

**1. Definitions**

- 1.1 “Adhere” means Adhere Promotions Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Adhere Promotions Pty Ltd.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by Adhere to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Agreement” means this agreement including any schedule and any other agreement expressed to be supplemental to this agreement for the order placed by the Client and all other amendments to such a document for which has been accepted by Adhere.
- 1.5 “Price” means the Price payable for the Goods as agreed between Adhere and the Client in accordance with clause 4 below.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places a purchase order for the Goods, or accepts Delivery.
- 2.2 In the event that the client elects to control their purchases by a Purchase Order, the Client agrees to provide Adhere with a duly authorised purchase order number for all Goods ordered or purchased.
- 2.3 The Client agrees to make payment to Adhere in accordance with clause 4 below for any Goods supplied, irrespective of whether the Client has provided a duly authorised purchase order number or not.
- 2.4 The Client acknowledges and agrees that where the Client does not elect to control their purchases by a Purchase Order and/or a Letter of Authority, then all purchases made by the Client and/or any other third party acting on behalf of the Client (where such Goods are charged to the Client’s credit account), shall remain at all times payable by the Client. All said notices of restrictions pertaining to purchases must be in writing and will remain in place until such time as the Client revokes.
- 2.5 The Client agrees to notify Adhere in writing immediately upon the departure of the Client’s employee if an authorised account user. The Client acknowledges they will be bound by all purchase orders made by that account user.
- 2.6 These terms and conditions may only be amended with Adhere’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Adhere.
- 2.7 Prior to the production of the Goods, a pre-production sample or artwork approval form will be sent to the Client for sign-off approval via email, which must be completed and returned to Adhere in writing. Once received by Adhere, production of the Goods will commence.

**3. Change in Control**

- 3.1 The Client shall give Adhere not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Adhere as a result of the Client’s failure to comply with this clause.

**4. Price and Payment**

- 4.1 At Adhere’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by Adhere to the Client; or
  - (b) Adhere’s quoted price (subject to clause 5) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 At Adhere’s sole discretion, a deposit may be required.
- 4.3 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Adhere, which may be:
  - (a) prior to production;
  - (b) on Delivery;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given or posted to the Client by Adhere.
- 4.4 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three percent (3%) of the Price for any Amex transactions), or by any other method as agreed to in writing between the Client and Adhere.
- 4.5 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Adhere an amount equal to any GST Adhere must pay for any supply by Adhere under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**5. Variations**

- 5.1 Adhere reserves the right to change the Price:
  - (a) if a variation to Adhere’s quotation is requested, including but not limited to:
    - (i) when design, style, type or layout is left to Adhere’s judgement and the Client makes further alterations to the artwork;
    - (ii) when quotations are based on specifications, roughs, layouts, samples or printed, typewritten or other copy,
    - (iii) any extra work or cost caused by any variation by the Client of their original instructions or by the artwork submitted being, in Adhere’s opinion, poorly prepared;
    - (iv) where the Client’s requirements are different from those originally submitted or described;
    - (v) all work carried out whether experimentally or otherwise at the Client’s request;
    - (vi) any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating;
    - (vii) any cost of fonts, or colour proofs, or artwork, specially bought at the Client’s request for the production of the Goods.

(viii) any change or correction to any artwork and/or any printing surface supplied by the Client which is deemed necessary by Adhere to ensure correctly produced Goods.

(b) in the event of increases to Adhere in the cost of labour or materials, or due to fluctuations in currency exchange rates, which are beyond Adhere's control.

## **6. Delivery**

6.1 Delivery of the Goods ("**Delivery**") is taken to occur at the time that Adhere (or Adhere's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

6.2 At Adhere's sole discretion, the cost of Delivery is in addition to the Price.

6.3 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Client is unable to take Delivery as arranged then the Good should be considered delivered hereunder and Adhere shall be entitled to charge a reasonable fee for redelivery and/or storage.

6.4 Adhere may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

6.5 Any time or date given by Adhere to the Client is an estimate only. The Client must still accept Delivery even if late and Adhere will not be liable for any loss or damage incurred by the Client as a result of delays in delivery schedules due to unforeseen circumstances, including, but not limited to:

(a) any action or inaction by authorities and/or customs;

(b) quarantine and/or agricultural holds;

(c) international shipping delays;

(d) local freight delays; or

(e) weather conditions.

