

## Westaflex Offer Document

**Closing Date:** Offers Close August 30<sup>th</sup> 2024 at 5pm (AEST), however offers may be considered and accepted prior to this date

**Date of Offer:** <<insert offer date>>

**Offering Party:**

**Name:**

**ACN/ABN:**

**Address:**

**Company Officer:**

**Phone No(s):**

**Mobile:**

**Work:**

**Email:**

**Details for submission  
of Offer**

Attention: Adam Scharer & Mark Tonkin  
Address: 3 Albert Coates Ln, Melbourne VIC 3000

Email: [ascharer@hilcoglobal.com](mailto:ascharer@hilcoglobal.com); [mtonkin@hilcoglobal.com](mailto:mtonkin@hilcoglobal.com)

## Conditions of Offer

- 1 The **Offer Document** comprises:
  - (a) the cover page on the preceding page (**Cover Page**);
  - (b) these Conditions of Offer;
  - (c) Annexure 1, Offer Details (**Offer Details Annexure**); and
  - (d) Annexure 2, Terms and Conditions for Sale of Goods (**Terms**).
- 2 These Conditions of Offer apply to the offer process carried out by Hilco Global APAC (as defined in the Offer Details Annexure) for the intended sale of the goods described in the Offer Details Annexure (**Goods**).
- 3 By submitting this Offer Application, the buyer makes an irrevocable offer, which is valid for 30 days following the Closing Date, to:
  - (a) purchase the Goods from Hilco Global APAC;
  - (b) for the total amount offered, as set out in row "E" of the Purchase Price Table in the Offer Details Annexure (**Purchase Price**); and
  - (c) in accordance with the Terms, (**Tender**).
- 4 As a result of this Offer Document, Hilco Global APAC at its sole discretion, may:
  - (a) accept an offer from a tenderer;
  - (b) decline to accept any offer application;
  - (c) sell or withdraw from sale all or part of the Goods at any time prior to the Closing Date; or
  - (d) cease to proceed selling the Goods.
- 5 Nothing in this Offer Application issued by Hilco Global APAC will be construed to:
  - (a) constitute an offer capable of acceptance by the Tenderer; or
  - (b) create any binding contract (express or implied) between the Tenderer and Hilco Global APAC,unless and until Hilco Global APAC gives notice in accordance with clause 4(c)(i) of the Terms as set out in clause 6(c) of these Conditions of Tender.
- 6 By submitting its Offer, the Tenderer acknowledges and agrees that:
  - (a) its Offer may only be withdrawn by the Tenderer with the prior written consent of Hilco Global APAC;
  - (b) for its Offer to be validly submitted to Hilco Global APAC the Tenderer must:
    - (i) complete all information on the Cover Page, complete each row of the Purchase Price Table contained in the Offer Details Annexure and sign the Tender Application; and
    - (ii) submit its fully completed and signed Offer Application to Hilco Global APAC (by way of email or post – details for which are as set out on the Cover Page) prior to the Closing Date;
  - (c) if the Tenderer's Offer is accepted by Hilco Global APAC and it is therefore the successful Tenderer (**Successful Tenderer**), then:
    - (i) the Successful Tenderer will receive a notification from Hilco Global APAC accepting the Offer. The date on which such notification is provided by Hilco Global APAC to the Successful Tenderer will be the agreement date for the purposes of the Offer Details Annexure and the Terms (**Agreement Date**); and
    - (ii) a binding agreement for the sale of the Goods is immediately formed between Hilco Global APAC and the Successful Tenderer on the terms of the Terms;
  - (d) in the event of Hilco Global APAC does not accept any offer submitted by a tenderer , Hilco Global APAC reserves the right to negotiate with one or more of the tenderers to the exclusion of all other tenderers;
  - (e) Hilco Global APAC may sell or withdraw from sale all or part of the Goods at any time prior to the Closing Date and any tenderer (including, for the avoidance of doubt, the Tenderer) or proposed tenderer will have no claim against Hilco Global APAC by reason of the sale or withdrawal of all or part of the Goods on or prior to the Closing Date; and

- (f) Hilco Global APAC is under no obligation to accept any offer application (including, for the avoidance of doubt, this Offer Application).

