Commercial Credit Terms

Privacy Statement

1 Use of Personal Information

1.1 We cannot extend credit without acquiring and using personal information.

1.2 We may collect and use your personal information for:

(a) our primary purposes, which include, but are not limited to, providing goods and services to you, obtaining your credit report, contacting your trade references, assessing your application for commercial credit, reviewing your credit terms, assessing your credit worthiness, assessing credit guarantees (current and prospective), reporting upon overdue payments, and collecting overdue payments due to us, and matters reasonably necessary in complying with your requests (together, **Primary Purposes**); and

(b) purposes other than our Primary Purposes.

1.3 If you sign and send to us:

(a) the Credit Application as a Customer; or

(b) the Deed of Guarantee and Indemnity as a Guarantor; then:

(c) you will be providing personal information to us; and

(d) you are accepting the terms of this Privacy Statement.

2 Application of Privacy Statement

This Privacy Statement encompasses consents, notifications, and disclosures under, or in relation to, the *Privacy Act 1988* (Cth) (**Privacy Act**).

3 Specific consents

3.1 You consent to us, to the extent permitted by law, collecting, using, and disclosing your personal information for our Primary Purposes.

3.2 You also consent to us undertaking the below enquiries and disclosures pursuant to the following sections and items of the Privacy Act:

(a) obtaining a copy of your credit report from a credit reporting body for a commercial credit related purpose (item 2 of section 20F(1));

(b) obtaining a copy of your credit report from a credit reporting body for a credit guarantee purpose (item 3 of section 20F(1));

(c) obtaining a copy of your credit report from a credit reporting body for a trade insurance purpose (item 8 of section 20F(1));

(d) disclosing credit eligibility information about you to other credit providers (section 21J(1) or 21K(1)); and

(e) disclosing credit eligibility information about you to another entity and/or its professional legal or financial advisers where the recipient proposes to use that information for the purposes described in section 21N(3) of the Privacy Act (section 21N(2)).

3.3 You also consent to us collecting, using, and disclosing your personal information (including sensitive information), for purposes other than our Primary Purposes, including, but not limited to, internal management purposes, marketing (including direct marketing), and sales and business development purposes.

4 Disclosure to credit reporting bodies

4.1 You consent to us, to the extent permitted by section 21D of the Privacy Act, disclosing your credit information to any or all of the following credit reporting bodies and their successors and assigns.

(a) Equifax Australia: GPO Box 94, North Sydney NSW 2059, www.equifax.com.au, 13 8332.

(b) Creditor Watch: GPO Box 276, Sydney NSW 2001, https://creditorwatch.com.au, 1300 501 312.

(c) NCI: PO Box 3315, Rundle Mall SA 5000, https://nci.com.au, 1800 882 820.

(d) Illion: PO Box 7405, St Kilda Road, Melbourne VIC 3004, https://www.illion.com.au, 13 23 33.

(e) Experian: GPO Box 1969, North Sydney NSW 2060, https://www.experian.com.au, (02) 8907 7200.

4.2 Our credit reporting policy contains a statement of notifiable matters in accordance with section 21C of the Privacy Act and items 4.1 and 4.2 of the *Privacy (Credit Reporting Code) 2014* (Cth) (**Credit Reporting Code**).

5 Disclosure to third parties

5.1 You consent to us disclosing your personal information (including your credit information) to our subsidiaries, employees, agents, and related bodies corporate, past, present, the credit reporting bodies noted above, any trade credit bureau of which we are a member, your trade references, the related bodies corporate of the preceding entities, and some overseas recipients.

5.2 By reason of your consent to the disclosure to overseas recipients pursuant to clause 5.1 of this Privacy Statement, Australian Privacy Principle 8.1 will not apply to our dealings with your personal information.

6 Our privacy policy and credit reporting policy

6.1 A copy of our privacy policy and credit reporting policy can be obtained from our website (www.endeavour.com.au) or by making a request in writing directed to our privacy officer.

