

**MEMORANDUM OF LEASE****CERTIFICATES OF TITLE BEING LEASED**

Lot 3 Primary Community Plan 26784 being the whole of the land in Certificate of Title Volume 6084 Folio 781

**ESTATE AND INTEREST**

Fee Simple

**ENCUMBRANCES**

Nil Mortgage No. 12087336

**LESSOR** (Full name and address)

STRAZDINS HENDON DEVELOPMENT PTY LTD ACN 132 745 156 of 98A Sydenham Road, Norwood SA 5067

**LESSEE** (Full name, address and mode of holding)

METAL MANUFACTURES LIMITED ACN 003 762 641 of 19-21 Loyalty Road North Rocks NSW 2151

**TERM OF LEASE**

COMMENCING ON THE.....1 JULY 2016.....

EXPIRING ON THE.....30 JUNE 2021.....

**RENT AND MANNER OF PAYMENT (OR OTHER CONSIDERATION)**

The amount set out in Item 7 of the Particulars to the Lease payable in accordance with clause 5 of the covenants

**OPERATIVE CLAUSE** <sup>(a)</sup> delete the inapplicable

The Lessor LEASES TO THE LESSEE the land <sup>(a)</sup> ABOVE / ~~HEREINAFTER~~ described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed <sup>(a)</sup> herein / in Memorandum No. \_\_\_\_\_ and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

**DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.**

Not Applicable

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:  
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

## Annexure A

### PARTICULARS

Item 1	Landlord:	Strazdins Hendon Development Pty Ltd ACN 132 745 156
Item 2	Tenant:	Metal Manufactures Limited ACN 003 762 641
Item 3	Land:	Lot 3 on Primary Community Plan 26784 Certificate of Title Volume 6084 Folio 781 being Unit 3, 4 Florence Street, Hendon SA
Item 4	Premises:	The whole of the Land
Item 5	Commencement Date:	1 July 2016
Item 6	Expiry Date:	30 June 2021
Item 7	Rent:	The amount determined in accordance with clause 6.1, where: A = \$33,049.08; B = the Adelaide Index Number for the quarter ending June 2016; and C = 106.8, being the Adelaide Index Number for the quarter ending June 2015, but not more than A increased by the Index Review Cap
Item 8	Market Review Dates:	1 July 2021
Item 9	Index Review Dates:	Annually on the anniversary of the Commencement Date including during the Further Term but excluding Market Review Dates
Item 10	Fixed Review Dates:	Not Applicable
Item 11	Fixed Percentage:	Not Applicable
Item 12	Index Review Cap:	3%
Item 13	Further Term:	5 years from 1 July 2021 to 30 June 2026
Item 14	Outgoings:	Local Authority rates and charges, land tax on a single holding basis, management fees capped at 4.75% of the Rent, body corporate levies, building insurance for the Risks, emergency service fees and ground maintenance (excluding structural maintenance)
Item 15	Tenant's Proportion:	100% attributable to the Premises
Item 16	Permitted Use:	Wholesale, warehouse and retail
Item 17	Allocated Number: (car parking)	3
Item 18	Landlord's Address:	Unit 7, 15 Fullerton Road Kent Town SA 5067

Item 19	Landlord's Fax:	(08) 8364 9696
Item 20	Tenant's Address:	19-21 Loyalty Road North Rocks NSW 2151
Item 21	Tenant's Fax:	(02) 8839 9154

**1. GRANT OF LEASE**

1.1 The Landlord leases the Premises to the Tenant for the Term.

**2. PERMITTED USE**

2.1 The Tenant may use the Premises for the Permitted Use, but not for any other purpose.

2.2 The Tenant may apply to the Landlord in writing for consent to change the Permitted Use. The Landlord must not unreasonably withhold its consent.

2.3 The Landlord may withhold its consent under clause 2.2 where the proposed use is not permitted under the town planning laws applicable to the Premises.

2.4 Where the Premises do not comprise the whole of the Land, or where the Landlord is the registered proprietor or has an interest in adjoining Land, the Landlord must not during the Term, lease or licence any other part of such Land owned by the Landlord, or in which the Landlord has an interest to a person who conducts a business which is substantially similar to the Tenant's business, or whose business would cause disruption to the Tenant's business by way of excessive noise or by production of dust.

**3. SUITABILITY OF PREMISES**

3.1 Intentionally deleted.

3.2 Intentionally deleted.

3.3 Intentionally deleted.

**4. QUIET POSSESSION**

4.1 If the Tenant complies with the terms of the Lease, the Landlord must permit the Tenant to peaceably occupy the Premises without interference.

**5. RENT**

5.1 The Tenant must:

- (a) pay the Rent to the Landlord by equal monthly instalments in advance on the same day of each month as the Commencement Date; and
- (b) pay the first instalment on the Commencement Date.

5.2 The Tenant may pay the Rent by electronic transfer to the Landlord's nominated bank account.

- 5.3 The Tenant will not be in default on any occasion where an electronic transfer has been delayed in reaching the Landlord's nominated account due to a weekend or public holiday occurring on the day when a monthly instalment falls due.
- 5.4 At the commencement of each year of the Term the Landlord must provide the Tenant with a tax invoice or tax invoices for Rent payable during that year.

## 6. RENT REVIEWS

- 6.1 The Rent may be adjusted on each Index Review Date to an amount represented by R where:

$$R = A \times \frac{B}{C}$$

A = the Rent payable immediately prior to the relevant Index Review Date;

B = the Index Number for the quarter ending immediately prior to the relevant Index Review Date;

C = the Index number published for the quarter one year before the quarter in B; and

R cannot be more than A increased by the Index Review Cap.

