

Rotacaster Wheel Pty Limited ACN 100 342 256

trading as Omnia Wheel

General Terms and Conditions of Trade

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1. Application of these Conditions

- (a) Unless otherwise agreed in writing by Omnia, these Conditions apply to all Products and Services delivered or supplied, or to be delivered or supplied, by Omnia to the Purchaser, and are taken to be incorporated in and form part of each Contract.
- (b) Each Contract constitutes the whole agreement and understanding between Omnia and the Purchaser in relation to the relevant Products and Services.
- (c) Unless otherwise directed or agreed in writing by Omnia, if there is any conflict between the terms set out in a Purchase Order or other document issued by or on behalf of the Purchaser to Omnia (on the one hand) and the terms of these Conditions (on the other hand), then the terms of these Conditions prevail to the extent of the conflict.
- (d) Omnia may from time to time vary these Conditions (other than in relation to Prices, which will be varied in accordance with clause 4) by giving at least 30 days' written notice to the Purchaser. If a Contract is a Regulated Contract (and the variation does not relate to the Prices), then the Purchaser may refuse to accept such a variation by giving written notice to Omnia within that 30 day notice period, in which case the variation will not apply to that Contract unless otherwise agreed in writing by Omnia and the Purchaser. If the Purchaser does not make such an election within the relevant 30 day notice period or a Contract is not a Regulated Contract, then the Purchaser agrees that all Products and Services ordered after notification of the variation will be subject to the variation, and the placing of such orders will be taken to be an acceptance of the variation by the Purchaser.

2. Acceptance and cancellation

- (a) The Purchaser is taken to have acknowledged and accepted these Conditions by ordering Products and/or Services from Omnia, making and/or facilitating payment to Omnia in respect of Products and/or Services, or agreeing to any other document provided by Omnia that incorporates these Conditions by reference.
- (b) Omnia reserves the right to refuse acceptance of part or all of any Purchase Order at its sole discretion. No Purchase Order issued by the Purchaser will be taken to have been accepted by Omnia unless and until acceptance of that Purchase Order has been communicated in writing by Omnia to the Purchaser.
- (c) Once a Purchase Order has been issued by the Purchaser to Omnia, it may only be cancelled by the Purchaser with the written consent of Omnia. If such consent is given, then the Purchaser must reimburse Omnia on demand for all losses, damages and expenses directly or indirectly incurred by Omnia in the preparation and procurement of the relevant Products and Services to fulfil the relevant Purchase Order.

3. Quotations and tenders

Any quotations and/or tenders sent by Omnia to the Purchaser, prior to receipt by Omnia of written acceptance by the Purchaser, are subject to change or withdrawal at any time by Omnia in writing, and (unless Omnia states otherwise in the relevant quotation or tender) will be taken to have been rejected by the Purchaser if not accepted by the Purchaser in writing before the date that is 30 days after the date of the relevant quotation or tender (as applicable).

4. Prices

- (a) Subject to the other provisions of this clause 4, all prices payable by the Purchaser to Omnia for Products and Services supplied or to be supplied by Omnia to the Purchaser (**Prices**) are as set out in the relevant Contract, or to the extent not specified in that Contract, as notified to the Purchaser by Omnia from time to time.

- (b) Subject to clause 4(c), all Prices are subject to change by Omnia from time to time on Omnia giving the Purchaser at least 30 days' prior written notice of any such change.
- (c) If a Contract is a Regulated Contract, then the Purchaser may refuse to accept any Price change referred to in clause 4(b) for the relevant Products and/or Services by giving written notice to Omnia within the 30 day notice period referred to in clause 4(b), in which case the Price change will not apply in respect of any such Products and Services ordered (and not delivered or supplied) before notification of the Price change. If the Purchaser does not make such an election within the relevant 30 day notice period or a Contract is not a Regulated Contract, then the Purchaser agrees that all Products and Services ordered, delivered or supplied after notification of the Price change will be subject to the Price change, and the placing of such orders or acceptance of the Products delivered or supplied will be taken to be an acceptance of the Price change by the Purchaser.
- (d) Unless otherwise stated in a Contract, the Prices do not include any of the following in relation to the relevant Products and Services:
 - (i) any applicable GST (as that term is defined in the GST Act);
 - (ii) any other taxes (other than income tax), duties, levies, withholding taxes and other government fees and charges (**Other Taxes**); or
 - (iii) any delivery, packaging, freight, insurance, customs, installation and/or commissioning costs, expenses or charges (**Delivery Charges**).
- (e) Unless otherwise stated in a Contract, the amount of any applicable GST, Other Taxes and Delivery Charges will be added to, and must be paid by the Purchaser to Omnia, in the same way and at the same time as the Price for the relevant Products or Services is payable under or in connection with the relevant Contract.
- (f) Any GST, Other Taxes, Delivery Charges, rates of exchange and any other similar amounts quoted by Omnia to the Purchaser (or which otherwise apply to the relevant Products or Services) are those prevailing at the date of quotation. Any increase or decrease in these amounts will be to the Purchaser's account if that change is notified to the Purchaser before the relevant Products or Services are delivered or supplied to the Purchaser.

