



TRACS (QLD) PTY LTD t/a BREATHESAFE
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BREATHESAFE CREDIT AGREEMENT

TERMS AND CONDITIONS

NOTICE TO CUSTOMER: If you are a “consumer” under the Australian Consumer Law (“ACL”) then the ACL provides that our goods come with guarantees that cannot be excluded under the ACL. If you are a “consumer” you are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage and you are also 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.

1. Definitions

The following terms used in this Agreement have the following respective meanings:

- (a) **ACL** means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) as amended from time to time. It also includes reference to any of the Australian States’ or Territories’ Fair Trading Acts (as amended from time to time) and which incorporate any of the provisions of the ACL;
- (b) **Additional Charge** means fees or charges for additional Goods provided by BreatheSafe at the Customers’ request or reasonably required as a result of the Customer’s conduct, calculated in accordance with BreatheSafe’s current prices.
- (c) **Agreement** means the agreement comprised by these Credit Agreement Terms and Conditions and the accompanying Credit Agreement Schedule and all variations to either;
- (d) **BreatheSafe** means TRACS (QLD) PTY LTD ACN 109 689 803, its external administrators, permitted assigns, any person or entity acting on behalf of and with its authority, and its Related Entities (as that latter term is defined in the *Corporations Act 2001* (Cth));
- (e) **Business Days** means a day that is not a Saturday, Sunday or public holiday in Brisbane, Australia;
- (f) **Business Hours** means the period on any business day during which BreatheSafe is normally open for business as varied by it from time to time;
- (g) **Confidential Information** means all information not in the public domain whether oral, in writing or recorded in any other medium or mode of storage in relation to BreatheSafe and includes (without limiting the generality of the following):
 - (i) information and material that is proprietary or confidential to BreatheSafe including intellectual property rights; and
 - (ii) all business, technical or financial information of any sort (regardless of how it is recorded or stored) relating to the business of BreatheSafe including any subsidiaries, customers and suppliers; and
 - (iii) BreatheSafe designates as being confidential; and
 - (iv) any information which by its nature places or potentially places BreatheSafe at an advantage over its business competitors; and
 - (v) any other commercially sensitive information;
- (h) **Customer** means the person or entity specified in Item 2 of the Schedule (or any person or entity acting on behalf of and with the authority of the Customer) and as described on any quotation, work authorisation or another form as provided by BreatheSafe to the Customer;
- (i) **Customer’s Nominated Address** means the Physical Address specified in Item 2 of the Schedule;
- (j) **Effective Date of this Agreement** means the date on which the last of the Parties to this Agreement exchanges with the other a properly executed version of it;
- (k) **Force Majeure Event** means any cause, action or omission beyond a Party’s reasonable control, including fire, storm, flood, earthquake, explosion, accident, an act of a public enemy, war, rebellion, insurrection, sabotage, epidemic, pandemic, quarantine restriction, border restriction, labour dispute, labour shortage, transportation embargo or failure or delay in transportation, shortage of or inability to obtain raw materials, plant or equipment breakdown, an act of God, act (including laws, regulations, disapprovals or failure to approve) of any government or agency whether national, municipal or otherwise, by which the Party relying on the event is prevented from, delayed or impeded in performing its obligations;
- (l) **Goods** mean all goods supplied by BreatheSafe to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and which are or may be described on any invoices, quotations, work authorisations or any other forms as provided by BreatheSafe to the Customer;
- (m) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation enacted to validate, recapture or recoup such tax;
- (n) **GST** means the tax payable on a Taxable Supply within the meaning of the GST Act;
- (o) **Intellectual Property Rights** means all intellectual and industrial property rights throughout the world

that are recognised by any law or statute or regulation or any form of jurisdiction in equity in each territorial jurisdiction in which they are or might be sought to be enforced as being an intellectual property or industrial property rights that may be infringed and/or enforced by the owner (or enforced by another entity with a relevant interest), and whether present or future rights. It also includes, but is not limited to, intellectual or industrial property rights of any sort in any prototype device created by BreatheSafe and also all rights in registered or unregistered at any time protected by statute or common law, including copyright (including moral rights), registered or unregistered trade marks, patents, registered or unregistered designs, circuit layouts, Confidential Information, and database rights where available;