Dated this \_\_\_\_\_ day of \_\_\_\_\_

This Offer Application is signed by the Tenderer's duly authorised representative.

Signed for and on behalf of the Tenderer:

**Signed:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

The person signing above on behalf of the Tenderer warrants in favour of Hilco Global APAC that it is duly authorised to submit this Offer Application to Hilco Global APAC on behalf of the Tenderer and to bind the Tenderer to any agreement for the purchase of the Goods on the Terms.

**Annexure 1 – Offer Details**

**Assets**

[insert details]

**The Premises** – Do you intend to

- a) Lease
- b) Remove all equipment and vacate within 60 days of completion of sale.

**The Dies/Moulds/Tooling** – Do you require these assets.

- a) Yes
- b) No
- c) Other

Offer - Purchase Price payable by Successful Tenderer ( <b>Purchase Price Table</b> )		
A	Offer Price	\$
B	Buyers Premium (refer scale)	\$

C	Removal & Loading (if quoted)	\$
D	Total of Rows A & B & C	\$
E	Plus GST (10% of Row D)	\$
E	Row D plus E = Purchase Price	\$

<b>Summary of Transaction (to be entered into by the Successful Tenderer)</b>	
<b>Buyer:</b>	The Successful Tenderer is referred to as the <b>Buyer</b> for the purposes of the Terms
<b>Hilco Global APAC</b>	Refers to the selling agent representing Westaflex - Hilco Global APAC (ABN 61 634 803 973)
<b>Goods:</b>	Purchase and sale of each of the item(s) of Goods described above
<b>Location:</b>	Westaflex – 155 Bamfield Road, Heidelberg West VIC 3081
<b>Removal Date:</b>	Successful Tenderer to remove Goods (at its expense) from the Location on or before negotiated date with vendor, not exceeding 31/12/2024.
<b>Transaction Summary:</b>	The Seller (as defined in clause 5 of the Terms) agrees to sell the Goods to the Successful Tenderer and the Successful Tenderer agrees to buy the Goods from the Seller on the Completion Date for the Purchase Price on the terms and conditions of this Annexure 1, Offer Details and the Terms ( <b>Transaction</b> )
<b>Note:</b>	The Goods are sold “as is, where is, with all faults”. The age of some components of the Goods may differ from the Good’s year of manufacture. It is the Successful Tenderer’s sole responsibility to: (a) undertake all necessary steps to ensure that the Goods and associated components meet all relevant certification requirements and Australian / or applicable local standards prior to use; and (b) engage an approved removal contractor for the Removal Work (as that term is defined in the Terms) unless quoted by Hilco Global APAC.
<b>Completion Date:</b>	10 Business Days after Deposit is accepted
<b>Purchase Price:</b>	The Purchase Price (set out in row “E” of the Purchase Price Table) less any paid Deposit is due on the Completion Date..
<b>Invoice:</b>	An Invoice for the Goods will be issued to the Successful Tenderer by Hilco Global APAC ( <b>Invoice</b> ).
<b>Deposit:</b>	A 20% deposit is payable by the Successful Tenderer within 48 hours of the Agreement Date ( <b>Deposit</b> ). Balance Within 10 Business Days.
<b>Payment terms:</b>	All payments required to be made by the Successful Tenderer must be paid in accordance with the payment terms set out in the Terms.

## Annexure 2 – Terms and Conditions for Sale of Goods

### 1 Parties

These Terms of sale, as amended from time to time, apply to all sales of Goods by Hilco Global APAC to the Buyer, other than sales of goods conducted by auction, including by:

- (a) Tender;
- (b) private treaty;
- (c) expression of interest; or
- (d) private sale.