5. Terms of payment

- (a) Subject to clause 6, payment of the Price and any other amounts payable in respect of the relevant Products or Services the subject of a Purchase Order must be made in full by the Purchaser to Omnia on the issue of an invoice by Omnia.
- (b) Each payment must be made by the Purchaser:
 - (i) by electronic funds transfer, by credit card or by any other method as may be agreed by Omnia and the Purchaser;
 - (ii) in the relevant currency under clause 7; and
 - (iii) into such bank account as directed by Omnia.
- (c) The Purchaser must bear the cost of any merchant fees or other similar amounts incurred by Omnia on any credit card payments.

6. Credit terms

- (a) Omnia may offer credit terms to the Purchaser from time to time. The Purchaser agrees that it is not entitled to any credit until it receives written notice from Omnia stating that credit has been approved, the maximum amount of credit approved (**Credit Limit**) and the maximum period of time that the Purchaser is afforded in order to pay amounts owing to Omnia (**Payment Terms**). Until the Purchaser receives such notice, all Products and Services that are delivered or supplied to the Purchaser by Omnia must be paid for in accordance with clause 5(a).
- (b) Omnia may impose additional conditions on the Purchaser in respect of any credit afforded to the Purchaser under this clause 6 (which may

include the provision of a letter of credit, director(s) guarantee or other security, or entering into a separate agreement or undertaking relating to that credit), and the Purchaser must comply with those conditions.

- (c) The Purchaser grants permission to Omnia, before, during and after the provision of any credit, to receive information about the Purchaser from any credit reporting body, credit provider, bank, financial institution or other person.
- (d) The Purchaser warrants that all information provided in any credit application form is complete, true and correct, and acknowledges that Omnia has relied on this information in considering whether to approve the application for credit.
- (e) If credit terms have been approved by Omnia (and the Purchaser complies with any additional conditions imposed by Omnia under clause 6(b)), then the Purchaser must pay each invoice issued by Omnia within the time period stipulated by Omnia under the relevant Payment Terms, notwithstanding the fact that the relevant Products and/or Services may not have been delivered, supplied, installed or commissioned (as applicable) by that date.
- (f) If any invoice issued by Omnia to a Purchaser is overdue, Omnia may refuse to supply any Products or Services on credit until that and any other outstanding invoice has been paid in full.
- (g) Omnia may amend or revoke the credit terms in this clause 6 in its absolute discretion by giving written notice to the Purchaser, in which case the Purchaser will be required to pay Omnia in accordance with those amended credit terms or if the credit terms have been revoked, in accordance with clause 5(a). The amended or revoked credit terms apply with effect from the date stipulated in the notice (which must be no earlier than the date the notice is given to the Purchaser), and do not affect any accrued rights and remedies of Omnia.
- (h) The Purchaser acknowledges and agrees that the Credit Limit is a maximum limit, and the Purchaser must ensure at all times that the aggregate amount of all outstanding invoices issued by Omnia to the Purchaser is less than the Credit Limit. If the aggregate amount of all outstanding invoices reaches (or, with the further delivery or supply of Products and/or Services, would reach) the Credit Limit, then any Products and/or Services to be delivered or supplied to the Purchaser by Omnia will only be on a cash in advance basis.

7. Currency

The Purchaser must pay all Prices, GST, Other Taxes, Delivery Charges and any other fees, costs and charges related to the Products and/or Services:

- (a) in the currency notified in writing by Omnia to the Purchaser from time to time (with the relevant exchange rate being determined by Omnia); or
- (b) if no relevant currency is notified by Omnia, in Australian dollars.