- (p) **Party** means either a party to this Agreement, being BreatheSafe or the Customer;
- (q) **Price** means the Price payable for the Goods as agreed between BreatheSafe and the Customer in accordance with clause 4 of this contract, and contract, and shall be in Australian Dollars. The Prices does not include insurances, freight, the hiring of trucks, forklift trucks cranes or any necessary mechanical handling equipment at the point of delivery. If special equipment is required, all costs incurred will be charged to the Customer;
- (r) **Services** mean all Services supplied by BreatheSafe to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above); and

2. Interpretation

In this Agreement:

- (a) Words importing the singular include the plural and vice versa;
- (b) References to a Party's include a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (c) A reference to a Party to this document also includes the Party's heirs, executors, external administrators of any sort, successors in title, permitted substitutes and permitted assigns, and a Party's Related Entities (as that latter term is defined in the *Corporations Act 2001* (Cth) as amended from time to time); and
- (d) Headings are for ease of reference only and do not affect the meaning or interpretation of this Agreement.

3. Acceptance

- (a) Any instructions received by BreatheSafe from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by BreatheSafe constitute acceptance of the terms and conditions contained in this Agreement.
- (b) Where more than one Customer has entered into this Agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- (c) Upon acceptance of this Agreement by the Customer, the terms and conditions are binding and can only be amended with the written consent of BreatheSafe (which it may withhold at its sole discretion).

- (d) The Customer shall give BreatheSafe not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by BreatheSafe as a result of the Customer's failure to comply with this clause.
- (e) Goods are supplied by BreatheSafe only on the terms and conditions of this Agreement to the exclusion of anything to the contrary in the terms of the Customer's order, and notwithstanding that any such order is placed on terms that purport to override this Agreement.

4. Price and Payment

- (a) At BreatheSafe's sole discretion, the Price shall be either:
 - (i) as indicated on invoices provided by BreatheSafe to the Customer in respect of Goods supplied; or
 - (ii) BreatheSafe quoted Price (subject to clause 4(b)), which shall be binding upon BreatheSafe provided that the Customer shall accept BreatheSafe quotation in writing within sixty (60) days.
- (b) BreatheSafe reserves the right to change the Price in the event of a variation to BreatheSafe's quotation.
- (c) At BreatheSafe's sole discretion:
 - (i) a non-refundable deposit may be required; and/or
 - (ii) payment shall be due on delivery of the Goods; or
 - (iii) payment for approved Customers shall be due thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- (d) Time for payment shall be of the essence and may be stated on the invoice or any other forms. If no time is so stated, then payment shall be due thirty (30) days following the last day of the month in which the invoice was issued.
- (e) Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to the percentage amount of the Price payable by BreatheSafe to the credit card provider as a merchant's or similar fee), or by direct credit, or by any other method as agreed to between the Customer and BreatheSafe.
- (f) GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- (g) Where completed Goods are comprised of a number of easily identifiable components, BreatheSafe reserves the right to produce the agreed number of these components and invoice these separately. BreatheSafe will submit a break-up of these components to total the full unit Price when acknowledging receipt of the order and such values will be used to invoice components produced.
- (h) The Price payable by the Customer is ex-works (Brisbane) and the Customer is solely responsible for all duties, taxes or any other government or other

charges of any description for the importation of the Goods to wherever they are to be delivered to the Customer.

5. Drawings, Dimensions and Performance Data

- (a) Any dimensions, datasheets, and instructions that may be submitted in conjunction with, or referred to, in any quotation or information given by BreatheSafe will be as accurate as reasonably practicable and possible to enable fit and reflect the performance of the Goods. Any visual representation of the Goods that may accompany instructions will be considered approximate only. Any information supplied under this clause 5(a) should contain no more sensitive information than that which is publicly available for BreatheSafe's Goods already, or if it does, it will be subject to clauses 14 and 15.
- (b) Any dimensions, datasheets, instructions, and visual representations that may be submitted in conjunction with, or referred to, in any quotation or information given by BreatheSafe related to Goods will be considered approximate and for quotation purposes only and must not be used for construction purposes.
- (c) Any inaccuracy as permitted by either of clauses 5 (a) or (b) shall not invalidate this Agreement, shall not be made the basis for any claim against BreatheSafe, nor justify rejection of the Goods.

6. Third-Party Designs

- (a) BreatheSafe accepts no responsibility for the efficacy of any design, specification or unit capacity not prepared or estimated by BreatheSafe. In such instance, BreatheSafe's guarantee is limited to the quality and capacity of the Goods supplied subject to any limitation or restriction on that quality or capacity resulting from any such design, specification or unit capacity.

