

**DRAFT DISCLOSURE DOCUMENT**

**FOR FRANCHISEE OR PROSPECTIVE FRANCHISEE**



**Snap-on Tools (Australia) Pty Ltd**  
**of 80 Holbeche Road, Arndell Park, NSW 2148**  
**Phone: (02) 9837 9100**  
**ABN 55 010 793 683**

This disclosure document is signed by the following director of Snap-on Tools (Australia) Pty Ltd:

-----  
P. Ajit Ponnambalam – Managing Director

Date of preparation of this disclosure document: 30<sup>th</sup> April 2020

This disclosure document contains some of the information you need in order to make an informed decision about whether to enter into a franchise agreement. It should be read together with the information statement you have received.

Entering into a franchise agreement is a serious undertaking. Franchising is a business and, like any business, the franchise (or franchisor) could fail during the franchise term. This could have consequences for the franchisee.

A franchise agreement is legally binding on you if you sign it.

You are entitled to a waiting period of 14 days before you enter into this agreement.

If this is a new franchise agreement (not the transfer or renewal of a franchise agreement, nor the extension of the term or the scope of a franchise agreement), you will be entitled to a 7 day “cooling off” period after signing the agreement, during which you may terminate the agreement.

If you decide to terminate the agreement during the cooling off period, the franchisor must, within 14 days, return all payments (whether of money or of other valuable consideration) made by you to the franchisor under the agreement. However, the franchisor may deduct from this amount the franchisor’s reasonable expenses, if the expenses or their method of calculation have been set out in the agreement.

Take your time, read all the documents carefully, talk to other franchisees and assess your own financial resources and capabilities to deal with the requirements of the franchised business.

You should make your own enquiries about the franchise and about the business of the franchise.

You should get independent legal, accounting and business advice before signing the franchise agreement.

It is often prudent to prepare a business plan and projections for profit and cash flow.

You should also consider educational courses, particularly if you have not operated a business before.

**TABLE OF CONTENTS**

2.	FRANCHISOR DETAILS .....	4
3.	BUSINESS EXPERIENCE .....	6
4.	LITIGATION .....	8
5.	PAYMENTS TO AGENTS .....	9
6.	EXISTING FRANCHISES .....	10
7.	MASTER FRANCHISES .....	15
8.	INTELLECTUAL PROPERTY .....	16
9.	FRANCHISE SITE OR TERRITORY .....	20
10.	SUPPLY OF GOODS OR SERVICES TO A FRANCHISEE .....	23
11.	SUPPLY OF GOODS OR SERVICES BY A FRANCHISEE .....	25
12.	SUPPLY OF GOODS OR SERVICES – ONLINE SALES .....	26
13.	SITES OR TERRITORIES .....	27
14.	OTHER PAYMENTS .....	28
15.	MARKETING OR OTHER COOPERATIVE FUNDS .....	37
16.	FINANCING .....	38
17.	UNILATERAL VARIATION OF FRANCHISE AGREEMENT .....	39
18.	ARRANGEMENTS TO APPLY AT THE END OF THE FRANCHISE AGREEMENT .....	41
19.	AMENDMENT OF FRANCHISE AGREEMENT ON TRANSFER OF FRANCHISE .....	44
20.	EARNINGS INFORMATION .....	44
21.	FINANCIAL DETAILS .....	46
22.	UPDATES .....	47
23.	RECEIPT .....	48

ANNEXURE A – SNAP-ON FRANCHISE AGREEMENT

ANNEXURE B – FRANCHISING CODE OF CONDUCT

ANNEXURE C – TERRITORY OR LIST OF CALLS

ANNEXURE D – HISTORY OF TERRITORY/LIST OF CALLS

ANNEXURE E – DEED OF GUARANTEE

ANNEXURE F – CHROME AGREEMENT

ANNEXURE G – R.A FINANCING AGREEMENT

ANNEXURE H – DETAILS OF FRANCHISEES WHO HAVE EXITED THE NETWORK IN THE LAST 3 FINANCIAL YEARS

ANNEXURE I – MERCHANT AGREEMENT

ANNEXURE J – FRANCHISE SNAP-ON FINANCE LOAN DETAILS

ANNEXURE K – STATEMENT OF FINANCIAL POSITION – AUDIT REPORT (ITEM 21.4)

ANNEXURE L – END OF TERM STATEMENT

ANNEXURE M – INFORMATION STATEMENT FOR PROSPECTIVE FRANCHISEE

**NOTE:** This document sets out the information required in response to each of the items set out in Annexure 1 to the Franchising Code of Conduct prescribed under section 51AE of the Competition and Consumer Act 2010 (Cth) (**Code**). A copy of the Code is attached to this document as Annexure B.