- 6.2 The Rent may be adjusted on each Fixed Review Date by increasing the Rent payable immediately prior to the relevant Fixed Review Date by the Fixed Percentage.
- 6.3 If either the Landlord or Tenant want to adjust the Rent on an Index Review Date or a Fixed Review Date then the party requiring adjustment must give notice to the other of the new Rent within 3 months after the relevant Review Date. The adjustment takes effect from the relevant Review Date. If neither party gives notice in compliance with this clause the Rent is not adjusted.
- 6.4 The Landlord may elect to review the Rent to current market rent from any Market Review Date. If the Landlord makes this election the following applies:
- (a) The Landlord must give notice to the Tenant ("Landlord's Notice") not more than 6 months and not less than 4 months prior to the relevant Market Review Date of the amount it considers to be the current market rent for the Premises.
  - (b) If a Landlord's Notice is not given within the time parameters specified in clause 6.4(a), the Rent will remain unchanged on the Market Review Date.
  - (c) The Tenant may accept or dispute the current market rent specified in the Landlord's Notice. The Tenant must give notice of this to the Landlord.
  - (d) If the parties have not agreed upon the current market rent within 2 months after service of the Landlord's Notice then the current market rent will be determined by a valuer.
  - (e) The valuer will be appointed by agreement between the parties. If the parties cannot reach agreement within 14 days after one party gives notice to the

other of its nomination, then the valuer will be nominated at the request of either party by the President of the Australian Property Institute.

- (f) The valuer:
  - (i) will act as an expert and not as an arbitrator; and
  - (ii) will be requested to make a written determination containing reasons within 1 month after appointment.
  
- (g) The valuer must:
  - (i) have regard to submissions from the Landlord and Tenant about the current market rent;
  - (ii) disregard the value of the goodwill of the Tenant's business;
  - (iii) disregard the value of the Tenant's fixtures and fittings;
  - (iv) adjust face rentals to which the valuer has regard, for any incentives given by landlords in the market-place for similar premises; and
  - (v) consider all other factors a prudent valuer would consider in determining current market rent.

The purpose of the adjustment for incentives is to ensure that the current market rent payable under this clause is equal to the effective rent for the Premises.

- (h) The valuer's determination is final and binding upon the parties.
  
- (i) The valuer's costs must be paid by the Landlord and Tenant equally. If one party pays the valuer's costs it may recover one half of that amount from the other.
  
- (j) Any variation of the Rent under this clause 6.4 takes effect from the relevant Market Review Date, even if the variation is not determined until after that Market Review Date.
  
- (k) If current market rent is not determined until after the relevant Market Review Date the Tenant will continue to pay the existing Rent. Within 14 days after determination the Landlord must refund any overpaid Rent or the Tenant must pay any shortfall.

## **7. OUTGOINGS**

- 7.1 The Tenant must pay to the Landlord the Tenant's Proportion of the Outgoings for the Premises.
  
- 7.2 The Landlord may elect to apply either the Reimbursement Method or the Annual Estimate Method for the Term. The Landlord must notify the Tenant which method it will use. Once the Landlord notifies the Tenant of the method, it cannot change this without the Tenant's consent.
  
- 7.3 The Reimbursement Method is as follows:
  - (a) The Landlord must provide a tax invoice to the Tenant for each Outgoing within 6 months after the Outgoing is due for payment by the Landlord to its supplier or the relevant Authority. If the Landlord does not provide the

invoice within that time frame the Tenant is not obliged to pay that Outgoing.

- (b) The Landlord must not invoice the Tenant until the Outgoing has become due for payment by the Landlord to its supplier or the relevant Authority.
- (c) The Tenant is not obliged to pay Outgoings direct to the supplier or relevant Authority.
- (d) When invoicing the Tenant, the Landlord must provide written evidence that the Outgoing is payable by the Landlord (for example, a copy of the relevant tax invoice from its supplier or the relevant Authority), and of the amount paid or payable.
- (e) If Outgoings include rates, levies or taxes charged by any Authority, and a discount is available for payment by a particular date, the Landlord may only invoice the Tenant for the Tenant's Proportion of the discounted amount.

7.4 The Annual Estimate Method is as follows:

- (a) The Landlord may notify the Tenant of the Landlord's estimate of Outgoings for any period not exceeding one year in advance of the estimate. The estimate must itemise each Outgoing.
- (b) The Tenant must pay to the Landlord the Tenant's Proportion of the Outgoings by equal monthly instalments on the same day and in the same manner as the Tenant is required to pay Rent. The first and last instalments will be apportioned if necessary.
- (c) At the commencement of the period the Landlord must give the Tenant a tax invoice or tax invoices for the Outgoings payable during that period.
- (d) Within one month after the end of the period the Landlord must give the Tenant:
  - (i) an itemised statement of actual Outgoings incurred; and
  - (ii) evidence that each Outgoing was payable by the Landlord (for example, a copy of the relevant tax invoice from its supplier or the relevant Authority), and of the amount paid.
- (e) Within one month after giving the information referred to in clause 7.4(d) an adjustment will be made between the parties by the relevant party paying a refund or further amount as the case requires.
- (f) If Outgoings include rates, levies or taxes charged by any Authority, and a discount is available for payment by a particular date, the Tenant is only liable for the Tenant's Proportion of the discounted amount.

7.5 The Landlord must pay all rates, levies, and taxes in respect of the Premises when they are due. This does not affect the Landlord's right to seek reimbursement from the Tenant of the Tenant's Proportion if applicable.

