due to the Supplier under this Agreement have been paid in full to the Supplier by the Customer.

3.3 Until payment for the Products to the Supplier in full, the Customer holds the Products as a fiduciary agent of the Supplier. The Customer's right to possession of the Products ceases upon any of the events set out in clause 12 occurring. The Customer agrees that the Supplier and its employees and agents may enter upon the Customer's



premises upon the provision of reasonable notice in writing for the purpose of examining or recovering the Products.

- 3.4 Whilst the Supplier holds all right, title and interest in the Products, the Customer consents to the Supplier registering its interest in the Products on the Personal Property Securities Register (PPSR).

## 4 Evidence of Delivery and Quantity

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- 4.1 Except where provided otherwise to the contrary in this Agreement, the signature or acknowledgment of delivery by any operator, employee or other person purporting to accept delivery on behalf of the Customer, is prima facie evidence of the fact of delivery and the quantity of Products delivered. If at the time of delivery of the Products there is no one to sign for the delivery then the delivery docket will be prima facie evidence of the fact of delivery and the quantity of Products delivered.

Maintenance of the Customer's desired Product inventory levels are the sole responsibility of the Customer. The Customer hereby releases and indemnifies the Supplier against any claim, loss or action resulting from the Customer having insufficient supplies of Products to meet the Customer's requirements.

## 5 Insurance

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- 5.1 The Supplier must arrange for the following policies of insurance to be taken out in the name of the Supplier and at the cost of the Supplier:

- (a) **[Product insurance]**;
- (b) All insurance and other contracts of indemnity which the Supplier is required to effect and maintain by law including, but without limiting the general extent of the preceding part of this clause, insurance in relation to its employees under any workers' compensation legislation applicable to the Supplier's activities; and
- (c) A policy of public liability insurance for an amount of \$20 million;

and will produce evidence of such insurance and other contracts to the Customer from time to time upon request.

- 5.2 The Customer must arrange for the following policies of insurance to be taken out in the name of the Customer and at the cost of the Customer:

- (a) **[Product insurance]**;
- (b) All insurance and other contracts of indemnity which the Supplier is required to effect and maintain by law including, but without limiting the general extent of the preceding part of this clause, insurance in relation to its employees under any workers' compensation legislation applicable to the Supplier's activities; and
- (c) A policy of public liability insurance for an amount of \$20 million;

and will produce evidence of such insurance and other contracts to the Supplier from time to time upon request.



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## 6 Warranties

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- 6.1 The Customer warrants to the Supplier that:
- (a) It will comply with all current state and federal laws, codes and regulations applicable to this Agreement and its subject matter; and
  - (b) The Products will not be used if it is known by the Customer to require maintenance.

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## 7 Indemnities

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The Customer indemnifies and holds harmless the Supplier against all expenses, losses, damages and costs that the Supplier may sustain or incur as a result of, whether directly or indirectly, any breach of this Agreement by the Customer.

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## 8 Intellectual Property

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- 8.1 The Customer acknowledges that the Intellectual Property in the Products of the Supplier is the absolute property of the Supplier and that the Customer must do all things and sign all documents that may be necessary to vest such Intellectual Property in the Supplier.
- 8.2 For the purpose of this clause, Intellectual Property means all present and future intellectual property rights including without limitation patents, copyright, trademarks, business names, business methods or scientific methods and processes, logos, stationary, signs, all processes, know-how, trade secrets, registered or unregistered designs or other like rights relating to the Products.

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## 9 Limited Liability

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Subject to any condition or warranty implied in favour of the Customer by the *Competition and Consumer Act 2010* (Cth) or any other applicable law which cannot lawfully be excluded, to the fullest extent permitted by applicable law the liability of the Supplier for defective Products including for breach of any implied condition or warranty will be limited to (at the Supplier's discretion):

- 9.1 the replacement of the Products or the supply of equivalent products; and
- 9.2 the payment of the cost of replacing the Products or of acquiring equivalent products.

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## 10 Assignment and Subcontracting

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This Agreement is not assignable by the Customer. The Supplier may at any time assign transfer or otherwise deal with its rights under this Agreement without the consent of the Customer.

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## 11 Disclaimer of relationships

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- 11.1 The Customer and the Supplier are not:
- (a) Employer and employee;
  - (b) Partners or joint venturers; or
  - (c) Principal and agent, except to the extent provided by this Agreement;
- and any such relationship is disclaimed by the Customer and the Supplier.
- 11.2 The Supplier's officers, employees and agents are not the Customer's officers, employees or agents, and any such relationship is disclaimed by the Customer and the Supplier.