In this disclosure document a reference to:

- ♦ **Franchisor or Snap-on** is a reference to Snap-on Tools (Australia) Pty Ltd (ACN 010 793 683);
- ♦ **Franchise Agreement** is a reference to the Snap-on Tools franchise agreement attached to this disclosure document as Annexure A;
- ♦ **Territory Franchise Agreement** is a reference to a Snap-on Tools Franchise Agreement containing an exclusive or protective defined territory; and
- ♦ **List of Calls Franchise Agreement** is a reference to a Snap-on Tools Franchise Agreement containing a List of Calls and provisions to the effect that the Franchisee may only sell Products to customers and potential customers at Approved Stops on the List of Calls.

Unless defined in this document, capitalised expressions set out in this disclosure document bear the same meaning given to those expressions in the Franchise Agreement. The defined term **Potential Customers**, includes existing, actual or potential customers.

## 2. FRANCHISOR DETAILS

### 2.1 Franchisor details:

Name: Snap-on Tools (Australia) Pty. Ltd.  
ABN: 55 010 793 683  
Registered office: 80 Holbeche Road, Arndell Park, NSW 2148  
Principal place of business: 80 Holbeche Road, Arndell Park, NSW 2148

### 2.2 Name under which the Franchisor carries on business in Australia relevant to the franchise:

Snap-on and Snap-on Tools

### 2.3 Description of the kind of business operated under the franchise:

Snap-on offers a licence to operate a Snap-on Franchise on the terms and conditions set out in the Franchise Agreement. Under the Franchise Agreement, the Franchisee is granted limited and clearly defined rights to use the Snap-on trademarks and to purchase tools and equipment manufactured and/or distributed by Snap-on and made available by Snap-on to its franchisees at a discount from recommended List Prices. The Franchisee also has the right to resell the tools and equipment at prices of the Franchisee's choosing to customers, who are professional tool users and responsible for purchasing their own tools, at their place of business.

The Franchisee has the right to resell certain tools and equipment:

- **in the case of a Territory Franchise Agreement:** within a prescribed geographic area which is clearly identified by descriptive notes that are part of the Territory Franchise Agreement; and
- **in the case of a List of Calls Franchise Agreement:** to customers and potential customers at the Approved Stops (businesses) set out in the Franchisee's List of Calls/Approved Stops.

A Franchise is conducted from a custom-built display van (referred to in the Franchise Agreement as a **Mobile Store**), which is effectively a showroom and office on wheels. The Franchisee or its employee is required to visit its customers and potential customers on a weekly basis to satisfy their tool and equipment and performance requirements. Revolving Accounts or RA sales will typically make up a large percentage of the Franchisee's sales. RA sales are credit sales between the Franchisee and a customer in which the Franchisee extends credit, usually at no interest, to finance the customer's purchase of Products. The Franchisee and the customer decide on the down payment and repayment schedules. Since the Franchisee extends the Franchisee's own credit, the Franchisee bears 100% of the risk of loss if the customer defaults on a Revolving Account.

Snap-on has developed a program for selling and servicing the tools and equipment they manufacture and/or distribute, together with techniques and procedures associated with the operation of a Snap-on Franchise. This program is termed the 'Snap-on Program' and Snap-on may and will revise the Program from time to time. Under the Franchise Agreement the Franchisee is granted the right to use the Snap-on Program, which is set out in the Franchisee Operations Manual.

### 2.4 The number of years that the franchise or the franchise system has operated in Australia:

Snap-on commenced operations in Australia on 17<sup>th</sup> March 1988. Snap-on Tools commenced franchising operations in Australia in 1997, about twenty three (23) years ago.