8. Delivery of Products

- (a) Unless specified otherwise in the relevant Contract:
 - (i) subject to clauses 8(a)(ii) and 8(a)(iii), the Products will be taken to be delivered when they are delivered to the relevant delivery location specified in the Contract;
 - (ii) if the Purchaser requires delivery at a location other than the one specified in the Contract (and Omnia agrees with that arrangement), then the Purchaser will be responsible for arranging delivery of the Products to that location and delivery will be taken to occur when the Products are loaded on to the carrier arranged by the Purchaser; or
 - (iii) if no location for delivery is specified in the Contract or the relevant delivery location is unmanned, then delivery will be taken to occur at the time when the Products are ready for collection at Omnia's premises or at the time the Products are left at the unmanned location, respectively.
- (b) Delivery may be by separate instalments. Each separate instalment must be accepted and fully paid for by the Purchaser, notwithstanding any late delivery or any non-delivery of any other instalment.
- (c) Any times quoted for delivery are estimates only. Omnia will not be liable to the Purchaser for any failure to deliver or for delay in the delivery of any Products. Any failure to deliver or delay in delivery does not entitle the Purchaser to terminate any Contract.

- (d) The parties agree that Omnia is not a common carrier..

9. Risk

Unless specified otherwise in the relevant Contract, risk of loss or damage in respect of each Product will pass to the Purchaser at the time delivery to the Purchaser occurs (or is taken to have occurred) in accordance with clause 8(a).

10. Retention of title

- (a) The Purchaser agrees that legal title and property in the Products is retained by Omnia (and that for the purpose of the PPSA, Omnia retains a Security Interest in all Proceeds relating to those Products), and such legal title will not pass to the Purchaser until payment is received in cleared funds from the Purchaser of all sums owing to Omnia in relation to the supply of all Products and Services under all Contracts.
- (b) The Purchaser acknowledges and agrees that each Contract constitutes a Security Agreement under the PPSA and secures Omnia's right to receive the Price of all Products and Services sold under the relevant Contract and all other amounts from time to time owing by the Purchaser to Omnia under that Contract or any other Contract.
- (c) The Purchaser must promptly do anything required by Omnia to ensure that the relevant Security Interest is a perfected Security Interest and has priority over all other Security Interests in the Products and any Proceeds relating to those Products.
- (d) Until legal title and property in any Product has passed to the Purchaser, the Purchaser must keep that Product separate from other products and must store the Products so that they are readily identifiable as being supplied by Omnia.
- (e) If the Purchaser fails to pay any amount to Omnia in relation to any Products and/or Services by the due date required under the relevant Contract for that payment, then Omnia may (without limiting any of its other rights and remedies) recover and resell any of the Products in which legal title and property has not passed to the Purchaser and/or recover any Proceeds relating to those Products. In addition to any rights Omnia may have under Chapter 4 of the PPSA, Omnia may, without notice, enter any premises where it suspects the Products and/or any Proceeds relating to the Products may be located and take possession of them without committing a trespass, and the Purchaser authorises Omnia to enter on to the premises where the Products and/or those Proceeds are located to take possession of the Products and/or those Proceeds for that purpose at any time.
- (f) The Purchaser agrees to waive any right to receive any notice or statement from Omnia under the PPSA, except to the extent that the giving of that notice or statement is required by the PPSA and cannot be excluded by agreement.
- (g) To the maximum extent permitted by law:
 - (i) for the purpose of sections 115(1) and 115(7) of the PPSA:
 - (A) Omnia need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - (B) sections 142 and 143 are excluded;
 - (ii) for the purpose of section 115(7) of the PPSA, the Purchaser need not comply with sections 132 and 137(3); and
 - (iii) if the PPSA is amended after the date of the relevant Contract to permit Omnia and the Purchaser to agree to not comply with or to exclude other provisions of the PPSA, then Omnia may notify the Purchaser that any of those provisions are excluded, or that Omnia need not comply with any of those provisions, as notified to the Purchaser by Omnia, and that notice will be binding on the Purchaser.
- (h) If Omnia exercises a right, power or remedy in connection with any Contract, then that exercise is taken not to be an exercise of a right, power or remedy under the PPSA, unless Omnia states otherwise at the time of exercise. However, this clause 10(h) does not apply to a right, power or remedy that can only be exercised under the PPSA.
- (i) The Security Interests arising under this clause 10 attach to the relevant Products when the Purchaser obtains possession of those Products and the parties confirm that they have not agreed that any Security Interest arising under this clause 10 attaches at any later time.
- (j) Capitalised terms used in this clause 10 that are not otherwise defined in these Conditions have the meaning given in the PPSA.

11. Services

If required under a Contract, Omnia must provide Services to the Purchaser, with the details of the relevant Services, the timing of the Services and any applicable Prices being as specified in that Contract (or to the extent those items are not specified in that Contract, as notified by Omnia from time to time).