### 2 Definitions

In these Terms:

- (a) **Australian Consumer Law** means the Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*;
- (b) **Agreement** means an agreement for the sale of Goods from Hilco Global APAC to the Buyer that is concluded on the terms set out in clause 4(b);
- (c) **Agreement Date** has the meaning given to that term in clause 4(d);
- (d) **Business Days** means a day that is not a Saturday, Sunday, public holiday or bank holiday in State of Victoria;
- (e) **Buyer, you or your** means:
  - (i) in relation to sales of Goods by Tender, the party specified as the Buyer on the Tender Application; and
  - (ii) for all other sales, the party specified on the Invoice as purchaser of the Goods;
- (f) **Buyer's Premium** means:
  - (i) in relation to sales of Goods by Tender, the amount specified in the Tender Application; and
  - (ii) for all other sales, any amount payable by the Buyer in addition to the Price to which Hilco Global APAC and the Buyer may agree and which is specified on the Invoice;
- (g) **Completion Date** means:
  - (i) in relation to sales of Goods by Tender, the date specified on the Tender Application; and
  - (ii) for all other sales, within 48 hours of the Buyer's acceptance of Hilco Global APAC's offer pursuant to clause 4(c)(ii) of these Terms;
- (h) **Deposit** means the deposit (if any) specified in:
  - (i) the Tender Application, in relation to sales by Tender; and
  - (ii) the Invoice, in relation to all other sales;
- (i) **Goods** means the Goods described on the Invoice;
- (j) **GST** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended from time to time;
- (k) **Hilco Global APAC, we or us** means the party specified on the Invoice (and in relation to a Tender, also in the Tender Application) as a seller of the Goods;
- (l) **Invoice** means the tax invoice issued by Hilco Global APAC to the Buyer in respect of the Goods;
- (m) **Location** means:
  - (i) in relation to Goods which are sold by Tender, the location specified on the Tender Application;
  - (ii) for all other sales, means the location of the Goods as specified on the Invoice;
- (n) **Price** means:
  - (i) in relation to sales of Goods by Tender, the purchase price as specified in the Tender Application; and
  - (ii) for all other sales, the Price for the Goods as specified on the Invoice (including any Deposit);
- (o) **Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001 (Cth)*;
- (p) **Removal Date** means:
  - (i) in relation to Goods which are sold by Tender, the date specified on the Tender Application; and
  - (ii) for all other sales, the date agreed between the parties for the Buyer's collection of the Goods;

- (q) **Seller** means an entity which has engaged Hilco Global APAC to sell the Goods on its behalf;
- (r) **Tender** means a sale of Goods pursuant to a Tender Application submitted by a Buyer;
- (s) **Tender Application** means the tender application submitted by a Buyer containing an irrevocable and unconditional offer to purchase Goods on the terms set out in the Tender Application; and
- (t) **Terms** means these terms and conditions for sale of goods as amended from time to time.

### 3 Construction

In these Terms, unless the subject or the context otherwise requires:

- (a) singular includes the plural and vice versa;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a person includes that person's successors and permitted assigns;
- (d) a reference to a statute, ordinance or other legislation includes any amendment, replacement or re-enactment for the time being in force and includes all regulations, by-laws and statutory instruments made under that statute, ordinance or other legislation;
- (e) a reference to this or any other agreement, schedule, attachment or document includes a reference to that agreement, schedule, attachment or document as amended, supplemented, novated or replaced from time to time;
- (f) a reference to a clause, attachment or schedule is a reference to a clause, attachment or schedule of these Terms;
- (g) the use of the words 'includes' or 'including' is not to be taken as limiting the meaning of the words preceding it;
- (h) a reference to time is a reference to time in the State of Victoria, Australia;
- (i) a reference to '\$' or 'dollar' is a reference to Australian dollars;
- (j) a reference to a person includes a natural person, company, corporation, partnership, trust, estate, joint venture, government or governmental agency, association, co-operative and any other entity recognised by law; and
- (k) an agreement, representation or warranty on the part of two or more persons binds them and is for the benefit of them jointly and severally.