**2.5 The name, ABN, ACN or ARBN, address of registered office and principal place of business of each associate of the Franchisor that is a body corporate (if any):**

Name: Snap-on Incorporated  
ABN, ACN or ARBN: Not applicable  
Registered office: 2801 80<sup>th</sup> Street, Kenosha, Wisconsin, USA  
Principal place of business: 2801 80<sup>th</sup> Street, Kenosha, Wisconsin, USA

Name: Snap-on Asia Pacific Holdings Pte Ltd  
ABN, ACN or ARBN: Not applicable.  
Registered office: 2 Shenton Way, #18-01 SGX Centre 1, Singapore 068804  
Principal place of business: 2 Shenton Way, #18-01 SGX Centre 1, Singapore 068804

**2.6 Name and address of each associate of the Franchisor that is not a body corporate (if any), and if applicable, each associate's ABN or ARBN:**

Name: P. Ajit Ponnambalam  
Address: 93 Storey Street, Maroubra, NSW 2035  
ABN or ARBN: Not applicable.

Name: Barrie J. Young  
Address: C/-80 Holbeche Road, Arndell Park, NSW 2148  
ABN or ARBN: Not applicable.

Name: Paul J. Lynch  
Address: C/-80 Holbeche Road, Arndell Park, NSW 2148  
ABN or ARBN: Not applicable.

Name: Bhupesh Bhai  
Address: C/-80 Holbeche Road, Arndell Park, NSW 2148  
ABN or ARBN: Not applicable.

**2.7 A description of the relationship between:****(a) each associate mentioned in item 2.5 and the franchisor**

Snap-on, Incorporated is the parent company of all Snap-on businesses globally. Snap-on, Incorporated, through its subsidiaries manufactures and produces most Snap-on products sold by franchisees.

Snap-on Asia Pacific Holdings Pte Ltd is the parent company of Snap-on. Snap-on Asia Pacific Holdings Pte Ltd is a wholly owned subsidiary of Snap-on, Inc.

**(b) each associate mentioned in item 2.6 and the franchisor**

P. Ajit Ponnambalam is an employee and director of the franchisor.

Barrie J Young is a director of the franchisor.

Paul J Lynch is an employee of the franchisor.

Bhupesh Bhai is the Company Secretary and employee of the franchisor.

**and of the relevance of the relationship to the franchise system and the franchise.**

Refer to Items 2.7(a) and (b) above.

**2.8 For each officer of the franchisor – name, position held and qualifications (if any):****Directors**

Name: P. Ajit Ponnambalam  
Position: Managing Director  
Qualifications: BA (Hons), MBA, FCA (England & Wales),  
FCA (Australia), ACMA (UK)

Name: Barrie J. Young  
Position: Director  
Qualifications: MBA

Name: Paul Lynch  
Position: National Sales Manager  
Qualifications: MBA, MMgt

Name: Bhupesh Bhai  
Position: Financial Controller and Company Secretary  
Qualifications: B.Acc/Fin Mgt, CA (Australia)

**3. BUSINESS EXPERIENCE****3.1 A summary of the relevant business experience of each person mentioned in item 2.8 for the past 10 years, including length of experience in:**

- (a) working in the franchise system; and
- (b) working for the franchisor.

**P. Ajit Ponnambalam**  
***Managing Director***

P. Ajit Ponnambalam is the Managing Director of Snap-on Tools (Australia) Pty Ltd. Prior to joining Snap-on in 1992, he was the Financial Accounting Manager for Masterfoods (a division of Mars Australia Pty Ltd) for 6 years. He joined Snap-on as Director of Finance where his responsibilities included finance, secretarial, accounting, information services, financial planning functions, together with legal responsibilities and human resources. In 2007 he was appointed Managing Director of Snap-on.

**Barrie J. Young**  
***Director and President – Sales and Franchising***

Barrie J. Young has been in his present position with Snap-on Incorporated since February 2007. From March 1999 until February 2007, he was Managing Director of Snap-on Tools Australia Pty. Ltd., located in Sydney, Australia.