6.2 Our privacy policy and credit reporting policy contain information about how to access and seek correction of your personal information, or how to complain about a breach of the Privacy Act, the Credit Reporting Code, or the Australian Privacy Principles, and how we will deal with any such complaint.

Endeavour Foundation Limited
ACN 009 670 704 ABN 80 009 670 704
33 Corporate Drive, Cannon Hill QLD 4170
Phone 1800 112 112 | endeavour.com.au

Credit Facility Terms ("Credit Terms")

1 The effect of the Credit Application

1.1 We may extend you credit if:

(a) we receive a completed Credit Application from you on terms which are satisfactory to us; and

(b) we consider, in our sole discretion, that your application ought to be approved.

1.2 You acknowledge that any credit we may approve under clause 1.1 will be subject to these Credit Terms which (together with the Privacy Statement and the Terms of Trade (incorporated under clause 2)) are incorporated into the Credit Application.

1.3 If you wish to negotiate the terms of the credit facility or otherwise any terms incorporated in the Credit Application, you should respond to us marking up the terms you seek, and drawing those changes to our attention and obtain our agreement in writing.

2 Incorporation of our Terms of Trade

2.1 By applying for a credit facility with us, you:

(a) warrant that you have read and understand our Terms of Trade, which may be found at www.endeavour.com.au and are available upon request at any time by email to arcredit@endeavour.com.au;

(b) acknowledge that our Terms of Trade are incorporated into these Credit Terms and continue to apply to trade on your credit facility; and

(c) agree to be bound by our Terms of Trade.

3 Payment terms

3.1 Charges on your approved credit facility must be paid:

(a) strictly thirty (30) days from the date of invoice or charge (or such other terms as nominated by us in writing at the time we establish your credit facility); and

(b) without deduction or setoff.

4 Unauthorised use of your credit facility

4.1 You are solely responsible for ensuring there is no unauthorised use of your credit account. You must keep details of your credit facility with us confidential, including your account number, and treat it like a banking PIN or password.

4.2 If you become aware that your credit facility is, or may be, the subject of unauthorised use, you must:

(a) notify us in writing as soon as possible via email to arcredit@endeavour.com.au; and

(b) provide us with any information you have regarding the misuse or potential unauthorised use of your credit account.

4.3 You will be liable for charges that you have not authorised to your credit account unless:

(a) we ought to have known that they were unauthorised; or

(b) you have notified us in accordance with clause 4.2.

5 Credit remains at our discretion

5.1 Your account will be ascribed a credit limit, which you must not exceed.

5.2 At our sole discretion we may:

(a) extend, or refuse, credit to you for any reason;

(b) provide you with credit in excess of your credit limit; and

(c) cease to provide further credit even if your credit limit has not been, or will not be, exceeded.

5.3 We may close your credit facility if you do not use it for six (6) months.

6 Variations

6.1 We may increase or decrease your account credit limit by written notice to you effective immediately.

6.2 If:

(a) we decrease your credit limit by giving notice pursuant to clause 6.1; and

(b) your credit facility would fall into default as a consequence by reason of that notice, then we will not treat this as an event of default.

6.3 From time to time, we may otherwise amend our Credit Facility Terms with you, in which case:

(a) we will give you at least fourteen (14) days' written notice of the change; and

(b) your credit facility will be subject to those amended terms in respect of any further supplies made after the fourteen (14) day period has expired unless you have issued a written notice to us objecting to the varied terms within the fourteen (14) day period.

7 Default

7.1 Your credit facility will be in default if any of the below events occur.

(a) You fail to pay any sums to us when they fall due.

(b) Your account balance exceeds the amount we have identified as your credit limit and clause 6.2 does not apply.

(c) Any corporate entity that is a Customer or Guarantor is the subject of the appointment of administrators, liquidators, receivers, provisional liquidators or enters into an arrangement or compromise with creditors.

(d) Any individual person that is a Customer or Guarantor commits an act of bankruptcy.

(e) You have given us information in support of your credit account which is false or misleading.

(f) You breach an obligation under our Terms of Trade.