## **8. INTEREST ON OVERDUE AMOUNTS**

- 8.1 The Tenant must pay interest to the Landlord at the rate of 8% per annum on any overdue monies.
- 8.2 Interest accrues from the date the Landlord gives the Tenant notice that the amount is overdue.
- 8.3 Interest is calculated on the amount that remains unpaid.

## **9. GOODS AND SERVICES TAX**

- 9.1 Amounts expressed in the Lease to be payable by the Landlord or the Tenant are exclusive of GST.
- 9.2 If a party makes a Taxable Supply to the other in connection with the Lease the party liable to pay for the Taxable Supply must also pay any GST which is payable in respect of that Taxable Supply.
- 9.3 GST on any amount payable by the Tenant to the Landlord in respect of a Creditable Acquisition made by the Landlord from a third party will be calculated after deducting any GST Input Tax Credit to which the Landlord is entitled.
- 9.4 A party's right to payment for a Taxable Supply is subject to that party issuing a valid Tax Invoice to the party liable to pay.
- 9.5 If an Adjustment Event occurs in relation to any Taxable Supply under the Lease the relevant party will issue an Adjustment Note to the other party within 14 days after the Adjustment Event.

## **10. CHARGES**

- 10.1 The Tenant must pay all charges for electricity, telephone, gas and water consumed on the Premises during the Term.
- 10.2 Where the Tenant has consumed electricity, gas or water on the Premises, but supply of that service is not separately metered for the Premises, the Tenant must pay the Tenant's Proportion of the charge for that service to the Landlord after receipt of:
- (a) a tax invoice from the Landlord; and
  - (b) evidence that the charge is payable by the Landlord (for example, a copy of the relevant tax invoice from its supplier or the relevant Authority), and of the amount paid or payable.
- 10.3 The Tenant is not responsible under this clause 10 for general water charges. It is only responsible for water charges which are calculated by reference to the amount consumed.
- 10.4 If the Premises do not contain a separate meter for electricity, the Landlord must install one at its expense within one month after the Commencement Date.
- 10.5 The Tenant must pay all charges for commercial garbage collection and waste disposal services which are additional to those ordinarily provided to the Premises by the local Authority or the local Authority's contractor.
- 10.6 Where any charge referred to in this clause 10 is included in Outgoings, the clause relating to Outgoings applies instead.

## **11. COSTS**

- 11.1 The Tenant must pay to the Landlord upon the Landlord providing a tax invoice to the Tenant of any amount for reimbursement (together with a copy of any invoice



from the Landlord's solicitor or such other evidence of payment of the amount paid by the Landlord):

- (a) stamp duty on the Lease (if applicable);
- (b) registration fees in respect of the Lease, where the Tenant requires that the Lease be registered;
- (c) one half of the Landlord's mortgagee's fees for consenting to the Lease; and
- (d) the Landlord's reasonable legal fees and disbursements in connection with:
  - (i) any breach by the Tenant of the Lease; and
  - (ii) any assignment of the Lease or subletting of the Premises.

11.2 The Landlord must pay:

- (a) surveyor's or draftsman's fees for the preparation of any plan required for registration of the Lease;
- (b) one half of the mortgagee's fees for consenting to the Lease; and
- (c) the cost of obtaining the consent of any person or Authority to enable registration of the Lease.

## **12. COMPLY WITH LAWS**

12.1 The Landlord must comply with all laws relating to the Premises and the Land.

12.2 The Tenant must:

- (a) comply with all laws relating to; and
- (b) apply for and keep current all licences, permits and approvals necessary for, the conduct of its business at the Premises.

12.3 Clause 12.2 does not oblige the Tenant to:

- (a) carry out structural work on the Premises;
- (b) install fixtures at the Premises; or
- (c) comply with laws which expressly apply only to the owner or proprietor of the Land, Building or Premises.

## **13. MAINTENANCE AND REPAIR**

13.1 The Tenant must maintain the Premises in good repair and condition.

13.2 The Tenant's obligation under clause 13.1 does not apply to:

- (a) fair wear and tear;
- (b) damage caused by flora, including falling trees and root growth;
- (c) repairs of a capital nature to the Services;
- (d) malicious damage by persons on the Land without the Tenant's consent;
- (e) repairs and maintenance necessary because of structural defects in the Premises; or
- (f) damage caused by:
  - (i) the Landlord, its employees, agents or contractors;
  - (ii) fire, storm, flood, earthquake, civil commotion, acts of terrorism or enemy action;

- (iii) impact by vehicles, unless caused by the Tenant's negligence; or
- (iv) other tenants in the Building.

**13.3 The Tenant must:**

- (a) keep the Premises clean and tidy;
- (b) repair any damage it causes to the Premises;
- (c) repair or replace any broken windows in the Premises;
- (d) replace light bulbs in the Premises when they cease functioning;
- (e) keep the Premises free of pests, insects and vermin (except termites);
- (f) not place any thing in the drains or waste pipes which would cause an obstruction; and
- (g) where the Tenant is leasing the whole of the Building, keep the external gutters and downpipes free of obstruction from flora.

**13.4** Nothing in this clause 13 obliges the Tenant to carry out structural repairs, unless those repairs are necessary because the Tenant damaged the Premises.