**Paul Lynch**  
***National Sales Manager***

Paul J Lynch is the National Sales Manager of Snap-on. Paul has 35 years' experience in the broader automotive industry covering wholesale, retail, aftermarket service and tooling including vertically integrated retail, franchise operations and independent distribution. In his 14 years with Snap-on, Paul has held the roles of Technical Trainer, National Training Manager, Manager of Diagnostics and Equipment, Franchise Business Manager and National Sales Manager. As National Sales Manager for Australia and New Zealand, Paul has responsibility for the areas of Franchise Sales and Operations, Marketing and Product, inclusive of Diagnostics and Undercar Equipment.

**Bhupesh Bhai**  
***Financial Controller and Company Secretary***

Bhupesh Bhai is the Financial Controller for Snap-on Tools Australia and New Zealand since 2016 and was appointed as Company Secretary in 2018. In this role, he is responsible for all aspects of the company's finance function including accounting, audit, financial planning and analysis, tax, and corporate strategy.

Prior to joining Snap-on, he was the Group CFO and Company Secretary for Applus Velosi's Asia Pacific and African operations based in Brisbane. Prior to Applus he was with General Electric (GE) for 10 years in a variety of key finance leadership roles including Regional Controller, Group Financial Controller and ERP Implementations Manager, based in Sydney, Brisbane, Singapore and Dubai.

Bhupesh practiced with KPMG's Sydney Audit and Assurance division for five years prior to his time at GE.

**3.2 A summary of the relevant business experience of the Franchisor for the past 10 years, including:**

**(a) length of experience in:**

**(i) operating a business that is substantially the same as that of the franchise; and**

The Franchisor has been involved in selling tools and equipment from company owned and operated Mobile Stores for approximately twenty three (23) years.

The Franchisor is a wholly owned subsidiary of Snap-on Asia Pacific Holdings Pte Ltd, which is a subsidiary of Snap-on Incorporated, a Delaware USA corporation that was founded in 1920.

Snap-on Incorporated is primarily a developer, manufacturer and distributor of tools and equipment for professional users, including without limitation technicians, motor service shop owners, specialty repair centres, equipment manufacturers and other industry tool users worldwide.

The Franchisor was incorporated in October 1971 and commenced operations in 1988.

The Franchisor carries on a business of supplying tools and equipment for professional tool users, predominantly in the automotive industry. Supply is via a network of independent franchisees operating in exclusive territories from custom built display vans.

The first Australian office was opened in Brisbane in 1988, followed by offices in Sydney, Melbourne, Perth and Adelaide in 1989.

In 1991, the state based Australian operations of the Franchisor were consolidated and the National Distribution Centre in Sydney was opened.

In 1997 the Franchisor introduced the Snap-on franchise system into Australia and commenced granting franchises. Prior to 1997, the Franchisor only offered Authorised Dealerships.

As at the date of this Disclosure Document, Snap-on Products are distributed in Australia in 3 ways:

**(1) by Franchisees;**

- (2) by the Franchisor through its Industrial Division, which includes a 'National Accounts Program'; (Refer to the Franchise Agreement.) and
- (3) by the Franchisor through the Internet.

- (ii) **offering other franchises that are substantially the same as the franchise; and**

Nil.

This is the only business that the Franchisor has operated since its incorporation and the Franchisor does not offer any other franchises that are substantially the same as the Snap-on Franchise.

- (b) **whether the Franchisor has offered franchises for other businesses and if so:**

- (i) **a description of each such business; and**
- (ii) **for how long the Franchisor offered franchises for each such business.**

No.

The Franchisor has not previously offered, and does not currently offer, any franchises for businesses other than Snap-on franchised businesses.