7. Delivery of Goods

- (a) At BreatheSafe's sole discretion, delivery of the Goods shall take place when the Customer or its agent takes possession of them at BreatheSafe's Address or the Customer takes possession of the Goods at the Customer's Nominated Address (in the event that the Goods are delivered by BreatheSafe or BreatheSafe's nominated carrier).
- (b) At BreatheSafe's sole discretion, the costs of delivery may be included in the Price or may be charged to the Customer in addition to the Price.
- (c) Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this Agreement.
- (d) The failure of BreatheSafe to deliver shall not entitle either Party to treat this contract as repudiated.
- (e) Subject to the limitation of liability allowed by clause 11 of this Agreement, BreatheSafe shall not be liable for any loss or damage whatsoever due to failure by BreatheSafe to deliver Goods by the specified delivery date where due to circumstances beyond the control of BreatheSafe provided that BreatheSafe has used its reasonable best endeavours to meet that specified delivery date.

8. Title and Risk

- (a) All risk of loss or destruction of, or damage to, the Goods passes to the Customer at the time at which the Goods are ready for collection on behalf of the Customer.
- (b) The Customer must obtain its own insurance for the Goods and at its own cost.
- (c) BreatheSafe and the Customer agree that ownership of the Goods shall not pass until:
 - (i) the Customer has paid BreatheSafe all amounts owing for the particular Goods; and
 - (ii) the Customer has met all other obligations due by the Customer to BreatheSafe in respect of contracts between BreatheSafe and the Customer ;
- (d) Where BreatheSafe supplies Goods to the Customer without payment in full, the Customer:
 - (i) agrees that it is a bailee of the Goods until title in them passes to it as required by this Agreement and, until such time as title passes, it holds the Goods, or any proceeds of sale or disposal of any of the Goods (up to and including the amount that the Customer owes to BreatheSafe for the goods) or on trust for BreatheSafe;
 - (ii) appoints BreatheSafe to be its attorney to do all acts necessary to ensure that BreatheSafe retains title in the Goods, including the registration of any security interest in favour of BreatheSafe under any applicable law;
 - (iii) agrees, to take, on request, all such steps that BreatheSafe might reasonably require of it to separate and identify the Goods belonging to BreatheSafe from other goods held by the Customer;
 - (iv) agrees that it must not allow any other person or entity to have or acquire any form of security or other interest in the Goods pending full payment of all amounts due and payable in respect of the Goods;
 - (v) agrees that, until such time as ownership of the Goods passes from BreatheSafe to the Customer, BreatheSafe may give notice in writing to the Customer to return the Goods or any of them to BreatheSafe. Upon the giving of such notice, the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;
 - (vi) agrees that, in addition to all other rights and remedies available to BreatheSafe, it is entitled to (a) stop Goods in transit; and/or (b) to issue proceedings to recover the unpaid Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and.
 - (vii) must permit BreatheSafe employees or agents (as the Customer's invitee) to enter on and into land and premises in the possession or control of the Customer, or any other premises where the Goods are situated, and take possession of the Goods.
- (e) Where BreatheSafe supplies Goods to the Customer without payment in full and:
 - (i) the Customer makes a new object from the Goods, whether finished or not; and/or
 - (ii) the Customer mixes the Goods with other goods; and/or

- (iii) the Goods become part of other goods (in each such case “**New Goods**”),
the Customer agrees that ownership of the New Goods immediately passes to BreatheSafe. The Customer will hold the New Goods on trust for BreatheSafe until payment of all monies owed to BreatheSafe by the Customer whether under this Agreement or any other contract have been made. If BreatheSafe so requires, the Customer must store and label the New Goods in a manner that clearly shows BreatheSafe’s ownership of the New Goods.
- (f) To avoid any doubt, and notwithstanding any contrary term of clause 8(e), ownership of the New Goods passes to BreatheSafe at the beginning of the event or process by which the Goods are converted into New Goods.
- (g) Despite any other clause of this Agreement, the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of the Customer’s business provided that the Customer:
 - (i) is paid by the third party in respect of the Goods, including the New Goods, and the Customer holds the entire proceeds of the sale on trust for BreatheSafe in a separate bank account until all amounts owed by the Customer to BreatheSafe have been paid; or
 - (ii) where the Customer is not paid by a third-party, the Customer agrees to assign all of its rights against the third-party to BreatheSafe.
- (h) Receipt by BreatheSafe of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and, until then, BreatheSafe’s ownership of and all of its other rights in respect of the Goods shall continue to be of full force and effect.