12. Default

- (a) If the Purchaser fails to pay to Omnia any amount when due under a Contract, then Omnia may (at its sole discretion and without limiting its other rights and remedies):
- (i) suspend performance of its obligations under or in connection with that Contract until the amount outstanding is paid in full; and
 - (ii) charge interest on the amount outstanding at the Prescribed Rate, calculated from and including the date on which the relevant payment became due until but excluding the date on which the relevant payment is made, which interest is payable by the Purchaser to Omnia on demand.
- (b) Without limiting its other rights and remedies, Omnia may terminate a Contract with immediate effect by giving written notice to the Purchaser, if the Purchaser:
- (i) breaches any obligation of the Purchaser under that Contract (including the obligation of the Purchaser to pay any amounts when due under that Contract) and if the breach is capable of remedy, the Purchaser does not remedy the breach within 7 days after being notified in writing by Omnia; or
 - (ii) has a receiver, receiver and manager, liquidator, provisional liquidator, trustee, mortgagee in possession, administrator, controller or inspector appointed under any law (or any similar official is appointed in respect of the Purchaser or any of its assets) or the Purchaser is unable to pay its debts when due or otherwise is, becomes or is deemed to be insolvent or bankrupt.

13. Consequences of termination

- (a) Subject to the other provisions of this clause 13, on termination of a Contract, the Contract is at an end as to its future operation except for the enforcement of any right or claim that arises on, or has arisen before, the termination.
- (b) On termination of a Contract for any reason, and without limiting its other rights and remedies, Omnia may at its option exercise any one or more of the following rights by giving written notice to the Purchaser:
- (i) suspend delivery or supply of further Products and/or Services to the Purchaser, whether under that or any other Contracts;
 - (ii) terminate one or more other Contracts;
 - (iii) withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all moneys owed to Omnia by the Purchaser from time to time (and the Purchaser must comply with that requirement);
 - (iv) issue an invoice for, and demand immediate payment of, Products and/or Services ordered by the Purchaser but not delivered, whether under that or any other Contracts (and the Purchaser must comply with that demand);
 - (v) in respect of Products already delivered or otherwise supplied to the Purchaser and which have not been fully paid for by the Purchaser, enter onto the premises where those Products are located to recover and resell those Products (and the Purchaser must ensure that Omnia is able to exercise that right of entry); and
 - (vi) exercise any other rights that Omnia has under the PPSA, that Contract and any other applicable law.
- (c) In all other respects, clauses 1, 4, 5, 6, 7, 10, 13, 14, 15, 16, 17, 18, 19, 21, 22 and 23 survive termination of any Contract.

14. Warranty

- (a) Subject to the other provisions of this clause 14 and clause 18, Omnia warrants to the Purchaser that at the time of delivery or supply of any Products and/or Services under a Contract, those Products and Services comply with any specifications for those Products and

Services as set out in that Contract, and to the maximum extent permitted by law Omnia makes no other representations or warranties in relation to any Products or Services.