## 4. LITIGATION

### 4.1 Details of:

- (a) **current proceedings by a public agency, criminal or civil proceedings or arbitration, relevant to the franchise, against the Franchisor a Franchisor director, an associate of the Franchisor or a director of an associate of the Franchisor, in Australia alleging:**

- (i) **breach of a franchise agreement:** None
- (ii) **contravention of trade practices law:** None
- (iii) **contravention of the *Corporations Act 2001* (Cth):** None
- (iv) **unconscionable conduct:** None
- (v) **misconduct:** None
- (vi) **an offence of dishonesty:** None

- (b) **proceedings against the Franchisor , a Franchisor director, an associate of the Franchisor or a director of an associate of the Franchisor, other than for unfair dismissal of an employee, under:**

- (i) **section 12 of the *Independent Contractors Act 2006*; or** None
- (ii) **a law of a State or Territory that regulates workplace relations or independent contractors.** None



**4.2 Whether the Franchisor, a Franchisor director, an associate of the Franchisor or a director of an associate of the Franchisor has been:**

- |     |  |    |
|-----|--|----|
| (a) | in the last 10 years – convicted of a serious offence, or an equivalent offence outside Australia:                       | No |
| (b) | in the last 5 years – subject to final judgment in civil proceedings for a matter mentioned in paragraph 4.1(a):         | No |
| (c) | in the last 10 years – bankrupt, insolvent under administration or a Chapter 5 body corporate in Australia or elsewhere: | No |

**4.3 For Items 4.1 and 4.2 – the following details (where relevant):**

- |     |  |
|-----|--|
| (a) | Names of the parties to the proceedings;<br><br>Not applicable.  |
| (b) | the name of the court, tribunal or arbitrator;   |
| (c) | Not applicable.the case number;  |
| (d) | Not applicable.the general nature of proceedings;  |
| (e) | Not applicablethe current status of proceedings;   |
| (f) | Not applicable.the date and content of any undertaking or order under section 87B of the <i>Competition and Consumer Act 2010</i> ;<br><br>Not applicable. |
| (g) | the penalty or damages assessed or imposed;<br><br>Not applicable.   |
| (h) | the names of the persons who are bankrupt, insolvent under administration or externally administered; and<br><br>Not applicable.                           |
| (i) | the period of the bankruptcy, insolvency under administration or external administration.<br><br>Not applicable.   |

**5. PAYMENTS TO AGENTS****5.1 For any agreement under which the Franchisor must pay an amount, or give other valuable consideration to a person who is not an officer, director or employee of the Franchisor in connection with the introduction or recruitment of a Franchisee – the name of the person:**

The Franchisor pays an amount to any existing Snap-on Franchisee, or employee of the Franchisor who introduces a person to the Franchisor who ultimately becomes a Franchisee.

The Franchisor may from time to time retain the services of a Franchise Broker to assist in the recruitment of new franchisees. The Franchisor may pay a commission to the broker on the execution of a franchise agreement by a new franchisee.

## 6. EXISTING FRANCHISES

### 6.1 Number, sorted by State, Territory or region, of:

- (a) existing franchised businesses;
- (b) existing franchisees; and
- (c) businesses owned or operated by the franchisor or an associate of the franchisor in Australia that are substantially the same as the franchised business.

State/ Region	Number of Existing Franchised Businesses (Item 6.1(a))	Number of Existing Franchisees (Item 6.1(b))	Number of Businesses owned or Operated by Franchisor or an associate of the Franchisor in Australia that are substantially the same as the franchised business (Item 6.1(c))
Queensland	42	34	3
New South Wales & ACT	43	40	6
Victoria & Tasmania	35	28	4
South Australia	10	9	0
Western Australia & NT	21	19	0
	151	130	13

### 6.2 For each existing franchisee:

- (a) business address, if this is not the franchisee's residential address; and
- (b) business phone number; and
- (c) year when the franchisee started operating the franchised business.

Name & Business Address if this is not the Franchisee's Residential Address (Item 6.2(a))	Business Phone Number (Item 6.2(b))	Year Franchisee started Franchised Business (Item 6.2(c))
<b>QUEENSLAND</b>		
Norman Child*	0412 781 876	1998
Steven Fell*	0408 187 115	2001
Scott Coburn*	0414 365 029	2003
Andrew Kent*	0412 830 834	2005
Ian Hunt*	0418 740 637	2006
Evan Waugh*	0400 104 767	2006
Mark Abrahams*	0412 432 221	2007
Clive Surridge*	0422 845 953	2008
Craig Wilkinson*	0439 880 220	2008