### 4 Concluding an Agreement

- (a) For sales of Goods by Tender, the Buyer may make an irrevocable offer to purchase Goods from Hilco Global APAC for the Price and on the terms set out in the Tender Application and these Terms by submitting a completed and executed Tender Application to Hilco Global APAC.
- (b) For sales of Goods other than by Tender, Hilco Global APAC may make an offer to sell the Goods to the Buyer for the Price by issuing the Terms and an Invoice to the Buyer. Offers made pursuant to this clause 4(b) will be open for acceptance by the Buyer for a period of 72 hours from the time and date of the offer. If the Buyer does not accept the offer within this period in accordance with clause 4(c)(ii), the offer will automatically lapse and will not be capable of acceptance by the Buyer.
- (c) A binding agreement for the sale of the Goods is formed between Hilco Global APAC and the Buyer (**Agreement**) when:
  - (i) in relation to sales of Goods by Tender, when Hilco Global APAC gives written notice to the Buyer to accept the Buyer's Tender Application given pursuant to clause 4(a); and
  - (ii) in relation to all other sales, when the Buyer gives notice in writing to Hilco Global APAC of its acceptance of the offer, the Terms and the Invoice issued by Hilco Global APAC pursuant to clause 4(a).

- (d) The date specified in clause 4(c)(i) and 4(c)(ii) of these Terms is the **Agreement Date** for the purposes of these Terms.

## 5 Seller of Goods

- (a) The seller of Goods under an Agreement may be:  
(b) the Seller, where Hilco Global APAC is acting as the agent of the Seller; or  
(c) otherwise, Hilco Global APAC.

## 6 Price and payment

- (a) Hilco Global APAC must issue an Invoice for all sales of Goods made pursuant to these Terms.  
(b) If the Tender Application or an Invoice specifies that a Deposit is payable, the Buyer must pay the Deposit plus all applicable GST in accordance with the payment terms for the Deposit as specified in the Tender Application or the Invoice.  
(c) Completion of the sale of Goods from Hilco Global APAC to the Buyer will occur on the Completion Date. The parties may by agreement in writing agree to vary the Completion Date.  
(d) On the Completion Date, the Buyer must pay to Hilco Global APAC:  
(i) the Price (less any Deposit paid pursuant to clause 6(a) of these Terms);  
(ii) any Buyer's Premium; and  
(iii) any delivery fees specified on the Invoice, plus all applicable GST.  
(e) Time is of the essence for all the Buyer's payment obligations.  
(f) The Buyer must make payment of the Price in the manner specified on the Invoice.  
(g) The Buyer acknowledges that any Deposit paid by the Buyer will become the property of Hilco Global APAC upon payment and will not be refundable unless Hilco Global APAC defaults in relation to its obligations on the Completion Date under these Terms.

## 7 Title & Risk

- (a) Hilco Global APAC may at its discretion withhold delivery or collection of Goods until the Buyer has paid all amounts owing under an Agreement.  
(b) Title in the Goods will pass to the Buyer on the Completion Date and subject to Hilco Global APAC receiving all amounts payable pursuant to these Terms in full and in cleared funds.  
(c) Arrangements for delivery or collection of Goods will be specified:  
(i) in relation to sales by Tender, on the Tender Application; and  
(ii) in relation to all other sales, on the Invoice.  
(d) Risk in the Goods will pass to the Buyer on the Agreement Date.

## 8 Collection and Delivery

- (a) If Goods are to be delivered:  
(i) the address nominated for delivery must be a valid residential or commercial street address, and not a PO box or storage facility; and  
(ii) receipt of the Goods must be acknowledged by signature.  
(b) In relation to Goods that are to be collected by the Buyer, the Goods must be collected by the Removal Date.  
(c) For Goods held at Hilco Global APAC's premises and not sold by Tender, the Removal Date agreed between Hilco Global APAC and the Buyer are estimates only. Hilco Global APAC will use reasonable endeavours to comply with the agreed Removal Date, but will not be liable to the Buyer for any loss or damage suffered by the Buyer as a result of Hilco Global APAC's failure to comply with such time.  
(d) Where Goods are not held by Hilco Global APAC on its premises, the Buyer must strictly comply with any Removal Date and related arrangements specified by Hilco Global APAC.  
(e) If the Buyer does not comply with its obligations for the collection and removal of Goods under these Terms, including under clauses 8(f) and 8(g), the Buyer acknowledges that the Goods may be removed from the Location, after notice to the Buyer, and in such