9. Personal Property Securities Act 2009 (Cth) (as amended from time to time) (“PPSA”)

- (a) in this clause:
 - (i) “financing statement” has the meaning given to it by the PPSA;
 - (ii) “financing change statement” has the meaning given to it by the PPSA;
 - (iii) “security agreement” means the security agreement under the PPSA created between the Customer and BreatheSafe by this Agreement; and
 - (iv) “security interest” has the meaning given to it by the PPSA.
- (b) By entering into this Agreement, the Customer acknowledges and agrees that this Agreement:
 - (i) constitutes a security agreement for the purposes of the PPSA; and
 - (ii) creates a security interest in all Goods previously supplied by BreatheSafe to the Customer (if any) and all Goods that will be supplied in the future by BreatheSafe to the Customer.
- (c) The Customer undertakes to promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which BreatheSafe may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security

- interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 9(c)(i) or 9(c)(ii).
- (d) The Customer undertakes to:
 - (i) indemnify, and upon demand reimburse, BreatheSafe for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (ii) not register a financing change statement in respect of a security interest without the prior written consent of BreatheSafe;
 - (iii) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of BreatheSafe; and
 - (iv) immediately advise BreatheSafe of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- (e) BreatheSafe and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- (f) The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (g) The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- (h) Unless otherwise agreed to in writing by BreatheSafe, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- (i) The Customer shall unconditionally ratify any actions taken by BreatheSafe under clauses 9(d) to 9(h) of this Agreement.

10. Defects

- (a) This clause 10 is subject to any applicable provision of the ACL. The Customer shall inspect the Goods on receipt at the final destination and shall, within fourteen (14) days of receipt at the final destination, notify BreatheSafe of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The “final destination” for the purpose of this clause means a premises of the Customer. For the avoidance of doubt, nothing in this clause 10(a) derogates from the Customer’s obligations under clause 7.
- (b) The Customer shall allow a BreatheSafe employee or agent to inspect the Goods within a reasonable time following after the Customer gives written notice to BreatheSafe under clause 10(a).
- (c) If the Customer fails to comply with either of clauses 10 (a) or (b), the Goods shall be presumed to be free from any defect or damage, subject only to the warranties granted to the Customer under clause 12.
- (d) Subject to any provision of the ACL, defective Goods for which BreatheSafe has agreed in writing that the Customer is entitled to reject, BreatheSafe’s liability

is limited to either (at BreatheSafe's discretion) replacing the Goods or repairing them, except where the Customer has acquired Goods as a "consumer" within the meaning of the ACL, and is therefore also entitled to, at the Customer's discretion, either a refund of the purchase price of the Goods, or repair of them, or replacement of them.

11. Returns

- (a) The Customer acknowledges and agrees that under no circumstances is BreatheSafe liable to accept the return of any Goods and agrees that BreatheSafe has the right to refuse the return of any such goods.
- (b) Returns will only be accepted if :
 - (i) BreatheSafe has first agreed in writing to accept the return; and
 - (ii) the Goods to be returned are returned at the Customer's sole cost within 14 days of the date of their being available for delivery to the Customer; and
 - (iii) the Goods and all packaging material, brochures and instruction materials for them are returned in as close a condition to new as is reasonably possible in the circumstances.
- (c) If a return is accepted by BreatheSafe then it, at its sole discretion, may charge the customer and the customer shall pay a return handling fee of up to 15% of the value of the returned Goods as well as all reasonable costs of repairing and/or refurbishing and/or refinishing the returned Goods.
- (d) The customer acknowledges and agrees that under no circumstances is BreatheSafe liable to accept for return any non-stock Goods that are made to order for the Customer.
- (e) This clause 11 is subject to any overriding provision of the ACL.

12. Warranty on Goods

- (a) Without derogating from the exclusion of the ACL by any other clause of this Agreement, BreatheSafe warrants to the Customer that the Goods will be of merchantable quality and fit for their intended purpose; that, subject to clause 5, the Goods will match the description given to them in any quotation for them; that it has title to the Goods at the time of their delivery to the Customer; that there are no undisclosed security interests over the Goods that would prevent their sale to the Customer; and that , subject to this Agreement, the Customer will have undisturbed possession of the Goods as from their collection from BreatheSafe.
- (b) Without in any way limiting clauses 12(a) or 10 and subject to the conditions of warranty set out in clause 13(d), BreatheSafe warrants that if any defect in any workmanship of the Goods becomes apparent and is reported to BreatheSafe within twelve (12) months from the date of delivery, then BreatheSafe will either (at its sole discretion) replace the Goods in question or remedy the defect in workmanship accepted by it.
- (c) For service parts or components, and subject to the conditions of warranty set out in clause 13(d), BreatheSafe warrants against defects, provided such defect is reported to BreatheSafe within ninety (90) days following the purchase date.