**13.5 The Landlord must:**

- (a) maintain the Premises in a structurally sound and weatherproof condition;
- (b) where the Tenant is leasing part of the Building, keep the external gutters and downpipes free of obstruction;
- (c) where the Tenant is leasing the whole of the Building, keep the external gutters and downpipes free of any obstructions which are not the Tenant's responsibility to remove;
- (d) maintain the Services in good working order and condition;
- (e) take reasonable steps to ensure that the supply of Services to the Premises is not interrupted;
- (f) keep the Premises free of termites; and
- (g) maintain and service the roller doors at the Premises.

**14. RESTRICTIONS ON TENANT**

**14.1 The Tenant must not:**

- (a) overload any Services;
- (b) overload the floors in the Premises;
- (c) store any dangerous substance on the Premises, unless necessary for the conduct of the Tenant's business; or
- (d) conduct any offensive or illegal activity on the Premises.

**15. STRUCTURAL ALTERATIONS**

**15.1** The Tenant must not make any structural alterations or structural additions to the Premises without the Landlord's consent, which must not be unreasonably withheld.

**16. SIGNS**

**16.1** The Tenant may affix signs to:

- (a) the exterior of the Premises; and
- (b) any glass shop-front,

showing the Tenant's trade name and logo, but must not affix any other signs to the Premises or the Building without the Landlord's consent.

- 16.2 If the Tenant applies to the Landlord for consent to affix other signs to the Premises or the Building, the Landlord must not unreasonably withhold its consent.
- 16.3 If approval is necessary from any Authority in respect of the Tenant's signs, the Tenant must obtain that approval at its expense. The Landlord will consent to any such application for approval, and execute all documents necessary in this regard.
- 16.4 Signs affixed by the Tenant must be professional and tasteful in appearance.

**17. AIR CONDITIONING**

- 17.1 Intentionally deleted.

**18. INSURANCE**

- 18.1 The Tenant must maintain public risk insurance in respect of the Premises for at least \$10,000,000.
- 18.2 The Tenant must, if requested by the Landlord in writing, provide the Landlord with a certificate of currency for any policy it is required to maintain under this clause 18.
- 18.3 The Landlord must maintain insurance with CHU for damage to and destruction of the Building, for its replacement value, for the Risks.
- 18.4 While Metal Manufactures Limited is the Tenant, the Tenant covenants to carry out repairs to or replacement of plate glass damaged during the term of the Lease if such damage is caused by the wilful act or negligence of the Tenant or its employees, the Tenant's agents or contractors.
- 18.5 If the Tenant is obliged to maintain insurance or repair or replace plate glass under this clause 18, any reference to insurance of the same type in the definition of Outgoings will be ignored.

**19. INDEMNITY**

- 19.1 The Tenant indemnifies the Landlord against all Claims, expenses and losses the Landlord incurs which are caused by the wilful act or negligence of:
  - (a) the Tenant or its employees; or
  - (b) the Tenant's agents or contractors when inside the Premises.

However this indemnity does not extend to, and the Landlord has no claim against the Tenant in respect of any Claims, expenses or losses which are insured against under an insurance policy required to be taken out by the Landlord under the Lease.

- 19.2 The Landlord indemnifies the Tenant against all Claims, expenses and losses the Tenant incurs which are caused by the wilful act or negligence of the Landlord, its employees, agents or contractors.

**20. ACCESS**

- 20.1 The Landlord may enter the Premises for the following purposes:
- (a) to view the state of repair;
  - (b) to repair;
  - (c) to show prospective purchasers;
  - (d) to show prospective tenants, although only during the last 3 months of the Term.
- 20.2 The Landlord must give the Tenant 2 business days written notice before entering the Premises, except in the case of emergency.
- 20.3 The Landlord must be accompanied by a representative of the Tenant if the Tenant requests this.
- 20.4 The Landlord must not inconvenience or disrupt the Tenant when entering the Premises, except to the extent which is reasonable having regard to the reason for entry.

**21. DESTRUCTION**

- 21.1 If the Premises are destroyed or the means of access to the Premises is interrupted, so that the Tenant cannot use the Premises for the conduct of its business:
- (a) the Rent and Outgoings cease to be payable until the Premises are reinstated and access is restored; and
  - (b) the Tenant may terminate the Lease by notice in writing to the Landlord.
- 21.2 If the Premises are partly destroyed or the means of access to the Premises is interrupted, and the damage or interruption does not wholly prevent the Tenant from using the Premises for the conduct of its business, the following applies:
- (a) The Rent and Outgoings or a fair proportion having regard to the nature and extent of the damage or interruption ceases to be payable until the Premises are reinstated and access is restored.
  - (b) The Landlord must notify the Tenant within one month after the date of such damage or interruption whether it intends to reinstate the Premises and restore access.
  - (c) If the Landlord does not give notice within the time frame specified in clause 21.2(b) that it intends to reinstate the Premises and restore access, the Tenant may terminate the Lease by notice in writing to the Landlord.
  - (d) If the Landlord gives notice that it intends to reinstate and restore under clause 21.2(b), but has not reinstated the Premises or restored access within 3 months after giving that notice, the Tenant may terminate the Lease by notice in writing to the Landlord.
- 21.3 The Tenant is not entitled to:
- (a) a reduction in Rent or Outgoings; or
  - (b) terminate the Lease,

under this clause 21 if:

- (c) the destruction of the Premises or the interruption of access was caused by the Tenant; and
- (d) the insurer of the Premises lawfully refuses to pay under the policy because of an act or omission of the Tenant.

21.4 Any dispute regarding the amount of Rent payable must be determined by a valuer. The valuer will be appointed by agreement between the parties. If the parties cannot reach agreement within 14 days after one party gives notice to the other of its nomination, then the valuer will be nominated at the request of either party by the President of the Australian Property Institute. The valuer will act as an expert and not as an arbitrator and the determination is final and binding on the parties. The costs of the determination will be paid equally by the parties.