circumstances Hilco Global APAC will not be liable to the Buyer for the unavailability of the Goods and will have no obligation to refund the Price (or any part of the Price) to the Buyer. Hilco Global APAC will assist the Buyer to arrange access to the Goods again.

- (f) The Buyer acknowledges and agrees that:  
(i) it (or appointed and approved contractors) must dismantle, collect and remove (including transport) the Goods purchased from the Location ("**Removal Work**") (at its own risk, cost and expense) by the Removal Date;  
(ii) it must use all care and skill to complete the Removal Work without causing any damage to Hilco Global APAC's or the Seller's property. Any damage, breakage or injury caused by the Buyer, its employees, agents or contractors must be made good by the Buyer at its expense;  
(iii) it must complete the Removal Work by the Removal Date unless an extension is agreed in writing with Hilco Global APAC;  
(iv) the Goods can only be removed from the Location by the Buyer by prior appointment (between 8.00am to 4.00pm on Business Days), unless otherwise agreed with Hilco Global APAC or the Seller;  
(v) prior to the commencement of the Removal Work, the Buyer must comply with the operational requirements of Hilco Global APAC or the Seller;  
(vi) it must conform and comply with Hilco Global APAC and/or the Seller's site safety and environmental regulations that apply at the Location in relation to inspections and Removal Work;  
(vii) it must provide Hilco Global APAC with details of its personnel to be used in the Removal Work. Hilco Global APAC reserves the right to refuse entry to or the use of any such personnel at its site in its sole discretion;  
(viii) it is solely responsible for the work practices of its personnel and must ensure compliance with all laws relating to the Location and the Removal Work;  
(ix) alcohol, drugs and other substances are strictly prohibited at the Location. The Buyer must ensure that its personnel are free from the effects of any such substance when attending the Location. All parties attending the Location may be subject to random drug and alcohol testing;  
(x) it shall ensure that the Location is kept in a clean and tidy condition and shall remove all rubbish it and its personnel accumulate during their activities at the Location. If the Buyer fails to comply with these requirements and does not remedy the failure within 2 Business Days of receiving written notice from Hilco Global APAC, Hilco Global APAC may arrange for any cleaning required to be carried out at the Buyer's sole expense and the cost will become a debt owed by the Buyer to Hilco Global APAC;  
(xi) it shall complete the Removal Work in such a way as to ensure no inconvenience is caused to Hilco Global APAC or the Seller and that all roads surrounding the Location and Location access are kept free of blockage and obstruction at all times;  
(xii) all plant, tools and Goods used by the Buyer and its personnel on or around the Location shall be selected and maintained in a fully serviced and safe condition. The Buyer and its personnel must make such plant, tools and Goods available for inspection by Hilco Global APAC's safety officer prior to commencing the Removal Work. Any item which does not meet Hilco Global APAC's and/or statutory requirements must be removed immediately from the Location; and  
(xiii) it must produce written evidence (such as a certificate of currency) to the satisfaction of Hilco Global APAC prior to commencing the Removal Work that it has arranged adequate insurance cover in respect of any liability arising out of the Removal Work.  
(g) The Buyer acknowledges and agrees that it will:

- (i) carry out all Removal Work in accordance with Hilco Global APAC's environmental policies;
- (ii) accept full responsibility for any contaminants and pollutants which may be associated with the Goods or with any container, vessel or other Goods of the Buyer or its Personnel. Such contaminants and pollutants include but are not limited to hydraulic oil, motor oil, greases, solvent, acids, garbage and other materials. The Buyer must transport these to an approved site or as directed by Hilco Global APAC. Any spillage of any contaminants or pollutants shall be cleaned up to the satisfaction of Hilco Global APAC and at the cost of the Buyer;
- (iii) not permit its personnel, without the approval of Hilco Global APAC, to do any of the following at the Location:
  - (iv) start fires of any type;
  - (v) dig or cut any excavations;
  - (vi) drive vehicles off-road;
  - (vii) dispose of solid and liquid waste in other than prescribed; and
- (h) it must comply with:
  - (i) any relevant laws regarding occupational health and safety;
  - (ii) any directions or warnings about the Goods at their location; and
  - (iii) any directions given by Hilco Global APAC or its authorised parties when inspecting or removing any Goods from any location.
- (i) It is the Buyer's sole responsibility to carry out its own risk assessment of the Goods to identify any safety hazards and to take any remedial action.
- (j) If Hilco Global APAC is unable to deliver Goods or the Buyer does not collect the Goods by the Removal Date, Hilco Global APAC may charge a storage fee in accordance with our usual rates, as set out in clause 8(k) below, or at other rates we may reasonably specify. Unless otherwise agreed, storage charges for industrial equipment are \$50 per day or \$250 per week.
- (k) Subject to any applicable legislation governing the disposal of uncollected Goods, if the Buyer does not collect or take delivery of Goods within 7 days of a sale, and after 3 months' notice to you:
  - (i) where the Goods were purchased for \$100 or more, we may sell the Goods on terms we consider reasonable and refund the proceeds of sale to you, less Buyer's Premium (if applicable), a storage charge of \$5.00 per day and an administration fee of \$40.00; and
  - (ii) where the Goods were purchased for less than \$100, we may sell or otherwise dispose of the Goods, without refund to you.

## 9 PPSA

- (a) In respect of Goods sold to a Buyer where the Buyer takes possession before the Price is paid in full:
  - (i) the Buyer acknowledges and agrees that clause 7(b) applies to such Goods;
  - (ii) the Buyer undertakes to store the Goods on its premises separately from its own goods or those of any other person and in a manner which makes the Goods readily identifiable as our Goods;
  - (iii) until the Buyer pays the Price in full, the Buyer must not resell the Goods;
  - (iv) the Buyer's right to possession of the Goods ceases if it does anything or fails to do anything which would entitle a receiver, a receiver and manager, an administrator, a liquidator or a trustee to be appointed in respect of it or its assets, undertaking or property or any part thereof, or entitle a person to present a creditor's petition for its wind up;
  - (v) we may for the purpose of examination or recovery of the Goods enter upon any premises where the Goods are stored or where it is reasonably thought to be stored; and
  - (vi) you must not use the Goods in any manufacturing or construction process of your own or of some third party.

- (b) You acknowledge that this clause 9 constitutes a Security Agreement (as that term is described in the *Personal Property Securities Act 2009 (PPSA)*) in favour of Hilco Global APAC in all Goods supplied to you in respect of payment has not been received in full and all proceeds of
  - (i) we may, without notice to you, seek registration of our Security Interest pursuant to the PPSA as a Purchase Money Security Interest;
  - (ii) pursuant to section 275(6) of the PPSA, you agree that Hilco Global APAC is not required to disclose to an interested person information regarding its Security Interest unless required to do so pursuant to the PPSA or at law;
  - (iii) you will, upon request, promptly sign any documents, provide any further information and do anything else reasonably required to enable perfection of our Security Interest or registration of a Financing Statement or Financing Change Statement under the PPSA;
  - (iv) you will not register a Financing Statement or Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of Hilco Global APAC;
  - (v) you will not grant any other Security Interest or any lien over the Goods; and
  - (vi) you will give Hilco Global APAC not less than 14 days written notice of any proposed change in your name or contact details.
- (c) You waive your rights to receive any notices required under sections 95, 118, 121, 130, 132, 135 and 157 of the PPSA.

