

## SPECIAL CONDITIONS - CIRRUS PAY T&Cs

**1. LOAN OF PRODUCT PURCHASE PRICE.** The Supplier agrees to lend the purchase price of the Product to the Customer by (a) agreeing not to be paid for the Products on delivery but instead accepting payment by instalments over the term of this Product Schedule or (b) where applicable, paying the applicable part of the purchase price on behalf of the Customer to any vendor of the Products (each such vendor, including without limitation any product vendor named in Table A1, being a "Product Vendor").

**2. THE TOTAL PRODUCT PAYMENTS.** The Total Product Payments as shown in Table B1 of this Payment Schedule is immediately due and payable from the date this Payment Schedule is accepted by the Supplier, the Supplier allows the Customer to pay the Total Product Payments by the Instalment Amounts and on the due dates set out in Table B1 in cleared funds without any abatement, deduction, set-off, withholding, defense or counterclaim for any reason whatsoever (including, but not limited to, a force majeure event). The Supplier may issue a separate tax invoice or payment notification to the Customer for payment of each Instalment Amount before its due date, but any failure by the Supplier to issue the separate tax invoice or payment notification does not affect the Customer's obligation to pay the Instalment Amounts on the due dates as set out in Table B1. The Total Product Payments may include interest payable by the Customer in consideration of the Supplier lending the purchase price for the Products to the Customer.

**3. ASSIGNMENT.** Customer may not assign, novate or grant an encumbrance over this Payment Schedule or its rights and/or obligations hereunder, nor shall the Customer encumber, lease, lend or part with possession of the Products or allow them to be used by anyone other than customer's employees or agents without the prior written consent of the Supplier. The Customer agrees that the Supplier may, without notice to or consent of the Customer, assign to the benefit of a third party ("**Assignee**") its rights, title and interest, in whole or in part, to receive the Total Product Payments, other amounts payable by the Customer pursuant to this Payment Schedule, and any other rights that the Supplier has under this Payment Schedule. The Assignee shall not be liable for or be required to perform any of the Supplier's or Product Vendor's obligations to Customer under or in connection with this Payment Schedule, the Products, the Services or any Licence Agreement, such obligations being retained by Supplier and/or Product Vendor (as the case may be) each in their own capacity.

**4. PAYMENT OBLIGATIONS UNCONDITIONAL.** For the avoidance of doubt, any service credits, rebates or price reductions, if applicable, shall be independent of the Customer's obligation to pay the Total Product Payments and shall not reduce the Total Product Payments payable. Customer's obligation to pay the Total Product Payments and liability therefor is separate and completely independent of (and the Customer must therefore pay the Total Product Payments in accordance with these Payment Terms despite any matter relating to) (a) the delivery, performance or quality of the Products and of any Licence Agreement the Customer may have with the Product Vendor or any other person and (b) the delivery or provision of the Services. Without limiting the foregoing, the Customer's obligation to pay the Total Product Payments on the due dates shall continue notwithstanding (and shall not be affected by, released and/or reduced as a result of) any of the following: (a) any breach or defect in or in connection with the Products or any Licence Agreement and/or any wrongful or negligent act or omission by or on behalf of the Product Vendor; (b) any dispute between the Product Vendor and/or the Supplier and the Customer; (c) any agreed change or revision to this Payment Schedule; (d) any breakdown, accident or damage to and/or loss of any Product (or any function thereof); (e) any failure by the Supplier, the Product Vendor or any other person to provide the Services (whether in whole or in part) or to provide them in accordance with the requirements of Annexure B; (f) any defect or deficiency in the Services provided; (g) the Customer being unable to use any Product (in whole or in part) for any reason, including without limitation as a result of anything referred to in paragraphs 4(e) or (f); and/or (h) any Event of Default. None of the foregoing shall affect any right the Customer may have to bring a claim in damages directly against the Supplier, the Product Vendors or any other person responsible for providing any Services.