<b>Name &amp; Business Address if this is not the Franchisee's Residential Address (Item 6.2(a))</b>	<b>Business Phone Number (Item 6.2(b))</b>	<b>Year Franchisee started Franchised Business (Item 6.2(c))</b>
Stuart Newcombe*	0420 202 928	2009
Philip Curtis*	0411 726 750	2010
David Dean*	0413 938 997	2010
Michael Scribner*	0438 453 755	2011
Michael Carew*	0437 113 454	2012
Anthony Santarossa*	0429 876 526	2012
Ben Griffin*	0438 864 273	2013
Shaun Hayes*	0400 799 878	2013
David Walters*	0418 775 282	2014
Steve Kienzler*	0409 548 427	2015
Jonathan Ball*	0417 622 958	2016
David de Kleyn*	0407 365 232	2016
Brad Rackley*	0438 615 609	2016
David Fysh*	0438 615 230	2017
Michael Pedersen*	0408 510 302	2017
Lucas Glen*	0417 873 070	2017
Darren Omlid*	0438 615 608	2017
Anton Billett*	0438 615 610	2017
Stephen Willis*	0422 845 953	2018
Grant Luders*	0400 257 789	2019
Adrian Flanagan*	0428 785 001	2019
Andrew Mahoney*	0408 773 935	2019
Ryan Ziebarth*	0401 350 153	2019
Ben King*	0438 813 110	2019
Max Hardy*	0412 519 963	2019
<b>NEW SOUTH WALES</b>		
Chris Hohnke*	0412 027 027	1997
Ken McKay*	0419 205 434	1997
John Sinclair*	0418 463 388	1997
Tim Tredrea*	0428 668 380	1998
Stuart McKessar*	0414 508 050	1998
Brad Grant*	0419 203 182	2000
Steve Crawford*	0419 231 417	2003
Jeffrey Hoberman*	0414 588 284	2004
Charles Zografos*	0413 736 976	2005
Donovan Finney*	0419 218 490	2005
Glenn Mordue*	0428 463 655	2008
Yuri Stefanidi*	0439 435 511	2010
David Sarno*	0406 467 627	2012
Daniel Pullen*	0407 713 409	2014
Keith Armstrong*	0429 111 501	2014

<b>Name &amp; Business Address if this is not the Franchisee's Residential Address (Item 6.2(a))</b>	<b>Business Phone Number (Item 6.2(b))</b>	<b>Year Franchisee started Franchised Business (Item 6.2(c))</b>
Jeremy English*	0406 115 797	2014
Michael Vrouxiou*	0450 100 600	2015
Warren Wise*	0412 560 160	2015
Rhys Cavanagh*	0425 300 537	2015
Brett Maddicks*	0439 688 662	2015
Marcus Thomas*	0413 195 216	2015
Micky Vilches*	0417 221 989	2016
Steve Nash*	0429 977 007	2016
Andre Dykes*	0415 749 852	2016
Jim Bolovinos*	0402 717 330	2017
Tam Nguyen*	0448 683 933	2017
Chris Anderson*	0478 120 445	2018
Mitch Hind*	0410 460 977	2018
Richard Tobin*	0449 281 515	2018
Chad Rodgers*	0476 276 654	2018
Daniel Pirozzi*	0448 444 381	2018
Shayne Carter*	0418 298 429	2018
Luca Del Vecchio*	0448 734 866	2018
Lai Phan*	0490 153 718	2018
Daniel Payne*	0432 421 225	2019
Kurt Jeffrey*	0437 124 454	2019
Eduardo Rubio*	0418 630 650	2019
Joshua Bazika*	0414 422 483	2019
<b>AUSTRALIAN CAPITAL TERRITORY</b>		
Michael Phillips*	0412 131 123	2002
Robert Cartwright*	0419 675 337	2011
<b>NORTHERN TERRITORY</b>		
Kevin O'Shaughnessy*	0409 413 418	2004
<b>VICTORIA</b>		
Haig Mitchelhill*	0428 293 814	2000
Billy Brodrick*	0419 330 661	2005
Michael Holmes*	0427 774 805	2006
Laurence Op De Coul*	0408 303 538	2006
David Gillingham*	0418 399 845	2007
Adrian Goode*	0427 762 766	2008
Austin Smith*	0424 009 703	2008
Rodney Morris*	0438 544 050	2009
Daniel Robertson*	0411 964 038	2010
Adam Garth*	0412 530 349	2011
Ken Cornell*	0407 257 434	2012