## 10 Default

If the Buyer fails to pay any amount owing to Hilco Global APAC on the Completion Date or otherwise defaults under these Terms, in addition to any other rights it may have, Hilco Global APAC may do any or all of the following:

- (a) on written notice to the Buyer terminate the Agreement and do one or more of the following:
  - (i) retain any Deposit previously paid;
  - (ii) withdraw the offer to sell the Goods to the Buyer or its acceptance of the Buyer's Tender's Application without liability to Hilco Global APAC;
  - (iii) resell the Goods and make a claim against the Buyer for the losses incurred if the resale price for the Goods is less than the Price; and/or
  - (iv) charge you a cancellation fee equal to 30% of the Price to cover the actual and reasonable costs (which include cost of resale of the Goods, any lost commission, administration costs, restocking costs) we incur because of your failure to complete the purchase of the Goods;
- (b) debit the amount outstanding against the Buyer's credit card previously provided by the Buyer to Hilco Global APAC in connection with the establishment of an online account at [www.hilcoglobalapac.com.au](http://www.hilcoglobalapac.com.au) under the terms of the Buyer Agreement between the Buyer and Hilco Global (Australasia) Pty Ltd;
- (c) demand payment of the whole of the Price then outstanding;
- (d) take steps to recover the amount outstanding from the Buyer including legal costs and other expenses incurred in collecting any outstanding amounts due by the Buyer to Hilco Global APAC;
- (e) enforce the security interest granted pursuant to clause 9
- (f) cease delivery of the Goods until such time as all amounts outstanding are fully paid without notice to the Buyer; and/or
- (g) take any other action as permitted by law to recover the outstanding amounts.

## 11 Condition of Goods; refunds

- (a) All Goods sold are, to the extent permitted by law, sold on an "as is, where is" basis with all faults. It is the Buyer's sole responsibility to inspect the Goods and/or to read any information we provide relating to any Goods the subject of a Tender Application or an offer. Hilco Global APAC is not required to provide any information



about Goods or permit or arrange any inspection of the Goods.

- (b) The Buyer must read any information provided by Hilco Global APAC and attend any advised physical inspections, to assess the suitability of Goods before accepting an Offer.
- (c) Hilco Global APAC makes no warranty or representation that Goods purchased will be fit for the Buyer's purposes or appropriate for the Buyer's particular circumstances.
- (d) There are no refunds of the Price where the Buyer changes its mind after the Agreement Date.

## 12 Buyer's statutory rights

- (a) If the Buyer is a consumer or acquires consumer goods under an Agreement within the meaning of the Australian Consumer Law:
  - (i) Goods sold by us in our capacity as agent come with certain consumer guarantees that cannot be excluded under the Australian Consumer Law, including:
    - (A) section 51, relating to title;
    - (B) section 52, relating to undisturbed possession; and
    - (C) section 53, relating to undisclosed securities; and
  - (ii) for the avoidance of doubt, the following consumer guarantees do not apply to sales of Goods by us in our capacity as agent:
    - (A) section 54, relating to acceptable quality;
    - (B) section 55, relating to fitness for any disclosed purpose;
    - (C) section 56, relating to the supply of goods by description;
    - (D) section 57, relating to the supply of goods by way of sample;
    - (E) section 58, relating to repairs and spare parts; and
    - (F) section 59, relating to express warranties; and
  - (iii) Goods sold by Hilco Global APAC as seller are subject to all consumer guarantees to the extent applicable under the Australian Consumer Law.
- (b) Nothing in these Terms restricts or excludes any rights you may have under the Australian Consumer Law.
- (c) Your rights under these Terms are in addition to any rights you may have under the Australian Consumer Law.
- (d) To the extent permitted by law, all implied warranties as to quality, fitness for purpose or merchantability of the Goods are excluded.