21.5 If the Landlord considers it impractical or undesirable to reinstate the Premises or restore access, and the damage to the Premises or interruption of access was not caused by the Landlord, the Landlord may terminate the Lease by one month's written notice to the Tenant.

21.6 Termination of the Lease under this clause 21 is without prejudice to:

- (a) any rights which accrued to either party under the Lease prior to termination; and
- (b) any rights the Tenant may have against the Landlord where damage to the Premises or interruption of access was caused by the Landlord.

## **22. CAR PARKING**

22.1 Where:

- (a) the Tenant requires parking for motor vehicles outside the Premises; and
- (b) the Premises are not a lot in a Strata Title Scheme,

the Tenant may use the Allocated Number of parking spaces on the Land for the purposes of parking motor vehicles.

22.2 Where:

- (a) the Tenant requires parking for motor vehicles outside the Premises; and
- (b) the Premises are a lot in a Strata Title Scheme,

the following applies:

- (c) The Tenant shall have exclusive use of the Allocated Number of parking spaces on the Common Property, being those parking spaces for which the Premises has exclusive use under the relevant Strata Title Scheme, for the purposes of parking motor vehicles.
- (d) The Landlord warrants that it has the right to exclusively use that part of the Common Property on which the parking spaces are located.
- (e) This clause 22.2 does not restrict any rights the Tenant may have to park on Common Property over which no person has exclusive use rights.

22.3 If the parties have signed a car parking plan when signing the Lease the parking spaces allocated to the Tenant are shown on that plan.

22.4 If clause 22.3 does not apply, the parking spaces allocated to the Tenant are those agreed between the parties from time to time.

22.5 For avoidance of doubt, where:

- (a) the Premises are a lot in a Strata Titles Scheme; and
- (b) the lot includes parking spaces as shown on the plan creating the Strata Titles Scheme,

the Tenant may use those parking spaces for the parking of motor vehicles.

22.6 In clauses 22.1, 22.2 and 22.5 "Tenant" includes the Tenant's employees, agents, contractors, invitees and subtenants.

### **23. COMMON AREAS**

23.1 Where the Tenant requires access over Common Areas to the Premises, parking spaces or Amenities, the Tenant has the right in common with the Landlord and other occupiers of the Land and Building to use the Common Areas for that purpose.

23.2 Where the Premises do not contain Amenities, the Tenant may use the Amenities located in the Common Areas in common with the Landlord and other occupiers of the Land. The Landlord must keep them clean, hygienic and stocked with requisites.

23.3 In this clause "Tenant" includes the Tenant's employees, agents, contractors, invitees and subtenants.

### **24. ASSIGNMENT**

24.1 The Tenant must not assign this Lease unless it first obtains the Landlord's written consent.

24.2 The Landlord must give consent to an assignment in favour of a Related Body Corporate of the Tenant if the assignee signs an agreement with the Landlord agreeing to be bound by the terms of the Lease.

24.3 In all other cases the Landlord must give consent if:

- (a) the Tenant establishes that the assignee is financially capable of performing the Tenant's obligations under the Lease;
- (b) the Tenant is not in default of an essential term under the Lease;
- (c) the assignee signs an agreement with the Landlord agreeing to be bound by the terms of the Lease; and
- (d) where the assignee is a proprietary company, the directors of the assignee provide guarantees to the Landlord guaranteeing the assignee's obligations under the Lease.

24.4 Once the Lease is assigned, the Tenant is released from all liabilities and obligations under the Lease, except for liabilities which accrued prior to assignment.

## **25. SUBLETTING**

- 25.1 The Tenant must not sublet the Premises or a part of the Premises unless it first obtains the Landlord's written consent.
- 25.2 The Landlord must give consent if:
- (a) the Tenant establishes that the subtenant is financially capable of performing the subtenant's obligations under the sublease; and
  - (b) the Tenant is not in default of an essential term under the Lease.

## **26. REGISTRATION AND COVENANT ON SALE OF FREEHOLD**

- 26.1 The Landlord must, if requested by the Tenant, register the Lease on the title to the Land.
- 26.2 If the Landlord sells the Land it must obtain a covenant from the purchaser in favour of the Tenant that the purchaser will recognise and be bound by the terms of the Lease, including any option contained in it. This clause does not apply if the Lease is registered on the title at the time of sale.

## **27. OPTION**

- 27.1 If a Further Term is specified in the Particulars and the Tenant:
- (a) gives notice to the Landlord not more than 6 months and not less than 3 months before the Term expires that it wishes to lease the Premises for the Further Term; and
  - (b) is not in breach of an essential term of the Lease when giving the notice,
- the Landlord must grant the Further Lease to the Tenant.
- 27.2 The Further Lease will be on the same terms as the Lease, except that the Particulars will be varied as follows:
- (a) The Commencement Date and Expiry Date will be the commencement date and expiry date of the relevant Further Term in the Particulars.
  - (b) The Rent will be an amount determined by reference to the Review Dates specified in the Particulars.
  - (c) This clause 27 will be omitted from the last Further Lease for which there is a Further Term specified in the Particulars.
- 27.3 The Tenant will prepare the Further Lease.
- 27.4 If the Lease is registered and a time limit is prescribed by law for registration of the Further Lease, the parties must execute the Lease within that time limit. Otherwise the parties must execute the Further Lease within 2 months after the Commencement Date of the Further Lease.