Name & Business Address if this is not the Franchisee's Residential Address (Item 6.2(a))	Business Phone Number (Item 6.2(b))	Year Franchisee started Franchised Business (Item 6.2(c))
Ian Giddings*	0448 506 401	2012
David Forsyth*	0430 015 866	2012
Michael Jambor*	0408 996 474	2013
Ryan Shepherd*	0457 303 915	2014
Craig Barry*	0419 364 424	2014
Ben Finch*	0409 807 965	2014
Steven Fulton*	0401 208 053	2014
Andrew McLellan*	0438 740 782	2015
Glenn Hanley*	0410 674 747	2016
Ben Moore*	0408 917 751	2017
Danny Hill*	0437 072 252	2017
David Johnson*	0477 770 772	2017
Freeman Tang*	0413 304 121	2018
Beau Missen*	0408 059 035	2018
Stephen Beech*	0405 199 894	2019
<b>TASMANIA</b>		
Tim Scott*	0409 974 063	NSW 2009, TAS 2015
Allan Honess*	0418 132 273	2017
<b>SOUTH AUSTRALIA</b>		
Donald Nicholl*	0411 188 674	1999
Shaine Osten*	0407 974 162	1999
Chris Wood*	0447 829 153	2008
Graham Glendenning*	0409 085 311	2010
Phil Sandow*	0408 251 430	2012
Misha Djukanovic*	0415 709 443	2013
Ian Gifford*	0408 892 369	2016
John Jones*	0419 983 008	2017
Daniel Smith*	0422 093 833	2017
<b>WESTERN AUSTRALIA</b>		
Martin Sparks*	0418 932 187	1998
Michael Ellis*	0408 542 665	1999
Christopher Edwards*	0418 931 823	1999
Ray Leonard*	0418 940 089	2008
Mal White*	0409 125 746	2001
Ken Richardson*	0407 986 188	2006
David Hollamby*	0430 051 799	2007
Malcolm Snow*	0433 134 202	2008
Chris Lovell*	0439 365 892	2009
Frank McGrory*	0415 915 929	2013
Cameron Branch*	0408 855 947	2016
Matt Kemp*	0477 121 508	2016

Name & Business Address if this is not the Franchisee's Residential Address (Item 6.2(a))	Business Phone Number (Item 6.2(b))	Year Franchisee started Franchised Business (Item 6.2(c))
Nick Ennis*	0416 210 369	2016
Jeff Wallmann*	0499 245 596	2017
Troy Thompson*	0409 700 323	2018
Damien Stephens*	0408 953376	2018
Jonathan Sidwell*	0430 968 721	2018
Paul Palor*	0424 123 802	2018

\* In accordance with Item 6.2(a) of Annexure 1 of the Code, business addresses have not been provided for these franchisees as their business address is also their residential address.

**6.3 However, if there are more than 50 franchises, the franchisor may instead give details under item 6.2 for all franchisees in the State, Territory, region or metropolitan area in which the franchise is to be operated.**

Although there are, as at the date of this Disclosure Document, more than 50 Snap-on franchised businesses, the Franchisor has chosen to provide the relevant details for all Snap-on franchisees.

**6.4 For each of the last 3 financial years and for each of the following events (an event may be counted more than once if more than 1 paragraph applies to it) - the number of franchised businesses for which the event happened:**

	Event*	Year ended 31 <sup>st</sup> December 2017	Year ended 31 <sup>st</sup> December 2018	Year ended 31 <sup>st</sup> December 2019
(a)	Franchise transferred	11	5	7
(b)	Franchised business ceased to operate	0	0	0
(c)	Franchise agreement was terminated by Franchisor	1	1	0
(d)	Franchise agreement was terminated by Franchisee	9	16	14
(e)	Franchise agreement was not extended	1	2	1
(f)	Franchised business was bought back by Franchisor	0	0	0
(g)	Franchise agreement was terminated and franchise business acquired by Franchisor	0	0	0

\* Note: an event may be counted more than once if more than one section applies.