- (b) If:
- (i) Products are delivered by Omnia to the Purchaser; and
 - (ii) the relevant Contract provides for those Products to be on sold by the Purchaser as a wholesaler, distributor or reseller of Omnia (or the Purchaser is otherwise approved in writing by Omnia as a wholesaler, distributor or reseller of Omnia),
- then any claim for a breach of the warranty provided by Omnia in clause 14(a) in respect of any of those Products (or any other claim in respect of any of those Products) must be made within 12 months after the date of delivery by the Purchaser to the Purchaser's customer of the Products the subject of the claim.
- (c) If:
- (i) Products are delivered by Omnia to the Purchaser in circumstances where clause 14(b)(ii) does not apply; or
 - (ii) Services are supplied by Omnia to the Purchaser,
- then any claim for a breach of the warranty provided by Omnia in clause 14(a) in respect of any of those Products or Services (or any other claim in respect of any of those Products or Services) must be made within 12 months after the date of delivery or supply by Omnia to the Purchaser of the Products or Services the subject of the claim.
- (d) If the Purchaser considers that it is entitled to make a claim under this clause 14 (or otherwise in relation to any Products or Services) (**Warranty Claim**), then the Purchaser must (at its cost):
- (i) notify Omnia by email or post (using the contact details set out on the first page of these Conditions or as otherwise notified by Omnia) before the end of the relevant 12 month period under clause 14(b) or 14(c);
 - (ii) as part of that notification, provide Omnia with:
 - (A) details of the alleged defect that relates to those Products or Services;
 - (B) the Purchaser's full name, address and telephone number;
 - (C) a copy of the Contract relating to those Products or Services; and
 - (D) any other information required by Omnia; and
 - (iii) if the Warranty Claim is in relation to any Products, cause the allegedly defective Products to be returned to Omnia for inspection at the address set out on the first page of these Conditions.
- (e) Subject to clause 14(f), if Omnia is satisfied that the Purchaser has the right to make a Warranty Claim and that the relevant Products or Services are defective, then Omnia will take any relevant action contemplated by clause 18(f) (as if those Products or Services were not of a kind ordinarily acquired for personal, domestic or household use or consumption) and to the extent permitted by law, this will be the Purchaser's sole remedy.
- (f) This clause 14(f) only applies where the Purchaser is a Consumer in connection with the supply of the relevant Products and/or Services. Omnia's Products and Services come with guarantees that cannot be excluded under the Australian Consumer Law. For Major Failures with Services, the Purchaser is entitled:
- (i) to cancel the Contract with Omnia for those Services; and
 - (ii) to a refund for the unused portion, or to compensation for the reduced value of those Services.
- The Purchaser is also entitled to choose a refund or replacement for Major Failures with Products. If a failure with any Products or Services does not amount to a Major Failure, the Purchaser is entitled to have the failure rectified in a reasonable time. If this is not done the Purchaser is entitled to a refund for those Products and to cancel the Contract for those Services and obtain a refund of any unused portion. The Purchaser is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Products or Services.
- (g) To the maximum extent permitted by law, the warranties and other requirements in this clause 14 do not cover defects, failures, non-

performance, damage or other issues which Omnia determines to have been caused by:

- (i) improper use;
 - (ii) improper installation;
 - (iii) fire, water, lightning, frost or accidental damage;
 - (iv) any alteration, repair or other technical manipulation (without Omnia's consent) by the Purchaser or any other person not acting under the direction or control of Omnia;
 - (v) any other act or omission of the Purchaser or any other person not acting under the direction or control of Omnia;
 - (vi) the fitting or use of parts or accessories not approved by Omnia;
 - (vii) normal wear and tear; or
 - (viii) Omnia complying with any specifications or requirements provided or agreed by the Purchaser.
- (h) To the maximum extent permitted by law, the following additional terms and conditions will apply in respect of any Warranty Claim:
- (i) to the extent that this clause 14 (or any applicable law) places a repair or replacement obligation on Omnia, the relevant Products or any other consumables or materials used in relation to that repair or replacement may (where possible) instead be replaced by second hand or refurbished products, consumables or other materials (as the case may be) of the same or similar type (and being in the same or better condition as the original item would have been at that time if it did not have the relevant defect or other issue); and
 - (ii) without limiting any other provisions in these Conditions, Omnia will not be liable under any Warranty Claim relating to any Products or Services if:
 - (A) any moneys are owing by the Purchaser to Omnia in relation to any of the Products or Services; or
 - (B) the Purchaser is in breach of the relevant Contract.
- (i) In this clause 14, terms that are capitalised and not otherwise defined in these Conditions have the meaning given to them in the Australian Consumer Law.

15. Confidentiality

- (a) Subject to clause 15(b), the Purchaser must:
- (i) keep the Confidential Information confidential and not directly or indirectly disclose, divulge or communicate any Confidential Information to, or otherwise place any Confidential Information at the disposal of, any other person without the prior written approval of Omnia;
 - (ii) take all reasonable steps to secure and keep secure all Confidential Information coming into the Purchaser's possession or control; and
 - (iii) not memorise, use, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than in connection with the performance by the Purchaser of obligations under a Contract.
- (b) The obligations of confidentiality under clause 15(a) do not apply to any disclosure of Confidential Information by the Purchaser to the extent required by law.
- (c) Immediately on the written request of Omnia or on the termination of a Contract for any reason, the Purchaser must cease the use of all Confidential Information of or relating to Omnia (or any Related Entity of Omnia) and deliver to Omnia all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, to the extent directed by Omnia, destroy, and certify to Omnia that it has destroyed, those documents and materials.

16. Return of Products

To the maximum extent permitted by law, and subject to clauses 14, 17 and 18, Omnia may, but will not be required to, accept a return of any Product, and no return will be accepted by Omnia unless it is authorised in writing by an officer or authorised representative of Omnia.