## **28. HOLDING OVER**

- 28.1 If the Tenant has not exercised the option in accordance with the Lease and continues to occupy the Premises after the Term with the Landlord's consent then:

- (a) the Tenant does so as a periodic tenant on the same terms as applied on the Expiry Date; and
- (b) either party may terminate the periodic tenancy by giving two month's written notice to the other expiring on any day.

**29. DEFAULT AND TERMINATION**

29.1 The Tenant defaults under the Lease if:

- (a) the Rent or any money payable by the Tenant is not paid when due;
- (b) the Tenant breaches any other provision of the Lease; or
- (c) the Tenant becomes an Externally Administered Body Corporate, except for the purposes of amalgamation or reconstruction.

29.2 If the Tenant defaults under the Lease the Landlord may do any one or more of the following:

- (a) re-enter and take possession of the Premises;
- (b) on giving notice, terminate the Lease;
- (c) exercise any of its other legal rights.

29.3 The Landlord cannot exercise its rights under clause 29.2 unless it has first given the Tenant notice specifying the default and allowing the Tenant 28 days:

- (a) to remedy the default; or
- (b) if the default is not capable of remedy, to compensate the Landlord for its loss.

29.4 If the Tenant:

- (a) remedies the default; or
- (b) compensates the Landlord for its loss,

within the notice period specified in clause 29.3, the Landlord cannot exercise its rights under clause 29.2.

29.5 If the Tenant repudiates or breaches an essential term of the Lease and the Landlord lawfully re-enters the Premises in consequence of that repudiation or breach, the Landlord may recover all money payable by the Tenant under the Lease up to the end of the Term then current. The Landlord must minimise its loss.

29.6 The essential terms include:

- (a) the obligation to pay Rent;
- (b) the obligation to pay Outgoings;
- (c) the obligation to use the Premises only for the Permitted Use;
- (d) the obligation not to assign or sublet without consent; and
- (e) the obligation to maintain the Premises in good repair and condition.

29.7 The Landlord's entitlement (if any) to damages is not limited if:

- (a) the Tenant abandons the Premises;
- (b) the Landlord elects to re-enter or terminate the Lease;
- (c) the Landlord accepts the Tenant's repudiation; or



- (d) the parties' conduct constitutes a surrender by operation of law.

### **30. END OF TERM**

30.1 The Lease ends:

- (a) when it expires;
- (b) if it is lawfully terminated;
- (c) if the Landlord lawfully re-enters and takes possession of the Premises; or
- (d) if it is surrendered by agreement between the parties.

This does not limit the circumstances in which, according to law, the Lease may end.

30.2 When the Lease ends the Tenant:

- (a) must vacate the Premises and give them back to the Landlord in the condition that the Lease requires the Tenant to keep them in including reinstating the hole in the wall inserted by the Landlord as part of the Landlord's Works as set out in clause 35;
- (b) must remove its chattels from the Premises;
- (c) must remove its signs; and
- (d) may remove its fixtures from the Premises.

30.3 The Tenant must repair any damage it causes to the Premises when removing its property.

30.4 Any of the Tenant's property which is not removed from the Premises within 7 days after the Lease ends becomes the property of the Landlord.

30.5 The Landlord must notify the Tenant within 60 days after the Lease ends of:

- (a) any monies remaining owing to the Landlord under the Lease; and
- (b) any obligations under the Lease which the Tenant has not complied with.

30.6 If the Landlord does not give a notice under clause 30.5 it loses its right to recover those monies or require compliance with those obligations.

### **31. POWER OF ATTORNEY**

31.1 The Tenant appoints the Landlord as its attorney to execute a surrender of the Lease.

31.2 The power of attorney may only be exercised by the Landlord when the Landlord is entitled to re-enter the Premises.

### **32. STRATA TITLE**

32.1 Where the Premises comprise a lot in a Strata Title Scheme the following applies:

- (a) The Lease is subject to the rights, reservations, obligations and powers expressed in the laws applicable to the Strata Title Scheme.
- (b) The Landlord and Tenant must comply with the by-laws applicable to the Strata Title Scheme.

- (c) The Tenant, its employees, agents, contractors and invitees may use the Common Property as if they were the owner of the lot on which the Premises are located. However if the Landlord has exclusive use car parking on the Common Property, the Tenant may only use that car parking if permitted by clause 22.
- (d) The Landlord must pay all levies in respect of the Strata Title Scheme when they are due. This does not affect the Landlord's right to seek reimbursement from the Tenant of the Tenant's Proportion if applicable.
- (e) If there is a defect, leakage or need for repair in the Building which:
  - (i) adversely impacts upon the Tenant; and
  - (ii) the Landlord does not have authority to remedy,the Landlord must use its best endeavours to cause the Strata Corporation to remedy it.
- (f) If the Strata Corporation is obligated by law to perform the subject matter of an obligation imposed on the Landlord under the Lease, the Landlord does not have to perform the obligation to the extent that the Strata Corporation is obliged by law to perform it. However the Landlord must take reasonable steps to cause the Strata Corporation to perform it.

### **33. MORTGAGEE'S CONSENT**

- 33.1 If the Land is subject to a mortgage, and the Tenant requests the Landlord to apply for the mortgagee's consent to the Lease, the Landlord must apply for it.
- 33.2 If the mortgagee refuses to give consent, or gives consent on terms not satisfactory to the Tenant, the Tenant may terminate the Lease by notice to the Landlord.