- (d) The conditions applicable to the warranty given by clauses 12(a) to 12(c):
 - (i) shall not cover any defect or damage attributable to any act or omission of the Customer or any end-user of the Goods or the employees or agents of either of them which has been caused or partly caused by or arise through:
 1. excessive vibration;
 2. misuse or abuse;
 3. by operation outside the recommended temperature range of -20 C to +50 C;
 4. interference by unskilled or unauthorised personnel;
 5. failure to observe normal installation start-up maintenance or service instructions specified in BreatheSafe's manuals;
 6. any use of any Goods otherwise than for any other application than those specified by BreatheSafe or in the Customer's manuals;
 7. the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 8. fair wear and tear, any accident or act of God.
 - (ii) cease and BreatheSafe shall thereafter, in no circumstances, be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without BreatheSafe's consent.
 - (iii) in respect of all claims, BreatheSafe shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship, provided that reasonable and proper assessing of the Customer's claim and, if it is accepted by BreatheSafe, the replacement or remedy of such accepted claims takes place within sixty (60) days of BreatheSafe receipt of a written notice of claim providing detail of the alleged defect(s) sufficient for it to assess the claim.
 - (iv) in the event the applicable Goods have been used to replace Goods subject to a previous warranty claim accepted by BreatheSafe, the period of the warranty shall be limited to the unexpired portion of the previous warranty.
 - (v) save for the express conditions and warranties contained in this Agreement, or implied or made non-excludable by Australian legislation (including, but not limited to, the ACL), common law, or otherwise, all other conditions and warranties are hereby expressly excluded.
- (e) Regardless of whether the Goods are manufactured by BreatheSafe or not, it will warrant the Goods pursuant to and subject to this Agreement.

13. Exclusions and Limitation of Liability

- (a) The Customer expressly agrees that the use of the Goods is at the Customer's risk. To the full extent allowed by law, BreatheSafe's liability for breach of any term implied into these terms by any law is excluded.
- (b) Where the Customer expressly requests BreatheSafe to leave Goods outside BreatheSafe's premises for collection or to deliver the Goods to an

unattended location, then such Goods shall be left at the Customer's sole risk and it shall be the Customer's sole responsibility to ensure the Goods are insured adequately or at all.

- (c) If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, BreatheSafe is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by BreatheSafe is sufficient evidence of BreatheSafe's rights to receive the insurance proceeds without the need for any person dealing with BreatheSafe to make further enquiries.
- (d) All information, specifications and samples provided by BreatheSafe in relation to the Goods are approximations only and, subject to any guarantees under the ACL, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- (e) BreatheSafe gives no warranty in relation to the Goods provided or supplied. Under no circumstances is BreatheSafe or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
 - (i) any Goods supplied to the Customer;
 - (ii) any delay in supply of the Goods; or
 - (iii) any failure to supply the Goods.
- (f) Any advice, recommendation, information, assistance or service given by BreatheSafe in relation to Goods, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. BreatheSafe does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (g) To the fullest extent permissible at law, BreatheSafe is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods, or otherwise arising out of the provision of Goods, whether based on terms of trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- (h) The Customer warrants that it is not acquiring the Goods for personal, domestic or household purposes and acknowledges and agrees that they are not intended and supplied by BreatheSafe for any of those purposes.

14. Intellectual Property

- (a) All Intellectual Property in any aspect of the Goods and also that in any other things of any description designed, drawn, written or made for the Customer by BreatheSafe and whether under this clause 14 or otherwise (and in anything described or depicted or referred to in them) remains vested in BreatheSafe and shall only be used by the Customer in the way permitted by this Agreement. Those permissions terminate on the termination or expiry of this Agreement, with the exception of those permissions pertaining to sales of any Goods in the Customer's stock after termination.
- (b) The Customer warrants that all designs or instructions to BreatheSafe will not cause BreatheSafe to infringe any form of Intellectual Property right in the execution of the Customer's order and the Customer agrees to indemnify BreatheSafe against any action taken by a third party against BreatheSafe in respect of any such infringement.
- (c) The Customer agrees that BreatheSafe may use any documents, designs, drawings or Goods created by BreatheSafe for the purposes of advertising, marketing, or entry into any competition.
- (d) Nothing in this Agreement is to be construed as giving the Customer any right, title or interest (whether by way of ownership or the ability to license or otherwise) in and to any of BreatheSafe's Intellectual Property, whether as embodied in the Goods or otherwise.