17. Product Recalls and other Product issues

- (a) Omnia and the Purchaser must notify each other of all relevant details within 24 hours after either of them becomes aware of any circumstances which may lead to a recall or withdrawal of any of the Products, whether for health, safety or other reasons (**Product Recall**).
- (b) The Purchaser must also promptly notify Omnia of all relevant details if any one or more of the following occurs (each a **Product Issue**):
- (i) a customer or any other person returns or purports to return a Product to the Purchaser;
 - (ii) a customer or any other person is given or seeks a refund or other payment from the Purchaser in respect of a Product sold by the Purchaser; or
 - (iii) a customer or any other person makes a claim against the Purchaser in relation to a Product or raises any other material issue or concern with a Product.
- (c) Omnia may at its discretion initiate a Product Recall.
- (d) If Omnia initiates a Product Recall, then:
- (i) Omnia must promptly notify the Purchaser of all relevant details concerning the Product Recall;
 - (ii) the Purchaser must comply with, and must use reasonable endeavours to procure its customers to comply with, Omnia's directions in relation to the Product Recall;
 - (iii) without limiting clause 17(d)(ii), Omnia and the Purchaser must comply with, and the Purchaser must use reasonable endeavours to procure its customers to comply with, any action plan put in place by Omnia in relation to the Product Recall; and
 - (iv) unless and until Omnia directs the Purchaser otherwise, the Purchaser must immediately cease selling any affected Products.
- (e) The Purchaser must comply with, and must use reasonable endeavours to procure that its customers comply with, Omnia's directions in relation to the handling of any Product Issues.
- (f) Unless a Product Recall or other Product Issue results from a wrongful, wilful or negligent act or omission of the Purchaser, or a breach of a Contract or any law by the Purchaser, in relation to each Product that is the subject of that Product Recall or other Product Issue (and which has been fully paid for by the Purchaser to Omnia), Omnia will (at its sole discretion) either:
- (i) replace that Product with a new Product with equivalent specifications;
 - (ii) repair that Product; or
 - (iii) credit the account of the Purchaser for the cost of that Product.
- (g) If a Product Recall or other Product Issue results from a wrongful, wilful or negligent act or omission of the Purchaser, or a breach of a Contract or law by the Purchaser, the Purchaser must indemnify Omnia from and against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Omnia or which Omnia may pay, sustain or incur as a direct or indirect result of the Product Recall or other Product Issue.

18. Liability

- (a) Subject to the other provisions of this clause 18, and to the maximum extent permitted by law, Omnia is not liable to the Purchaser or to any other person for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, or loss or damage resulting from wasted management time, irrespective of whether the loss or damage is caused by or relates to a breach of contract, statute, tort (including negligence) or otherwise, or Omnia or any other person was previously notified of the possibility of that loss or damage.
- (b) Any warranty, guarantee, condition, representation, undertaking or other right that would be implied in or otherwise required in connection with any Contract by legislation, common law, equity, trade, custom or usage, is excluded to the maximum extent permitted by law.
- (c) Any advice, recommendation, information or assistance provided by Omnia in relation to any Products and/or Services or their use or application (except to the extent that Omnia expressly agrees in