### **34. IMPLIED COVENANTS**

- 34.1 If any of the following provisions apply to the Lease, then they are excluded:
  - (a) Property Law Act 1974 (Qld): ss. 105, 107 and 109;
  - (b) Conveyancing Act 1919 (NSW): ss. 84, 84A, 85 and 86;
  - (c) Law of Property Act (NT): ss. 117, 118, 119 and 120;
  - (d) Real Property Act 1886 (SA): ss. 124 and 125;
  - (e) Transfer of Land Act 1893 (WA): ss. 92, 93 and 94;
  - (f) Transfer of Land Act 1958 (Vic): s.67(1);
  - (g) Land Titles Act 1980 (Tas): ss. 66 and 67;
  - (h) Land Titles Act 1925 (ACT): ss. 119, 120 and 121.

### **35. LANDLORD'S WORKS**

- 35.1 Not used.

### **36. RETAIL SHOP LEASE**

- 36.1 The parties acknowledge that the Premises are not retail premises and that the Lease is not a retail shop lease for the purposes of the retail tenancy legislation in the State or Territory in which the Premises are located.

### **37. ENTIRE AGREEMENT**

- 37.1 This Lease constitutes the entire agreement between the parties. There is no other oral understanding, agreement, warranty or representation whether express, implied

or collateral in any way extending, defining or otherwise relating to its provisions or binding on the parties. The parties acknowledge that they have not been induced to enter the Lease based on any representation other than as expressly recorded in the Lease.

**38. AMENDMENTS**

38.1 No modification to the Lease will be binding on any party unless made in writing and properly executed by that party.

**39. CONSENTS TO BE IN WRITING**

39.1 All consents required to be given in accordance with the Lease must be in writing.

39.2 If the Tenant requests consent under the Lease the Landlord must consider the request, act reasonably in making its decision, and give a response promptly.

**40. WAIVER**

40.1 The failure of either party to exercise any right arising as a result of a breach by the other will not waive that right, nor will any practice developed between the parties waive or lessen their rights under the Lease.

**41. NOTICES**

41.1 All notices under the Lease must be in writing and sent by prepaid post, facsimile transmission or hand delivery to:

- (a) the other parties' address or facsimile number shown in the Particulars; or
- (b) such other address or facsimile number as is notified by the party from time to time as its address for service.

41.2 Where the Landlord has engaged a managing agent to manage the Land, notices to the Landlord may be given to the managing agent.

41.3 All notices will be deemed to have been duly given:

- (a) if by mail 2 business days after being deposited in the mail with postage prepaid;
- (b) if delivered by hand at the time of delivery; and
- (c) if sent by facsimile transmission, when the sender's transmission record indicates that it was received without error.

**42. COUNTERPARTS**

42.1 This Lease may be executed in two or more counterparts, each of which will be deemed an original, and all of which together will constitute the Lease.

**43. NON BUSINESS DAYS**

43.1 If any day specified by the Lease for the payment of any money or the doing of any thing falls on a non business day the day specified will be deemed to be the next business day.

**44. GOVERNING LAW**

- 44.1 This Lease will be construed in accordance with the law of the State or Territory in which the Premises is located. The parties submit to the non-exclusive jurisdiction of the courts in the capital city of the State or Territory in which the Premises are located.

**45. SEVERANCE**

- 45.1 If any provision of the Lease is, for any reason, considered or found by a court of competent jurisdiction or any competent government authority to be invalid, illegal or unenforceable, that provision is severed from the remainder of the provisions of the Lease. The remainder of the provisions of the Lease will remain in full force and effect unless the basic purposes of the Lease are defeated.

**46. INTERPRETATION**

- 46.1 In the interpretation of the Lease unless the context otherwise requires:
- (a) Where a word or phrase is used in the Lease, and that word or phrase is specified in the Particulars, the word or phrase will have the meaning specified in the Particulars.
  - (b) Words denoting any gender include all other genders.
  - (c) Words denoting persons include all bodies, associations, trusts, partnerships, instrumentalities and entities corporate or unincorporate, and vice versa.
  - (d) References to any of the parties include in the case of a person, their personal representatives and permitted assigns, and in other cases their successors and permitted assigns.
  - (e) Any obligation on the part of two or more persons is deemed to bind or benefit as the case may be, any two or more of them jointly and each of them severally.
  - (f) Words expressing the singular include the plural and vice versa.
  - (g) Headings are included for convenience only and do not affect the interpretation of the Lease.
  - (h) References to clauses, subclauses, schedules, annexures and plans are to clauses, subclauses, schedules, annexures and plans forming part of the Lease.
  - (i) References to the Lease are to this Lease as amended supplemented or varied from time to time.
  - (j) References to any document or agreement includes all references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time.
  - (k) References to "\$" and "dollars" are to Australian dollars.

- (l) References to any legislation or law includes any legislative provision or law which amends, extends, consolidates or replaces it and any orders, regulations, instruments, proclamations or other subordinate legislation made under it.
- (m) References to institutes, associations, bodies and authorities whether statutory or otherwise will, if it ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred, refer to the institute, association, body or authority established or constituted in its place or which substantially succeeds to its powers or functions.
- (n) No rule of construction will apply to the disadvantage of a party because that party was responsible for the drafting of the Lease or any part of it.

#### 47. DEFINITIONS

In the Lease the following terms have the following meanings:

**“Adjustment Event”** has the meaning defined in the GST Act.

**“Adjustment Note”** has the meaning defined in the GST Act.

**“Air conditioning equipment”** means the air conditioning and refrigeration equipment located on or forming part of the Premises.

**“Amenities”** means toilet and, hand basins.

**“Australian Property Institute”** means the division of that institute in the State or Territory in which the Premises is located.