## **7. Risk**

7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Adhere is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Adhere is sufficient evidence of Adhere's rights to receive the insurance proceeds without the need for any person dealing with Adhere to make further enquiries.

7.3 If the Client requests Adhere to leave Goods outside Adhere's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

7.4 Whilst every care is taken by Adhere to carry out the instructions of the Client, it is the Client's responsibility to review/proof the artwork and/or order prior to authorising the production of the Goods. Subject to clause 12, Adhere shall be under no liability whatever for:

(a) any errors not corrected by the Client, and should the Client's alterations require additional proofs this shall be invoiced as an extra;

(b) any variation (beyond the reasonable control of Adhere) in colours between the approved artwork and the finished Goods.

7.5 Adhere is under no obligation to provide samples of Goods ordered other than by virtual (computerised) sample. Should a physical sample be required this will be provided on request by the Client and will be charged for as additional to the Price.

7.6 The Client acknowledges that variations of colour and shade are inherent in fabric dye lots. Whilst every effort will be taken by Adhere to match colour and shade of the Goods (including PMS colours), Adhere shall not be liable for any loss, damage or costs, howsoever arising resulting from any variation in colour and shading between batches, or samples (including but not limited to virtual or physical samples), and the final Goods supplied.

7.7 Adhere shall not be held liable for inks wearing off through general wear and tear.

## **8. Client-Supplied Materials**

8.1 Where the Client has supplied materials for Adhere to complete production of the Goods, the Client acknowledges that:

(a) the materials must be brand new. Used or second-hand materials will not be accepted by Adhere for use in the production of the Goods; and

(b) adequate quantities shall be supplied to cover spoilage. The materials shall not be counted or checked when received unless requested by the Client in writing. An additional charge may be made by Adhere in respect of any such counting or checking requested by the Client.

8.2 The Client accepts responsibility for the suitability of purpose, quality and any faults inherent in materials supplied by the Client, and Adhere shall not be responsible for any imperfections caused by defects in, or the unsuitability of, the materials, and any loss or damage to the materials and/or Goods (or any part thereof), howsoever arising from the use of the materials supplied by the Client.

8.3 In the case of materials and/or property left with Adhere without specific instructions, Adhere shall be free to dispose of them at the end of twelve (12) months after receiving them and to accept and retain any proceeds gained from such disposal to cover Adhere's costs in holding and handling such items.

## **9. Title**

9.1 Adhere and the Client agree that ownership of the Goods shall not pass until:

(a) the Client has paid Adhere all amounts owing to Adhere; and

(b) the Client has met all of its other obligations to Adhere.

9.2 Receipt by Adhere 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 Adhere's ownership or rights in respect of the Goods, and this agreement, shall continue.

9.3 It is further agreed that:

(a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to Adhere on request.

(b) the Client holds the benefit of the Client's insurance of the Goods on trust for Adhere and must pay to Adhere the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Adhere and must pay or deliver the proceeds to Adhere on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Adhere and must sell, dispose of or return the resulting product to Adhere as it so directs.
- (e) the Client irrevocably authorises Adhere to enter any premises where Adhere believes the Goods are kept and recover possession of the Goods.
- (f) Adhere may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Adhere.
- (h) Adhere may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

#### 10. Personal Property Securities Act 2009 (“PPSA”)

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Adhere to the Client.
- 10.3 The Client undertakes to:
  - (a) 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 Adhere 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 10.3(a)(i) or 10.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Adhere for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Adhere;
  - (d) 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 Adhere;
  - (e) immediately advise Adhere 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.
- 10.4 Adhere and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Adhere, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by Adhere under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

#### 11. Security and Charge

- 11.1 In consideration of Adhere agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies Adhere from and against all Adhere’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Adhere’s rights under this clause.
- 11.3 The Client irrevocably appoints Adhere and each director of Adhere as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client’s behalf.

#### 12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Client must inspect the Goods on Delivery and must within seven (7) days of such time notify Adhere in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Adhere to inspect the Goods.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.3 Adhere acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Adhere makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Adhere’s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, Adhere’s liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Adhere is required to replace the Goods under this clause or the CCA, but is unable to do so, Adhere may refund any money the Client has paid for the Goods.