## 13 Warranties and liability

- (a) To the fullest extent permitted by law, and subject to clause 13(d), Hilco Global APAC excludes all liability to the Buyer in respect of any loss or damage howsoever caused which may be suffered or incurred by the Buyer and which may arise directly or indirectly in respect of:
  - (i) your purchase of Goods;
  - (ii) your use of any Goods.
- (b) We expressly exclude all liability for special, indirect or consequential loss or damage, including without limitation, loss of anticipated savings, pure economic loss, loss of or damage to reputation or goodwill, or loss or damage associated with your purchase of Goods howsoever caused.
- (c) Hilco Global APAC makes no representation or warranty in relation to:
  - (i) any information conveyed or provided to you in relation to the Goods;
  - (ii) the state of repair or maintenance or serviceability of any Goods or that the Goods are free of defects;
  - (iii) the Goods complying with any applicable laws or regulations; or
  - (iv) the safety of, or absence of risk to health from, the Goods.
- (d) To the extent that any warranties or guarantees implied by law are not capable of being excluded or modified, the total aggregate liability of Hilco Global APAC, including its employees, servants, agents and Related Bodies Corporate, for breach of such warranties or

guarantees is limited, at the option of Hilco Global APAC to:

- (i) the replacement of the goods supplied or the supply of equivalent goods; or
  - (ii) the payment of the cost of replacing the Goods or of acquiring equivalent goods.
- (e) Other than as set out in clause 13(d), the maximum aggregate liability of Hilco Global APAC under an Agreement will in no circumstances exceed the Price of the Goods sold under that Agreement.

## 14 Indemnities

The Buyer releases, indemnifies and will keep indemnified Hilco Global APAC and its Related Bodies Corporate against all actions, claims, penalties and demands (including the cost of defending or settling any actions, claims, penalties and demands) which we may incur or which may be instituted against us arising out of:

- (a) a breach of these Terms by you; or
- (b) any wilful, unlawful or negligent act or omission by you.

## 15 Manufacturer's liability

- (a) Subject to any rights you may have under any law (including the Australian Consumer Law), if Goods are sold with an accompanying manufacturer's warranty, Hilco Global APAC takes no responsibility for the content, fulfilment or enforcement of that manufacturer's warranty. The Buyer is solely responsible to contact the relevant manufacturer in relation to the warranty.
- (b) To the extent permitted by law, Hilco Global APAC does not:
  - (i) give any representation or warranty in relation to any manufacturer's warranty that accompanies any Goods;
  - (ii) represent that the manufacturer's warranty is compliant with the Australian Consumer Law.
- (c) Any rights that you may have in respect of the manufacturer's warranty are against the manufacturer and not Hilco Global APAC.

## 16 General

- (a) These Terms may only be amended by written agreement of Hilco Global APAC and the Buyer.
- (b) If any provision of these Terms is found to be unenforceable for any reason, then that provision shall be deemed deleted from these Terms and all other provisions will remain in full force and effect.
- (c) Hilco Global APAC may assign its rights and obligations under these Terms or an Agreement to any party at any time without notice to the Buyer. The Buyer may not assign may assign its rights and obligations under these Terms without the prior written consent of Hilco Global APAC.
- (d) No waiver by Hilco Global APAC of any breach of these Terms operates as a waiver of any other breach, and the doing and/or omission of any act, matter or thing whatsoever by Hilco Global APAC, its Related Bodies Corporate, employees or agents (which but for this clause ought or might amount to a waiver of its rights in respect of any such breach or default) does not operate as a waiver in any way of its rights and powers in respect of such breach or default.
- (e) We are not liable for any delay or failure to perform our obligations under these Terms if such delay or failure is due to circumstances beyond our reasonable control which results in us being unable to observe or perform on time an obligation under these Terms, including, without limitation, acts of God, acts of government or acts of third parties (including war or other hostility, terrorism, national or international disaster, epidemic, pandemic, fire, explosion, power failure, Internet failure, equipment failure or strike or lockout).
- (f) These Terms are governed by the laws of the State of Victoria, Australia, and the parties submit the exclusive jurisdiction of the courts of or in the State of Victoria, Australia and the courts of appeal therefrom.