**5. EVENTS OF DEFAULT.** The term "Event of Default" shall mean any one or more of the following: (a) Customer fails to pay any amount due under this Payment Schedule on the due date and such failure is not cured within 10 days; (b) Customer or any guarantor of Customer's obligations (each a "**Guarantor**") commences any action for relief under any laws relating to bankruptcy, insolvency, reorganization or relief of debtors or is otherwise unable to pay its debts as and when they fall due; (c) a liquidator, provisional liquidator, administrator or receiver is appointed to the Customer or a Guarantor or to any of its assets; (d) any company of which Purchaser is a related body corporate under a Deed of Cross Guarantee entered into in accordance with ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 (whether before or after the Appendix Date) ceases to guarantee Purchaser's debt; (e) any of the following occurs and the Supplier considers that it materially increases its risk as a creditor of the Customer or materially affects the Customer's ability to perform its obligations under this Payment Schedule: (i) Customer fails to perform any obligation under this Payment Schedule (other than as referred to in paragraph 5(a)) and such failure is not cured, if capable of being remedied, within 15 days after written notice from the Supplier; (ii) Customer enters into a merger or other transaction in which it is not the surviving entity, or sells or transfers all or substantially all of its assets; (iii) there is a change in the ownership or control of the Customer, its funding arrangements, its management or its financial condition; (iv) any representation or warranty made by Customer to the Supplier in connection with this Payment Schedule shall prove at any time to have been untrue or misleading in any material respect.

**6. REMEDIES.** Upon the occurrence of any Event of Default (a) the Supplier may by notice to the Customer terminate this Payment Schedule and require the Customer to immediately pay to the Supplier (or Assignee, if applicable): (i) all Instalment Amounts specified in Table B1 and other amounts (other than amounts relating to Services) that are then due for payment under this Payment Schedule but remain unpaid; (ii) all Instalment Amounts which would have fallen due under Table B1 of this Payment Schedule after the date of the Supplier's demand, each such payment discounted to a present value by applying the Discount Rate over the period by which payment is brought forward; and (iii) all interest, late charges, taxes, and other amounts payable under or in connection with this Payment Schedule in relation to the Products and the Total

Product Payments; and (b) the Supplier (or Assignee, if applicable) may require Customer to cease use of all Software and delete it from Customer's computer systems. For the purposes of paragraph 4(a)(ii) "**Discount Rate**" means the rate reasonably determined by the Supplier (or Assignee, if applicable) to calculate the present value of the Instalments Payments specified in Table B1, taking into account any costs to the Supplier (or Assignee, if applicable) of an early termination. Those costs may include costs under the Supplier's (or Assignee's) funding or hedging arrangements or any corresponding adjustments to them, and the Supplier (or Assignee) may assess these on a global basis across all or part of its funding and hedging arrangements, not just any specific arrangement for this Payment Schedule.

**7. INTEREST ON OVERDUE AMOUNTS.** The Customer must pay interest at the rate of 1.5% per month or the maximum rate permitted by law, whichever is less, on all amounts that it does not pay when due under this Payment Schedule, such interest to be calculated daily from the due date for payment until the date of payment in full (both before and after judgment).

**8. INDEMNITIES.** The Customer unconditionally and irrevocably indemnifies the Supplier against all liability, loss and reasonable costs, charges and expenses incurred by the Supplier in connection with this Payment Schedule as a result of: (a) an Event of Default; (b) any new legislation or change in any legislation or regulation, or any change in any ruling, guideline, directive or requirement issued by a governmental authority or body or any change in the interpretation of any such legislation or regulation, ruling, guideline, directive or requirement that affects this Payment Schedule, the transactions under it, the Supplier's obligations under this Payment Schedule or the Supplier's return under this Payment Schedule; (c) the early termination of this Payment Schedule for any reason; (d) any security interest provided under this Payment Schedule not having its intended priority, failing to attach to the Product (if applicable), not being perfected, being void, illegal, invalid, unenforceable or of limited force and effect; (e) any claim or demand made by any third party in relation to the Product, including without limitation any claim for the infringement of a patent, trademark, copyright or other intellectual property right; or (f) any steps taken by Supplier or the Assignee to administer, exercise, enforce or preserve any of its rights under this Payment Schedule. The indemnities in this clause 8 survive the expiration or termination of this Payment Schedule. The indemnities in this clause 8 do not extend to indirect losses, costs or expenses, or to anything referred to in this clause to the extent that it occurs due to the fraud, wilful misconduct or negligence of the Supplier, the Assignee or any of their respective employees, contractors or agents.

**9. OWNERSHIP AND RISK.** Ownership of Product (other than software) passes to the Customer upon the last to occur of (a) execution of this Payment Schedule by both the Customer and the Supplier; and (b) the date of acceptance of delivery of the Products by the Customer. All risks in relation to the Products pass to the Customer upon delivery of the Product to the Customer.

**10. INSURANCE.** Customer must take out: (a) insurance of all Product against loss or damage for the full insurable value of the Product; and (b) insurance against third party risks in relation to all Product for an amount reasonably acceptable to the Supplier, in each case with a reputable insurer approved by the Supplier. Customer must provide to the Supplier from time to time on request a certificate of currency of each such insurance. Customer accepts responsibility for any loss or damage to the Product and all risks and liabilities in relation to it.