7.2 If your credit facility is in default, then:

(a) we may temporarily suspend your credit account;

(b) we may give you a notice requiring that all charges on your credit facility may, at our election, fall immediately due and payable, notwithstanding clause 3; and

(c) we may close your credit facility.

8 Charge over your real and personal property

8.1 As security for the sums you owe, or may owe, us, you charge in our favour all of your estate and interest in:

(a) any real property (i.e. any house or land); and

(b) personal property (i.e. any other assets including for example and without limitation, any plant, equipment, vehicles, personal effects, and household items), whether:

(c) such property is held in your own right or in your capacity as trustee;

(d) you own the property at present or later acquire it; and

(e) wherever it is situated.

8.2 You irrevocably appoint our company secretary from time to time as your duly constituted attorney to execute in your name a real property mortgage, general or specific security agreement, bill of sale, or consent to any caveat upon written notice and demand to you.

8.3 If you have previously entered into an agreement with us by which you have granted a charge, mortgage, or other security interest in respect of your property then those security interests will continue and will co-exist with the security interests created in these Credit Terms and will secure all of your indebtedness and obligations hereunder. We may, at our election and upon the provision of written notice, vary the terms of such previous charges, mortgages, or other securities to reflect these Credit Terms.

8.4 You acknowledge that:

(a) you have read and understood this clause 8; and

(b) this clause 8 is necessary to protect our legitimate interests including having regard to:

(i) the risk that retention of title and personal guarantees (if applicable in the Credit Application) may not in substance, provide adequate protection to us;

(ii) the terms of any credit we may approve under clause 1.1 are given on the basis that this clause 8 would apply, and if that were not the case, we would not have given the same credit terms; and

(iii) the risk of your insolvency given the nature of the industry in which you and we operate.

9 Waiver

A waiver of any provision of these Credit Terms will only be effective if made by the affected party in writing.

10 Entire agreement

10.1 You warrant that if you have entered into these Credit Terms in reliance upon any oral understanding or representation that you have written such matters on the Credit Application and brought them to our attention in accordance with clause 1.3.

10.2 Otherwise, these Credit Terms (together with all terms incorporated in the Credit Application):

(a) constitutes the entire agreement and understanding between the Parties in relation to its subject matter;

(b) excludes all implied terms; and

(c) supersedes all previous negotiations, understandings, representations, and warranties.

10.3 Notwithstanding clauses 10.1 and 10.2, where you have previously entered into a credit agreement with us (**Original Agreement**), these Credit Terms will constitute a variation of the Original Agreement whereby the terms the Original Agreement are deleted and replaced with these Credit Terms, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by these Credit Terms, in which case they will co-exist with these Credit Terms and, to the extent of any inconsistency, these Credit Terms will prevail.

Deed of Guarantee and Indemnity

1 Consideration

The Guarantors warrant and agree that they have read and agree to the Credit Terms and the Terms of Trade:

(a) incorporated in the Credit Application; and

(b) credit sought by the Customer from the Supplier:

(i) was the subject of their request; and

(ii) would confer a direct or indirect benefit upon them, if granted.

2 Guarantee

2.1 The Guarantors unconditionally guarantee to the Supplier the due and punctual payment by the Customer of all monies and obligations which the Customer owes, or may owe, to the Supplier, either alone, jointly, severally, or jointly and severally with another person, now, or from time to time, including liabilities which the Customer owes actually or as contingent liabilities.

2.2 The Guarantors must pay such money immediately upon demand.

2.3 The guarantee in clause 2.1 is a continuing guarantee and remains in force until the Customer's obligations have been paid and performed in full and any contingent liability that might exist is otherwise secured.

2.4 This deed binds each of the persons executing it even if one or more of the persons named in this deed does not execute, or ceases to be bound by, this deed.

3 Guarantors' obligations

3.1 The Guarantors' obligations are principal obligations and are not ancillary or collateral to any other right or obligation.

3.2 The Supplier is not obligated to proceed against the Customer or exhaust its remedies against the Customer before proceeding under this deed.