**12 Term**

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- 12.1 This Agreement will commence on \_\_\_\_\_ and terminate on \_\_\_\_\_ (**Term**), subject to the provisions of this Agreement.
- 12.2 The Customer may terminate this Agreement immediately and without notice to the Supplier if the Supplier breaches any obligation under this Agreement and fails to rectify such breach within 14 days of notice to that effect being given.
- 12.3 The Supplier may terminate this Agreement immediately and without notice to the Customer if the Customer breaches any obligation under this Agreement and fails to rectify such breach within 14 days of notice to that effect being given.
- 12.4 The Customer or the Supplier may terminate this Agreement upon the occurrence of any of the following events:
  - (a) An order being made for the winding up of the other;
  - (b) A receiver or a receiver and manager of any of the property of the other being appointed;
  - (c) An administrator of the other being appointed; or
  - (d) A judgment being entered against the other for an amount exceeding the sum of \$20,000.00 and remaining unsatisfied, either in whole or in part, or unappealed for a period of 21 days after such entry.

**13 Option to renew**

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If the Supplier:

- 13.1 \_\_\_\_\_ Wishes to extend the term of this Agreement from \_\_\_\_\_ to \_\_\_\_\_ (**Further Term**); and
- 13.2 \_\_\_\_\_ gives notice to that effect to the Customer not less than three months before the end date contained in Clause 13.1,

then the Customer must accept the extension of this Agreement for the Further Term on the same terms and conditions as are contained in this Agreement.

**14 Personal Property Securities Act 2009**

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The Supplier claims a purchase money security interest (“**PMSI**”), as defined in the *Personal Property Securities Act 2009* (Cth) (“**PPS Act**”), in the Products so as to secure its interest in the Products as are delivered to the Customer from time to time until all moneys due to the Supplier in respect of the Products have been paid in full by the Customer.

**Acknowledgement by the Customer**

- 14.1 The Customer grants to the Supplier a PMSI in the Products and any proceeds of their sale to secure the Supplier’s interest in the Products as are delivered to the Customer from time to time.
- 14.2 The Customer agrees not to do or permit anything to be done that may result in the PMSI granted to the Supplier to rank or to be subjected to priority to any other Personal Property Security Interest in favour of any other party.



14.3 The Customer agrees to take such further steps which may be required by the Supplier to take additional or better security under the PPS Act over the Products and the proceeds of their sale, or to maintain the ability to claim and realise the Supplier's Security Interest, including its priority and perfection, pursuant to the PPS Act or by reason of the Financing Statement (in order to avoid any doubt, this obligation on the part of the Customer includes obtaining written consents, supplying information, signing forms, executing documents, whether on the part of the Customer, any financier to the Customer, a lessor or landlord of the Customer or any third party having a claim or interest over land or a building in respect of which the Products are located at present or at any time in the future).

14.4 The Customer agrees to provide to the Supplier when requested all details of the location of the Products.

### **Personal Property Security Register Terminology**

"**Personal Money Security Interest**" - known by the acronym "**PMSI**". There are four types of PMSI:

1. retention of title clauses;
2. where a financier provides funds to a customer to enable the purchase of plant, equipment or other goods over which the financier takes security;
3. a leasing arrangement or a commercial bailment where the term exceeds three months in the case of motor vehicles, boats and aircraft, or exceeds one year for other types of personal property including the Commodity; and
4. Other goods made available on consignment.

"**Personal Property Security Interest**" - this means an interest in personal goods over which a security interest is claimed.

"**Financing Statement**" - this in effect means entering a security interest on the register and obtaining confirmation of this. In effect, this is evidence of the registered security.

"**Collateral**" - the personal property that is the subject of a security interest. In this Agreement this includes the Commodity.

"**Proceeds**" - means the proceeds of the sale or other dealing in the Collateral.

## **15 Confidentiality**

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15.1 The Customer and the Supplier will not disclose, or permit to be disclosed, to any person or company any information in relation to the other which is not generally available to the public, except where legally required to do so or with the prior written consent of the other and then only on the basis that the confidentiality of such information is preserved by the person or company to which disclosure is to be made.

15.2 The provisions of clause 15.1 apply during the currency of this Agreement and following its termination.

## **16 GST**

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16.1 If GST has application to any supply made under this Agreement by either the Customer or the Supplier, the Customer and Supplier agree that the amount payable in respect of the supply is exclusive of GST.

16.2 The supplier may, in addition to the payment but subject to providing a tax invoice (as required by the *A New Tax System (Goods and Services Tax) Act 1999* and associated legislation (**GST Legislation**)), recover from the recipient (and the recipient shall reimburse the supplier) an additional amount on account of GST, such additional amount to be calculated in accordance with the GST Legislation.