- 12.7 If the Client is not a consumer within the meaning of the CCA, Adhere's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Adhere at Adhere's sole discretion;
  - (b) limited to any warranty to which Adhere is entitled, if Adhere did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
  - (b) Adhere has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Adhere shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store the Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by Adhere;
  - (e) fair wear and tear, any accident, or act of God.
- 12.10 Notwithstanding anything contained in this clause if Adhere is required by a law to accept a return then Adhere will only accept a return on the conditions imposed by that law.

### **13. Intellectual Property**

- 13.1 Where Adhere has designed, drawn or developed Goods for the Client, then:
- (a) the copyright in any designs and drawings and documents shall remain the property of Adhere; and
  - (b) the Client undertakes to acknowledge Adhere's design or drawings in the event that images of the Goods are utilised in advertising or marketing material by the Client.
- 13.2 The Client warrants that all designs, specifications or instructions given to Adhere will not cause Adhere to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Adhere against any action taken by a third party against Adhere in respect of any such infringement.
- 13.3 The Client agrees that Adhere may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Adhere has created for the Client.

### **14. Default and Consequences of Default**

- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Adhere's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes Adhere any money the Client shall indemnify Adhere from and against all costs and disbursements incurred by Adhere in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Adhere's contract default fee, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies Adhere may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Adhere may suspend or terminate the supply of Goods to the Client. Adhere will not be liable to the Client for any loss or damage the Client suffers because Adhere has exercised its rights under this clause.
- 14.4 Without prejudice to Adhere's other remedies at law Adhere shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Adhere shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Adhere becomes overdue, or in Adhere's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### **15. Cancellation**

- 15.1 Adhere may cancel any contract to which these terms and conditions apply or cancel Delivery at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Adhere shall repay to the Client any money paid by the Client for the Goods. Adhere shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Client cancels Delivery the Client shall be liable for any and all loss incurred (whether direct or indirect) by Adhere as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or a sign-off approval has been received by Adhere.

### **16. Privacy Act 1988**

- 16.1 The Client agrees for Adhere to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Adhere.
- 16.2 The Client agrees that Adhere may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.

- 16.3 The Client consents to Adhere being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Client agrees that personal credit information provided may be used and retained by Adhere for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 16.5 Adhere may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 16.6 The information given to the CRB may include:
- (a) personal information as outlined in 16.1 above;
  - (b) name of the credit provider and that Adhere is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Adhere has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Adhere, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.7 The Client shall have the right to request (by e-mail) from Adhere:
- (a) a copy of the information about the Client retained by Adhere and the right to request that Adhere correct any incorrect information; and
  - (b) that Adhere does not disclose any personal information about the Client for the purpose of direct marketing.
- 16.8 Adhere will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 16.9 The Client can make a privacy complaint by contacting Adhere via e-mail. Adhere will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 17. General**
- 17.1 The failure by Adhere to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Adhere's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which Adhere has its principal place of business, and are subject to the jurisdiction of the Parramatta Courts in that state.
- 17.3 Subject to clause 12, Adhere shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Adhere of these terms and conditions (alternatively Adhere's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 17.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Adhere nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.5 Adhere may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.6 The Client agrees that Adhere may amend these terms and conditions at any time. If Adhere makes a change to these terms and conditions, then that change will take effect from the date on which Adhere notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Adhere to provide Goods to the Client.
- 17.7 Where Adhere is unable, wholly or in part, by reason of an act of God, strike, lockout or other interference with work, war, declared or undeclared, act of terrorism, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, government or quasi-governmental restraint, ex-appropriation, prohibition intervention, direct or embargo, unavailability or delay in availability of equipment or transport, inability or delay in authorities or allocations, and any other cause whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of Adhere ("Force Majeure"), to carry out any obligation under the agreement and Adhere:
- (a) gives the client notice of that Force Majeure with reasonably full particulars and the probable extent to which Adhere will be unable to perform or be delayed in performing that obligation; and
  - (b) uses reasonable diligence to remove that Force Majeure as quickly as possible;
- then that obligation is suspended so far as it is affected by a Force Majeure during the continuance of that event.
- 17.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.