15. Confidential Information

- (a) At its own discretion, BreatheSafe may disclose or make available Confidential Information to the Customer to be used solely for the purpose of this Agreement. Prior to the disclosure of the Confidential Information, the Customer must agree that it will keep the information confidential and that it will mark the information as "confidential". The Customer must not provide any Confidential Information to any person or entity unless that person or entity has first agreed in writing that it will keep the Confidential Information confidential. In the circumstances of the provision of Confidential Information under this clause, the Customer must:
 - (i) treat and keep all of the BreatheSafe Confidential Information in the strictest confidence, and take the same level of precautions to protect it as it takes to protect its own Confidential Information, but in no case less than reasonable measures to protect the Confidential Information in order to comply with this clause;
 - (ii) not use the Confidential Information for any purpose other than for the purpose of this Agreement; and
 - (iii) subject to clause 15(c), and, for the avoidance of doubt, also clause 15(b), not directly or indirectly disclose or make available all or any part of the Confidential Information to any third party without obtaining the prior written consent of BreatheSafe.
- (b) The Customer may disclose or make available such part(s) of BreatheSafe's Confidential Information to its directors, officers, employees, contractors and

- agents (as applicable) who have a specific need to access the Confidential Information for the purpose of this Agreement, provided always that those persons have first agreed in writing to keep the Confidential Information in confidence on terms and conditions at least as restrictive as those set out in this Agreement. The Customer remains fully liable to BreatheSafe for any unauthorised use or disclosure of any of the BreatheSafe Confidential Information by any third party to whom the Customer discloses or makes available that Confidential Information.
- (c) The obligations of confidence and non-use in this Agreement do not apply to any of BreatheSafe's Confidential Information that:
- (i) prior to this Agreement was made available to the Customer or came to the Customer's knowledge, as shown by documentary evidence existing at the relevant time;
 - (ii) is now or hereafter becomes publicly known through no act or omission by the Customer;
 - (iii) is received from a third party who is lawfully in possession of such information and has the authority to disclose it or make it available to the Customer;
 - (iv) is disclosed or made available by the Customer in accordance with the written authority of BreatheSafe.
 - (v) is disclosed or made available pursuant to the demand of a lawful governmental or judicial authority provided that the Customer must use reasonable efforts first to notify BreatheSafe of the demand and only make such disclosure to the extent required by the demand;
 - (vi) is independently developed by the Customer without any use of or reference to BreatheSafe's Confidential Information (or any part of it), as shown by documentary evidence existing at the relevant time; or
 - (vii) is disclosed otherwise than in accordance with clause 15(a) of this Agreement.
- (d) The obligations of confidence and non-use contained in this Agreement survive termination or expiration of this Agreement.
- (e) The original and all copies of any Confidential Information disclosed or made available to or accessed by the Customer, all materials which embody such Confidential Information, including any notes or records, or any evidence, of work performed in connection with this Agreement, in any form or media (including on any digital or electronic storage media), must be returned to BreatheSafe, destroyed or permanently and irretrievably deleted immediately upon demand of BreatheSafe and in any event upon expiration or termination of this Agreement. Notwithstanding the foregoing, the Customer is not required to return, delete or destroy copies of BreatheSafe's Confidential Information created and maintained by an automated back-up system provided that the Customer always maintains the confidentiality of such Confidential Information in accordance with the terms of this Agreement.
- of payment, at a rate of two and a half per cent (2.5%) per calendar month (and at BreatheSafe's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- (b) In the event that the Customer's payment of any correctly invoiced Price is dishonoured for any reason, the Customer shall be liable for any dishonour fees incurred by BreatheSafe.
 - (c) This Agreement may be terminated immediately by BreatheSafe on its giving written notice to the Customer in the event that the Customer becomes insolvent, or convenes a meeting with its creditors, or proposes to or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or has a receiver, or a manager, or a liquidator (provisional or otherwise), or an administrator (or any person similar to any of those) appointed over any of its assets and affairs, or otherwise enters into any administration in insolvency.
 - (d) Without prejudice to any other rights and remedies BreatheSafe may have (under this Agreement or otherwise), if at any time the Customer is in material breach of its obligations under this Agreement as to payment of the Price or either of clauses 14 or 15 of this Agreement, BreatheSafe shall have the right to immediately terminate this Agreement.
 - (e) Without prejudice to any other rights and remedies BreatheSafe may have (under this Agreement or otherwise), if at any time the Customer is in material breach of any obligation other than the obligations listed in 16(d), BreatheSafe will first give the Customer a notice to remedy that breach.
 - (f) A notice issued under clause 16(e) will give a period of at least seven (7) business days from its date to remedy each breach identified in it. During this notice period, any orders available for delivery will be delivered to the Customer.
 - (g) If a breach identified by the notice required by clause 16(e) is not remedied to BreatheSafe's reasonable satisfaction within the at least seven (7) business days prescribed by clause 18.3 then, at its sole option, BreatheSafe may immediately terminate this Agreement.
 - (h) The Parties may terminate this Agreement at any time by mutual agreement recorded in writing.
 - (i) Of its own volition, at any time BreatheSafe, and also the Customer (but only if the Customer is not in default of this Agreement), may terminate this Agreement by giving not less than 30 days written notice to the other.
 - (j) If this Agreement is terminated for any reason and the Customer has not paid BreatheSafe the full price for all the Goods purchased then, in addition to all other rights and remedies it then has BreatheSafe has the right to sell all or any of those Goods in its possession or control and apply the sale proceeds against any monies payable, whether liquidated amounts are otherwise, by the Customer to it under this Agreement or any other contract.