3.3 The Guarantors' obligations are absolute, unconditional, and irrevocable, and are not affected by any act or omission which might otherwise affect it at law or in equity, including:

(a) any indulgence of time, waiver, or other concession granted to the Customer or any Guarantor;

(b) the release of any Guarantor;

(c) any incapacity of any Guarantor;

(d) any insolvency or similar proceedings;

(e) any person named in this deed as Guarantor failing to execute this deed;

(f) by any other act, matter, or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of their obligations under this deed;

(g) any security now or in the future held or contemplated to be held by the Supplier not being held by the Supplier; or

(h) any act or omission of the Supplier that has had the effect that the liability under this deed has increased.

4 Indemnity

As a separate obligation, the Guarantors indemnify the Supplier from and against all damage, loss, and costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that the Supplier may suffer or incur as a result of any liability the Supplier has to a liquidator or trustee appointed for any voidable or antecedent transactions for any payment received by the Supplier in respect of the Customer such that if such monies are to be repaid then that sum is to be treated as though it was never paid by the Customer.

5 Limitations on Guarantors' rights

5.1 Until the entirety of all obligations of the Customer have been paid or satisfied in full, the Guarantors must not (except with the Supplier's prior written consent), directly or indirectly:

(a) take any steps to recover or enforce any right or claim against the Customer relating to any sum paid by any Guarantor under this deed;

(b) claim any contribution from, or exercise any right of subrogation against, the Customer or any other Guarantor; or

(c) claim or receive the benefit of any distribution, dividend, or payment arising out of, or relating to, the insolvency of the Customer or any other person liable jointly or severally with the Customer.

5.2 If the Guarantors receive any benefit, payment, or distribution, they undertake to hold that benefit, payment, or distribution for the benefit of the Supplier and to promptly pay or transfer the same to the Supplier.

6 Charge over real and personal property

6.1 As security for the sums the Guarantors owe the Supplier, the Guarantors charge in the Supplier's favour all their estate and interest in:

(a) any real property (i.e. any house or land); and

(b) personal property (i.e. any other assets including for example and without limitation, any plant, equipment, vehicles, personal effects, and household items), whether:

(c) such property is held in the Guarantors' own right or in their capacity as trustee;

(d) such property is owned solely or jointly with another person;

(e) the Guarantors own the property at present or later acquire it; and

(f) wherever it is situated.

6.2 The Guarantors irrevocably appoint the Supplier's company secretary from time to time as their duly constituted attorney to execute in the name of the Guarantors a real property mortgage, general or specific security agreement, bill of sale, or consent to any caveat upon written notice and demand to the Guarantors.

6.3 If the Guarantors have previously entered into an agreement with the Supplier conferring a security interest, then those security interests will continue and will co-exist with the security interests created in this deed and will secure all of the Guarantors' indebtedness and obligations hereunder.

6.4 The Guarantors acknowledge that:

(a) they have read and understood this clause 6; and

(b) this clause 6 is necessary to protect the Supplier's legitimate interests including having regard to:

(i) the risk that retention of title and other security provided by the Customer or other parties may not in substance, provide adequate protection to the Supplier;

(ii) the terms of any credit the Supplier may approve under the Credit Application are given on the basis that this clause 6 would apply, and if that were not the case, the Supplier would not have given the same credit terms; and

(iii) the risk of insolvency given the nature of the industry in which the Customer and the Supplier operate.

7 Security interest

7.1 The Guarantors:

(a) waive their right to receive a copy of any verification statement in accordance with section 157 of the *Personal Property Securities Act 2009* (Cth) (**PPS Act**); and

(b) agree that, to the extent permitted by the PPS Act:

(i) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and

(ii) waive their right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.

7.2 The Supplier needs not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by law.

7.3 Where the Supplier has rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

8 Severance

If any provision of this deed is illegal, invalid, or unenforceable, it must be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from this deed and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

9 Governing law and jurisdiction

This deed is governed by and must be construed according to the law applying in the State of Queensland.