**“Authority”** means any government or statutory body having jurisdiction over the Premises.

**“Building”** means the building on the Land in which the Premises are located.

**“Claims”** means any claim or legal action against the party indemnified for damages or compensation in respect of something that occurred at the Premises and includes expenses incurred by that party in respect of such claim or legal action.

**“Common Areas”** means areas on the Land provided by the Landlord for common use, including the driveways.

**“Common Property”** means the common property for the purposes of the Strata Title Scheme.

**“Creditable Acquisition”** has the meaning defined in the GST Act.

**“Externally Administered Body Corporate”** has the meaning defined in the Corporations Act 2001.

**“Further Lease”** means the lease granted to the Tenant when it exercises the option.

**“GST”** means the GST referred to in the GST Act.

**“GST Act”** means the A New Tax System (Goods and Services Tax) Act 1999.

**“Index Number”** means the Consumer Price Index (All Groups) published by the Australian Bureau of Statistics for the capital city of the State or Territory in which the Premises is located. If that index no longer exists “Index Number” means an index that the president of the Australian Property Institute decides best reflects changes to the cost of living in the capital city of the State or Territory in which the Premises is located.

**“Input Tax Credit”** has the meaning defined in the GST Act.

**“Lease”** means this lease, any variation to this lease, and any Further Lease or any variation to the terms of the Further Lease.

**“Related Body Corporate”** has the meaning defined in the Corporations Act 2001.

**“Rent”** means the annual rent specified in the Particulars, as reviewed under the Lease.

**“Review Dates”** means Market Review Dates, Index Review Dates or Fixed Review Dates.

**“Risks”** means fire, flood, lightning, storm, explosion, civil commotion, malicious damage, earthquake, impact by vehicles and aircraft, and escape of water inside the Building.

**“Services”** means electricity supply, water supply, gas supply, data supply, sewerage and telephone, and includes the pipes, wires or other conduits through which those services are supplied.

**“Strata Corporation”** means the body corporate for the Strata Title Scheme.

**“Strata Title Scheme”** means a scheme relating to land created by law which comprises a body corporate, common property and separately titled lots or units.

**“Tax Invoice”** has the meaning defined in the GST Act.

**“Taxable Supply”** has the meaning defined in the GST Act.

**“Term”** means the term of the Lease commencing on the Commencement Date and ending on the Expiry Date. It includes the term of any Further Lease.

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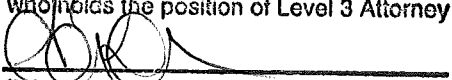


<p>To be completed by lodging Jeff Stevens &amp; Associates <b>ANNEXURE</b> to LEASE dated <u>20/6/16</u> over Certificate of Title Volume 6084 Folio 781 Parties: Strazdins Hendon Development Pty Ltd and Metal Manufactures Limited</p>	<p><b>NUMBER</b> Office use only</p>
--	--

**CONSENT OF MORTGAGEE:**

**NATIONAL AUSTRALIA BANK LTD. BEING MORTGAGEE OF THE SAID LAND BY VIRTUE OF MEMORANDUM OF MORTGAGE NO. 12087336 HEREBY CONSENTS TO THE WITHIN LEASE:**

NATIONAL AUSTRALIA BANK LIMITED  
By its Attorney  
who holds the position of Level 3 Attorney

  
P/A No. 10664492

Signed in my presence by

SAMUEL PEARSON

who is either personally known to me or  
has satisfied me as to his or her identity,  
as attorney for National Australia Bank  
Limited

  
Signature of Witness

LAUREN THORPE  
Print Full Name of Witness

491 SOUTH RD  
REGENCY PARK 5010  
Address

Business Phone No 84076773

**\*\*THIS PAGE IS LEFT INTENTIONALLY BLANK\*\***

**CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION**

This Lease does not contravene section 32 of the Development Act 1993


DATED 20<sup>th</sup> day of June ~~July~~ 2016

**EXECUTION**

**Strazdins Hendon Development Pty Ltd**  
CAN 132 745 156 in accordance with s127 of  
Corporations Act 2001

.....  
Director

Signature of LESSOR

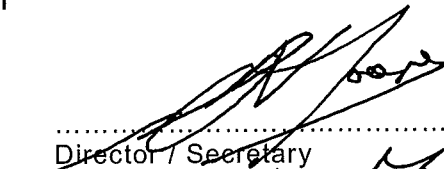

  
.....  
Director / Secretary

Signature of LESSOR

**Metal Manufactures Limited ACN 003 762 641**  
in accordance with s127 of Corporations Act 2001

  
.....  
Director **Andrew Price**

Signature of LESSEE

  
.....  
Director / Secretary  
**NIGEL GORDON**   
Signature of LESSEE

\* NB: A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

LANDS TITLES REGISTRATION  
OFFICE  
SOUTH AUSTRALIA

**MEMORANDUM OF LEASE**

FORM APPROVED BY THE REGISTRAR-GENERAL

**BELOW THIS LINE FOR OFFICE & STAMP DUTY PURPOSES ONLY**

Prefix
<b>L</b>
Series No.

**BELOW THIS LINE FOR AGENT USE ONLY**

<p>CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886</p>  <p>_____</p> <p>Solicitor/Registered Conveyancer/Lessee</p>
--

AGENT CODE

Lodged by:

Correction to:

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1. ....
2. ....
3. ....
4. ....

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

1. ....
2. ....
3. ....
4. ....

**DELIVERY INSTRUCTIONS** (Agent to complete)  
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	