## 17 Dispute Resolution

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- 17.1 A party must not commence any court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of or in relation to this Agreement (**Dispute**) unless it has first complied with this clause 17.
- 17.2 A party claiming that a Dispute has arisen must give written notice to the other parties giving details of the Dispute.
- 17.3 During the 21 day period after a notice is given under clause 17.2 (or a longer period agreed in writing by the parties to the Dispute) (**Initial Period**), each party to the Dispute must use its best efforts to resolve the Dispute.
- 17.4 If the parties are unable to resolve the dispute within the Initial Period, the parties agree and acknowledge that the Dispute must be referred for mediation to:
- (a) a mediator appointed by mutual agreement of the parties; or
  - (b) a mediator nominated by the President of the Law Society of South Australia.
- 17.5 A mediator may not make a decision that is binding on the parties unless the parties have otherwise agreed in writing.
- 17.6 The parties to the Dispute must bear their own costs of complying with this clause 17 and the parties must bear equally the costs of any mediator engaged.
- 17.7 If the parties do not resolve the Dispute within 40 days after the Dispute was referred to mediation, the parties may commence court proceedings.

## 18 Force Majeure

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Notwithstanding anything else contained in this Agreement, neither party will be liable for any delay in or failure to comply with this Agreement (except for an obligation to pay money) if such delay or failure is caused by circumstances beyond that party's reasonable control, including without limitation fire, flood, act of God, strikes, lock outs, stoppage of work, trade disputes or any act of war or terrorism.

## 19 General Provisions

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- 19.1 The Customer is solely responsible for the:
- (a) Correct dimensions of the Products; and
  - (b) Nature and weight of the load to be carried by the Products.
- 19.2 **Amendment**
- This Agreement shall not be amended except by an instrument in writing signed by the parties.
- 19.3 **No Waiver**
- The failure of any party to exercise or the delay in exercising any right power or privilege available to it hereunder shall not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise by that party or any other right power or privilege hereunder.
- 19.4 **Severance**





If any provision of this Agreement or part thereof is held illegal unenforceable or otherwise invalid, that provision or part thereof shall be deemed to be severed from this Agreement and the remainder of this Agreement shall continue in effect.

## 19.5 **Jurisdiction**

This Agreement shall be construed in accordance with and governed by the laws of the State of South Australia and the parties hereby submit to the exclusive jurisdiction of the Courts of South Australia in any matter arising out of or in connection with this Agreement.

## 19.6 **Counterparts**

This Agreement may be executed in any number of counterparts signed by one or more parties and all of those counterparts taken together constitute one and the same instrument. The exchange of executed counterparts by email or fax will create a binding agreement.

## 19.7 **Costs**

Each party must bear its own costs and expenses in respect of the negotiation, preparation, execution and delivery of this Agreement.

## **20 Notices**

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20.1 Any notice, consent, offer, demand, request or other instrument required or authorised to be given or served upon a party pursuant to this Agreement shall be in writing and may be given by post, hand, facsimile transmission or email to that party at its address as appearing in this Agreement or otherwise advised by each other party in writing.

20.2 An instrument given or served in accordance with clause 20.1 is deemed to have been received:

- (a) In the case of an instrument given or served by post to an address in the same country in which it is posted, on the second day following the day of posting;
- (b) In the case of an instrument given or served by hand, at the time of delivery;
- (c) In the case of an instrument sent by facsimile transmission, on the business day next after the date of transmission; and
- (d) In the case of an instrument sent by e-mail, on the business day next after the date of transmission.



**Executed as an Agreement**

**Executed by Ashborn Pty Ltd** in accordance with s 127(1) of the *Corporations Act 2001*:

.....Director/Secretary

.....Print Name

.....Director

.....Print Name

**Executed by [insert]** in accordance with s 127(1) of the *Corporations Act 2001*:

.....Director/Secretary

.....Print Name

.....Director

.....Print Name

**Signed by [insert]**  
in the presence of:

.....

.....Print Name



## Schedule

### Products

1. [Insert Products]

### Services

1. [Insert Services]

### Fees

1. [Insert Fees]
2. The Supplier will render tax invoices for the Products and Services provided on a monthly basis and all tax invoices shall be paid by the Customer by the end of the following month. For example, a tax invoice dated 30 June 2018 shall be paid by the Customer by no later than 31 July 2018.
3. The amount payable pursuant to item 1 above shall be reviewed annually increased annually on the 1st day of January