**11. COVENANTS.** Customer represents, warrants and covenants to the Supplier that: (a) Customer (and each Guarantor, if any): (i) is duly organized and validly existing under the laws of the state of its organization; (ii) has power and capacity to enter into this Payment Schedule and any other documents required to be delivered in connection herewith (hereinafter "**Documents**"); and (iii) holds each authorization and consent necessary for it to conduct its business as it is now being conducted; (b) the Documents have been duly authorized, executed and delivered by Customer and each Guarantor and constitute valid, legal and binding agreements, enforceable in accordance with their terms; (c) Customer's payment obligations under this Payment Schedule rank at least equally with all of its other unsecured and unsubordinated payment obligations, other than obligations that are mandatorily preferred by law; (d) Customer has disclosed to the Supplier all information that is material to an assessment by the Supplier of the risks that it assumes by entering into this Payment Schedule and the transactions under it; (e) Customer has not asserted against the Supplier, and has no basis to assert: (i) any set-offs, counterclaims or defences to Customer's obligation under this Payment Schedule; or (ii) any claims in connection with the Products; (f) Customer has not received or been promised any credits, rebates, refunds or other compensation, in cash or in kind, with respect to the purchase of the Products, except as disclosed to the Supplier in writing; and (g) Customer shall keep the Products free of all liens and encumbrances.

**12. PPSA.** The Customer grants to Supplier a security interest in the Products to secure the Customer's payment and other obligations under this Payment Schedule. The Supplier may, at the Supplier's expense, make any registration, or give any notification, in connection with this security interest for the purposes of the PPSA. The Customer consents to any registration or notification by the Supplier and agrees not to make an amendment demand. The Supplier need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded. The Customer agrees that the Supplier need not comply with sections 95,118, 121(4), 125, 130, 132(3) (d) and 132(4) of the PPSA, or any other provision of the PPSA notified to the Customer by Supplier after the date of this Payment Schedule, and the Customer may not exercise any rights under sections 142 and 143 of the PPSA, to the extent that the law permits these provisions, rights and requirements to be excluded.

Whenever the Supplier or the Assignee reasonably requests Customer to do anything: (a) to ensure that this Payment Schedule or any security interest is fully effective, enforceable and perfected with the contemplated priority; (b) for more satisfactorily assuring or securing to the Supplier or the Assignee the property the subject of any such security interest in a manner consistent with this Payment Schedule; or (c) for aiding the exercise of any power in this Payment Schedule, the Customer shall do it promptly at its own cost.

For the purposes of this clause, PPSA means the *Personal Property Securities Act 2009* (Clth).

**13. CAPACITY.** The Customer agrees that the Supplier may enter into this Payment Schedule (in so far as it relates to the loan and the Total Product Payments) as agent for another person (**Principal**) (whether disclosed or not) and that the Principal may be the true holder of the security interest under clause 12. The Supplier enters into this Payment Schedule (in so far as it relates to the Services and the Total Service Payments) in its own capacity and not as agent of the Principal or any other person. The Principal shall not be liable for the performance of the Products or the provision of the Services, such obligations being retained by Supplier and/or Product Vendor (as the case may be) each in their own capacity. The Customer acknowledges and agrees that the terms of clause 4 are appropriate given the different interests of (a) the Principal or any assignee (in relation to the loan and the Total Product Payments) and (b) the Supplier (in relation to the Services and the Total Service Payments).

**14. CHOICE OF LAW.** This Payment Schedule and all obligations arising out of or in connection with it are governed by the laws of New South Wales, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of New South Wales and Courts of Appeal from them.

**15. WAIVERS.** Customer shall not be discharged from its obligations hereunder except by payment and performance in full of all such obligations.

**16. MISCELLANEOUS.** This Payment Schedule contains the entire agreement between Customer and the Supplier relating to the subject matter hereof. No agreements or understandings shall be binding on the parties unless in writing and signed by the parties. Time is of the essence in this Payment Schedule. Any wording of this Payment Schedule held unenforceable in any jurisdiction shall be deemed deleted to the extent of such unenforceability without invalidating the remaining wording and/or provisions of this Payment Schedule. No waiver by the Supplier (or Assignee if applicable) shall be binding on it unless given in writing, and no waiver by the Supplier (or Assignee if applicable) of a breach by the Customer under this Payment Schedule shall be taken as a waiver of any subsequent breach of that obligation or of any other obligation unless expressly so stated in writing. If there is any inconsistency between the terms of Annexure B (if applicable) and the other terms of this Payment Schedule (including this Annexure A) then the other terms of this Payment Schedule (including this Annexure A) prevail over the terms of Annexure B to the extent of the inconsistency.