- writing to provide such advice or information) is given in good faith and, to the maximum extent permitted by law, Omnia does not accept any responsibility or liability in relation to any loss or damage arising in respect of any such advice, recommendations, information or assistance.
- (d) Notwithstanding the other provisions of this clause 18 and anything else in any Contract, Omnia does not exclude, restrict or modify any warranty, guarantee, condition, representation, undertaking or other right under any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene that statute or cause any part of any Contract to be void (**Non-excludable Condition**).
- (e) Subject to the other provisions of this clause 18, the maximum aggregate liability of Omnia for all proven losses, damages and claims arising out of any Contract, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Purchaser to Omnia under the Contract to which the relevant breach, negligence, tort or common law or statutory action relates.
- (f) To the maximum extent permitted by law, the liability of Omnia for a breach of any Non-excludable Condition in respect of any Products or Services delivered or supplied under a Contract that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited, at Omnia's option to:
- (i) in the case of Products:
 - (A) the replacement of the Products or the supply of equivalent products;
 - (B) the repair of the Products;
 - (C) the payment of the cost of replacing the Products or of acquiring equivalent products; or
 - (D) the payment of the cost of having the Products repaired; and
 - (ii) in the case of Services:
 - (A) the supplying of the Services again; or
 - (B) the payment of the cost of having the Services supplied again.
- 19. Intellectual Property**
- (a) The parties acknowledge and agree that all Intellectual Property Rights are owned by Omnia.
- (b) Nothing in these Conditions:
- (i) entitles the Purchaser to acknowledge, display, use, sublicense, publish or otherwise refer to any Intellectual Property Rights; or
 - (ii) constitutes a grant to or creates in favour of the Purchaser any goodwill, proprietary right or ownership in or in relation to any Intellectual Property Rights.
- (c) The Purchaser must:
- (i) not represent itself as the owner of or having any interest in the Intellectual Property Rights or any part of them except as otherwise agreed in writing by Omnia;
 - (ii) not use or allow the use of any Intellectual Property Rights or any part of them in a manner that is contrary to or conflicts with or in any way damages the title or interest of Omnia in the Intellectual Property Rights;
 - (iii) do all acts and things reasonably required by Omnia to defend Omnia's Intellectual Property Rights including the provision of any evidence required by Omnia for use in the preparation or conduct of any proceedings relating to unauthorised use or infringement of the Intellectual Property Rights;
 - (iv) not challenge or call into question in any way the right, title, interest or goodwill of Omnia in respect of the Intellectual Property Rights;
 - (v) not register or attempt to register under the provisions of any statute or otherwise any of the Intellectual Property Rights;
 - (vi) not modify, reverse engineer or make a copy of any of the Intellectual Property Rights for any purpose;
 - (vii) do all other acts and things that may be reasonably required by Omnia to ensure the protection of the Intellectual Property Rights; and
 - (viii) immediately notify Omnia of any issue, claim, demand, threat, notice of proceedings or causes of action (whether contingent, accrued or otherwise) against the Purchaser relating to any Intellectual Property Rights.
- 20. Force Majeure**
- (a) Where any failure or delay by Omnia in the performance of its obligations under a Contract is caused, directly or indirectly, by a Force Majeure Event, Omnia is not liable for that failure or delay and Omnia's obligations under that Contract are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.
- (b) If a Force Majeure Event impacts on one or more Purchase Orders accepted by Omnia and continues for more than 90 consecutive days, then Omnia may terminate any one or more of those Purchase Orders by giving at least 7 days' notice to the Purchaser, and in the event Omnia has been paid for any Products and/or Services but is unable to deliver them, Omnia will refund to the Purchaser the amounts paid by the Purchaser to Omnia in respect of those Products and/or Services.
- 21. Health and safety**
- (a) The Purchaser is solely responsible to ensure that all applicable health and safety laws are observed, and other appropriate steps are taken in relation to the storage, handling and use of the Products.
- (b) Where information is obtained by the Purchaser on potential hazards relating to any Products and/or Services, the Purchaser must immediately bring that information to the attention of its employees, agents, sub-contractors, visitors and customers.
- (c) Without limiting clause 21(a), it is the Purchaser's sole responsibility to provide safe facilities for the reception of the Products into storage.
- 22. Indemnity**
- (a) The Purchaser must indemnify Omnia, each of its Related Entities and the directors, employees and agents of Omnia or any of its Related Entities (**Indemnified Parties**) on demand in respect of all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against any of the Indemnified Parties or which any of the Indemnified Parties may pay, sustain or incur as a direct or indirect result of any breach or non-performance of any Contract by the Purchaser, or as a direct or indirect result of any wrongful, wilful or negligent act or omission of the Purchaser or any employees, directors or agents of the Purchaser.
- (b) To the extent that the indemnity in clause 22(a) is expressed to be for the benefit of a Related Entity of Omnia, Omnia enters into the relevant Contract in its own capacity and in its capacity as trustee and agent for that Related Entity, and Omnia is entitled to enforce the indemnity for the benefit of itself and that Related Entity.
- 23. General**
- (a) Headings are used for convenience only and do not affect the interpretation of any Contract.
- (b) Any notice to be given by Omnia to the Purchaser under these Conditions may be given personally, by post, by fax or by email.
- (c) The word "person" (including a party) includes a natural person, company, other body corporate, partnership, firm, joint venture, trust, association, government agency and any other body or entity whether incorporated or not, and that person's successors, permitted assigns, substitutes, executors and administrators.
- (d) A reference to either Omnia or the Purchaser includes its respective executors, administrators, successors and permitted assigns.
- (e) Wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".
- (f) If any provision of a Contract is or becomes invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected.
- (g) A failure or delay by Omnia in exercising any right conferred on Omnia under any Contract does not operate as a waiver of the right.

