



Heat Exchangers WA Pty Ltd

6/12 Carole Road, Maddington WA 6109, Australia

Phone No : 08 9493 2900 Fax No : 08 9493 3900

www.heatexchangers.com.au ABN 61 101 768 487

Heat Exchangers WA Security Agreement (V.1)

1. DEFINITIONS

Unless the context requires otherwise:

- (a) **Buyer** means the person or company who is the buyer under the Purchase Agreement;
- (b) **Goods** means the goods supplied by Heat Exchangers to the Buyer pursuant to the Purchase Agreement;
- (c) **Heat Exchangers** means Heat Exchangers WA Pty Ltd;
- (d) **PPS Law** means the *Personal Property Securities Act 2009* (Cth) and any amended, replacement and successor provisions or legislation;
- (e) **Purchase Agreement** means the agreement for the purchase of the Goods by the Buyer;
- (f) **Purchase Price** means the price for the Goods pursuant to the Purchase Agreement; and
- (g) **Security Agreement** means this agreement, as amended or supplemented from time to time.

2. TERMS

- (a) These terms are subject to alteration by Heat Exchangers without notice.
- (b) This Agreement commences on the date the Purchase Agreement commences and is conditional on the parties entering into the Purchase Agreement.
- (c) The parties agree to keep and treat the contents of this Security Agreement as confidential.

3. OPERATIVE PART

In consideration of Heat Exchangers supplying the Goods to the Buyer and in order to secure the Buyer's obligations, to pay the Purchase Price, the Buyer grants to Heat Exchangers a security interest in the Goods (and their proceeds).

4. RETENTION OF TITLE

Title to the Goods supplied by Heat Exchangers to the Buyer shall remain with Heat Exchangers unless and until the Purchase Price of the Goods and all monies owing to Heat Exchangers have been paid in full (**Debt**).

The Buyer shall have the right to resell the Goods, but only as fiduciary agent and trustee for Heat Exchangers by way of bona fide sale at full market value and in the ordinary course of its business.

Unless and until the Debt has been paid in full, the Buyer shall:

- (a) take custody of the Goods as trustee, fiduciary agent and bailee for Heat Exchangers;
- (b) keep the Goods separate from any other goods and properly marked, stored, protected and insured;
- (c) hold all of the money it receives (**Proceeds**):
 - (i) from sale of any property into which the Goods have been incorporated; or
 - (ii) from the sale of goods or provision of services including the Goods, as bailee, fiduciary agent and trustee for Heat Exchangers, in a separate account to the amount

of the Debt, and receipt by the Buyer of payment shall be conclusive evidence that it has received Proceeds.

Heat Exchangers may at any time without notice to the Buyer and without prejudice to any other rights which it may have against the Buyer, terminate any agreement connected with the Goods and enter upon any premises owned or occupied by the Buyer where Heat Exchangers reasonably believes the Goods may be stored, and repossess the goods without liability for any damage caused, and subsequently dispose of the Goods at Heat Exchangers' discretion if:

- (i) the Debt is not paid in accordance with this Security Agreement; or
- (ii) Heat Exchangers has reasonable grounds for believing that:
 - A a third person may attempt to levy execution against the Goods;
 - B the Buyer is insolvent (within the meaning of the *Corporations Act 2001* (Cth)) or bankrupt; or
 - C the Buyer has entered into any arrangement or composition with its creditors, gone into liquidation, or has appointed a receiver, a receiver and manager or administrator.

If after repossession Heat Exchangers sells the Goods, it must account to the Buyer for any excess of the proceeds of sale (less expenses of repossession and sale) over the Debt.

If any Goods are disposed of by the Buyer or an insurance claim is made in respect of them, Heat Exchangers shall be entitled to trace the sale or insurance proceeds, which Proceeds shall be held by Buyer in a separate bank account on trust for Heat Exchangers.

5. PPS Law

The Buyer acknowledges that these terms and conditions constitute a security agreement for the purposes of section 20 of the PPSA Law and that a security interest exists in all Goods (and their proceeds) previously supplied by Heat Exchangers to the Buyer (if any) and in all future goods (and their proceeds).

The Buyer will execute documents and do such further acts as may be required by Heat Exchangers to register the security interest on the PPS Register and otherwise ensure that Heat Exchangers' security interest is enforceable, perfected and otherwise effective under the PPS Law. The Buyer irrevocably appoints Heat Exchangers as its attorney for the purpose of executing on the Buyer's behalf those documents, acts, matters, or things, necessary to give effect to this provision;

Until ownership of the Goods passes, the Buyer waives its rights in relation to (and the parties contract out of) the following provisions of Chapter 4 of the PPS Law for the purposes of section 115:

- (a) to receive a notice of intention of removal of an accession (section 95);
- (b) to receive notice on enforcement of security in liquid assets (section 120);



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- (c) to receive a notice on enforcement action against liquid assets (section 121(4));
- (d) to receive a notice to seize collateral (section 123);
- (e) to receive a notice of disposal of goods by Heat Exchangers purchasing the goods (section 129);
- (f) to receive a notice to dispose of goods (section 130);
- (g) to receive a statement of account following disposal of goods (section 132(2));
- (h) to receive a statement of account if no disposal of goods for each 6 month period (section 132(4));
- (i) to receive notice of any proposal of Heat Exchangers to retain goods (section 135(2));
- (j) to object to any proposal of Heat Exchangers to either retain or dispose of goods (section 137(2));
- (k) to redeem the goods (section 142);
- (l) to reinstate the security agreement (section 143); and
- (m) to receive a notice of any verification statement (section 157(1) and section 157(3)).

The rights of Heat Exchangers under this Security Agreement are in addition to and not in substitution for Heat Exchangers' rights under other law (including the PPS Law) and Heat Exchangers may choose whether to exercise rights under this Security Agreement, and/or under such other law, as it sees fit.

Until ownership of the goods passes, the Buyer must not give to Heat Exchangers a written demand or allow any other person to give Heat Exchangers a written demand requiring Heat Exchangers to register a financing change statement under the PPS Law or enter into or allow any other person to enter into the PPS Register a financing change statement as defined in the PPS Law.

The Buyer acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest (as defined in the PPS Law).

The Buyer irrevocably grants to Heat Exchangers the right to enter upon the Buyer's property or premises, without notice, and without being in any way liable to the Buyer or to any third party, if Heat Exchangers has cause to exercise any of Heat Exchangers' rights under section 123 and/or section 128 of the PPS Law, and the Buyer shall indemnify Heat Exchangers from any claims made by any third party as a result of such exercise of Heat Exchangers' rights.

If the Buyer changes its names or details, it undertakes to provide Heat Exchangers with notice of its updated details.

The parties acknowledge and agree that the terms in this Security Agreement are supplementary to Heat Exchangers' rights under the PPS Law.