16. Default and Consequences of Default, Term and Termination of this Agreement

- (a) Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date

17. Collateral Guarantee, Security and Charge

- (a) In consideration for its agreeing to enter into this Agreement, at its discretion, BreatheSafe may require a Customer to provide to it a collateral

guarantee guaranteeing the performance by the Customer of all of the Customer's obligations to BreatheSafe under this Agreement. The guarantee will be on terms completely satisfactory to BreatheSafe and, at its discretion, may include clauses that are in like wording to or effect of clauses 17 (b), (c) and (d). Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged.

- (b) Where the Customer owns any land or other asset capable of being charged, the Customer hereby mortgages and/or charge all of its joint and/or several interests in that land or any such other assets to BreatheSafe or BreatheSafe's nominee to secure all amounts of any nature payable under this Agreement by the Customer to BreatheSafe. The Customer hereby permit BreatheSafe (or BreatheSafe's nominee) to lodge a caveat over any such land or any form of security interest notification permitted to BreatheSafe in any register of any other assets charged by this clause (b).
- (c) Should BreatheSafe elect to proceed in any manner in accordance with this clause 17, the Customer shall indemnify BreatheSafe from and against all BreatheSafe's costs and disbursements, including legal costs on a solicitor and own client basis.
- (d) The Customer hereby irrevocably nominates, constitutes and appoints each director and secretary of BreatheSafe or its nominee from time to time, as the Customer's true and lawful attorney to perform all necessary acts to give effect to this clause 17.

18. Cancellation

- (a) Subject to the termination provisions of clause 16 of this Agreement, BreatheSafe may cancel any contract to which this Agreement applies or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice, BreatheSafe shall repay to the Customer any sums paid in respect of the Price but BreatheSafe shall not be liable for any other claim for any form of loss or damage whatsoever arising from such cancellation.
- (b) Subject to the termination provisions of clause 16 of this Agreement, in the event that the Customer cancels delivery of Goods, the Customer shall be liable for any loss incurred by BreatheSafe (including, but not limited to, any loss of profits) up to the time of cancellation.
- (c) Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will not be accepted once production has commenced.

19. Unpaid BreatheSafe's Rights

- (a) In addition to all other rights and remedies granted to BreatheSafe under this Agreement, if the Customer has not collected goods from BreatheSafe once they have been made available by it for collection or the customer has left any item with BreatheSafe for repair, modification, exchange or for BreatheSafe to perform any other Service in relation to the item, and BreatheSafe has not received the whole of the Price for those Goods or items left for repair, or the payment has been dishonoured, BreatheSafe shall have:
 - (i) a lien on those goods and items; and

- (ii) the right to retain them for the Price while BreatheSafe is in possession of them; and
 - (iii) a right to sell the Goods or items as the case may be.
- (b) The lien of BreatheSafe shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