- (h) The Purchaser must not transfer, assign, create an interest in or deal in any other way with any of its rights under any Contract without the prior written consent of Omnia.
- (i) The Purchaser must not set off against or deduct from any Price or other amounts owing to Omnia, any amounts owed or claimed to be owed to the Purchaser by Omnia, nor withhold payment of any amount due to Omnia because that amount or any part of it is in dispute.
- (j) Each Contract is governed by and must be construed in accordance with the laws of New South Wales, Australia. The Purchaser submits to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to that Contract.

24. Dictionary

In these Conditions, the following terms have the following meanings:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Conditions means these General Terms & Conditions of Trade;

Confidential Information means:

- (a) the terms of each Contract and its subject matter, including Information submitted or disclosed by Omnia during negotiations, discussions and meetings relating to any Contract;
- (b) the Intellectual Property Rights;
- (c) all scientific, technical, product and marketing Information, processes (including manufacturing processes), systems, procedures, databases, manuals, formulae, recipes, notes, trade secrets, know-how, financial Information, business records, documentation, advices, reports and other Information used by Omnia or relating in any way to the business of Omnia (or any Related Entity of Omnia);
- (d) Information that at the time of disclosure by Omnia is identified to the Purchaser as being confidential; and
- (e) all other Information belonging or relating to Omnia (or any Related Entity of Omnia) that is not generally available to the public at the time of disclosure or which the Purchaser knows, or ought reasonably to be expected to know, is confidential to Omnia (or any Related Entity of Omnia);

Consumer has the meaning given in the Australian Consumer Law;

Consumer Contract has the meaning given in section 23(3) of the Australian Consumer Law;

Contract means a contract (whether or not in writing) between or involving the Purchaser and Omnia for the supply of Products and/or Services by Omnia to the Purchaser, to which these Conditions apply (including any quotation or invoice given by Omnia to the Purchaser, any Purchase Order to the extent it is accepted by Omnia, or any other agreement or deed agreed and signed by Omnia, the Purchaser and possibly one or more other parties);

Force Majeure Event means any act, event or cause beyond the control of the party affected, including:

- (a) an act of God, peril of the sea, accident of navigation, war, sabotage, riot, act of terrorism, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the party concerned), pandemic, epidemic, quarantine, radiation or radioactive contamination;
- (b) action or inaction of a government agency, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; or
- (c) the failure or inability of any supplier of Omnia to deliver or supply any goods or services required by Omnia to deliver or supply any Products and/or Services to the Purchaser;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Information means any information, whether oral, graphic, written or in any other form, including:

- (a) forms, memoranda, letters, specifications, processes, procedures, statements, formulae, technology, inventions, trade secrets, research and development information, know how, designs, plans,

photographs, microfiche, business records, notes, accounting procedures, financial information, sales and marketing information, names and details of customers, suppliers and agents, employee details, reports, drawings and data;

- (b) copies and extracts made of or from that information and data, whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered; and
- (c) samples or specimens (if any) disclosed either before or after entering into a Contract;

Intellectual Property Rights means all present and future intellectual and industrial property rights in any of the Products or Services (or any documents or materials in written, electronic or other form that are contained in or associated with any of the Products or Services), or otherwise held by Omnia, conferred by law and whether existing now or in the future, including:

- (a) patents, designs, trade marks, copyright (including future copyright), rights in circuit layouts, know how, domain names, inventions, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply from registration of any of those rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals and extensions of those rights;

Omnia means the company specified in or contemplated by a Contract as being the supplier of the relevant Products, being Rotacaster Wheel Pty Limited ACN 100 342 256 trading as Omnia Wheel or a Related Body Corporate of that company;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Prescribed Rate means the relevant rate of interest prescribed by rule 36.7(1) of the *Uniform Civil Procedure Rules 2005* (NSW);

Prices has the meaning given in clause 4;

Products means any goods manufactured and/or supplied (or to be manufactured and/or supplied) by Omnia to the Purchaser (including those products specified in any Contract);

Purchase Order means any purchase order, instruction, specification or requisition issued by the Purchaser to Omnia relating to Products and/or Services (including any orders made by the Purchaser from Omnia via Omnia's online portal if permitted by the relevant Contract);

Purchaser means the person specified in or contemplated by a Contract as being the purchaser of the relevant Products and/or Services from Omnia;

Regulated Contract means a Consumer Contract or a Small Business Contract;

Related Body Corporate and **Related Entity** have the meaning given in the *Corporations Act 2001* (Cth);

Services means any services supplied by Omnia to the Purchaser (including those services specified in any Contract); and

Small Business Contract has the meaning given in section 23(4) of the Australian Consumer Law.