20. Privacy Act 1988

- (a) The Customer agrees that BreatheSafe may, at its sole discretion, obtain from a credit-reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by BreatheSafe.
- (b) The Customer agrees that BreatheSafe may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (i) to assess an application by the Customer;
 - (ii) to notify other credit providers of a default by the Customer;
 - (iii) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (iv) to assess the creditworthiness of the Customer.
- (c) The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988* (Cth) (**Privacy Act**).
- (d) The Customer consents to BreatheSafe being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) of the *Privacy Act*).
- (e) The Customer agrees that personal credit information provided may be used and retained by BreatheSafe for the following purposes (and for other purposes as shall be agreed between the Customer and BreatheSafe or required by law from time to time):
 - (i) the provision of Goods;
 - (ii) the marketing of Goods by BreatheSafe, its agents or distributors;
 - (iii) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods;
 - (iv) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (v) enabling the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- (f) BreatheSafe may give information about the Customer to a credit reporting agency for the following purposes:
 - (i) to obtain a consumer credit report about the Customer;
 - (ii) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

- (g) The information given to the credit reporting agency may include:
- (i) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
 - (ii) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (iii) advice that BreatheSafe is a current credit provider to the Customer;
 - (iv) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (v) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (vi) information that, in the opinion of BreatheSafe, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customers credit obligations);
 - (vii) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (viii) that credit provided to the Customer by BreatheSafe has been paid or otherwise discharged.

21. Force Majeure

- (a) Neither Party shall be liable for any failure or delay in the performance of its obligations (except for the payment of money) to the extent it is due to a cause reasonably beyond the control of that Party including a Force Majeure Event and that Party has notified the other in writing as soon as practicable and provided sufficient detail regarding the nature, extent and likely duration of the cause.
- (b) If such failure or delay in performance continues for more than sixty (60) calendar days, the other Party shall have the right to terminate this Agreement immediately upon written notice. Each Party shall use its reasonable best efforts to notify the other Party of the occurrence of such an event within three (3) days of its occurrence.

22. General

- (a) This Agreement applies to all transactions between the Customer and BreatheSafe relating to the provision of Goods. This includes all quotations, contracts and variations. This Agreement takes precedence over any other terms contained in any document of the Customer or elsewhere.
- (b) A Party waives a right under this Agreement only if it does so in writing. BreatheSafe does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of a term of this Agreement does not operate as a waiver of another breach of the same term or any other term. The variation or waiver of a provision of this Agreement, or a Party's consent to a departure from a provision

by another Party, shall be ineffective unless in writing, executed by the Parties.

- (c) If a provision in this Agreement is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to that extent, and in that jurisdiction, be treated as deleted from this Agreement. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.
- (d) The laws of Queensland, Australia govern this Agreement and any contract to which it applies. The Parties consent to the Queensland State Courts and the Federal Court of Australia situated in Brisbane, Queensland, having jurisdiction to hear and determine any dispute arising out of, or in connection with, this Agreement.
- (e) This Agreement contains the entire understanding of the Parties relating to the subject matter of this Agreement but it may be amended by the mutual written agreement of the Parties.
- (f) This Agreement may consist of a number of copies (whether original, faxed or emailed) each signed by one or more Parties to this Agreement. If so, the signed copies (whether original, faxed or emailed) are treated as making up the one Agreement and the date on which the last counterpart is signed will be the date of this Agreement. The Parties agree that an original signature that is subsequently transmitted electronically or by facsimile has the same effect as an original signature.
- (g) BreatheSafe is entitled to assign or novate its rights and obligations under this Agreement at any time and at its sole discretion.
- (h) The Customer may assign or novate its rights and obligations under this Agreement but only after first giving BreatheSafe 21 business days written notice and seeking its consent to that assignment or novation. BreatheSafe will not unreasonably withhold its consent. As part of any conditions of its giving that consent, BreatheSafe may require the proposed assignee or party to whom the agreement is proposed to be novated to first covenant in writing to BreatheSafe that it will be bound by all of the assignee's or novating party's obligations under this Agreement.
- (i) The relationship of the Parties is that of independent contractors and neither Party is an agent of or partner with or joint venturer with the other for any purpose
- (j) Any notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by prepaid post are deemed to be received upon five business days after their posting. Notices sent by facsimile or email are deemed to have been received on the sender receiving a notice stating that there has been a successful transmission.
- (k) For the avoidance of any doubt, all warranties in respect of the Goods and any Services to be provided by BreatheSafe that are contained in any statute (whether the ACL or otherwise) or are available at law or equity are excluded to the maximum extent possible and allowable