**6.5 Subject to subclause 32(1) of the Code, the Franchisor must supply, for each event mentioned in Item 6.4, the name, location and contact details of each franchisee, if the information is available.**

To the extent that the information is available Annexure H contains the name, location and contact details of each franchisee involved in each event mentioned in Item 6.4. Annexure H does not contain the details of franchisees who have requested in writing that their details not be disclosed.

## **7. MASTER FRANCHISES**

### **7.1 If the franchisor is also a subfranchisor—the master franchisor's:**

- (a) name; and**
- (b) address, or addresses, of registered office and principal place of business; and**
- (c) ABN, ACN or ARBN (or foreign equivalent if applicable).**

Not applicable.

The Franchisor is not a subfranchisor and does not operate any master franchises or sub-franchisees in Australia.

### **7.2 The name under which the master franchisor carries on business relevant to the franchise.**

Not applicable. Refer to Item 7.1 above.

### **7.3 For each officer of the master franchisor—name, position held and qualifications (if any).**

Not applicable. Refer to Item 7.1 above.

### **7.4 For each of the last 3 financial years and each of the following events—the number of:**

- (a) franchise agreements terminated by the master franchisor;**
- (b) franchise agreements terminated by the franchisor;**
- (c) franchise agreements that were not extended by the master franchisor.**

Note: An event may be counted more than once if more than one paragraph applies.

Not applicable. Refer to Item 7.1 above.

### **7.5 The following details about the master franchise:**

- (a) the term of the franchise agreement, including the date that it began;**
- (b) the territory of the franchise;**
- (c) whether the franchise agreement may be renewed;**
- (d) whether the term of the franchise agreement may be extended and if so, any preconditions applying to an extension;**
- (e) whether the scope of the franchise agreement may be extended;**
- (f) whether the franchise agreement may be transferred, and if so, whether the franchisee is required to become a party to a franchise agreement with the transferee;**
- (g) the grounds on which the franchise agreement may be terminated;**
- (h) if the franchise agreement is terminated, how a subfranchisor's franchise agreement with a franchisee is affected.**

Not applicable. Refer to Item 7.1 above.

## 8. INTELLECTUAL PROPERTY

### 8.1 For any trade mark used to identify, and for any patent, design or copyright that is material to, the franchise system ("Intellectual Property"):

#### (a) a description of the Intellectual Property:

The Intellectual Property includes all copyright, trade mark rights, patent rights, design rights or any other intellectual property rights (whether registered or unregistered) subsisting in or created during the development of the Trademarks, Franchise Operations Manual, Snap-on Program and any advertising and promotional materials provided to Franchisee, including Snap-on's computer software (currently known as **CHROME and Chrome Express Plus**), source and object codes, scripts, records, documents, specifications, plans, program listings, calculations or drawings; and all Confidential Information necessary for, or which may be used in connection with the administration, operation and marketing of a Snap-on business.

The distinguishing features of the Snap-on Program include, the name "Snap-on"; the tools and equipment manufactured and/or distributed by Snap-on (**Products**) and made available by Snap-on for resale by its franchisees, special confidential techniques for selling and marketing the Products; know-how, systems, computer programs, processes, procedures, databases, signs, emblems, trade names, Trademarks, and service marks; instructional materials and training courses. In addition the Snap-on Program includes the policies, procedures, instructions and information contained in the Franchise Operations Manual and other manuals provided to franchisees by Snap-on (whether electronically or in any other form); all of which may be changed, improved, or further developed by Snap-on from time to time.

Intellectual Property is also included on the Mobile Store.

#### (b) Details of the Franchisee's rights and obligations in connection with the use of the Intellectual Property:

The Franchisee is granted the right to use the intellectual property strictly on the terms and conditions set out in the Franchise Agreement and in the manner authorised by the Franchisor.

In summary, the Franchisee must:

- not cause any of the Intellectual Property to be prejudicially affected or contested;
- use the Intellectual Property only in the manner prescribed by Snap-on;
- not make any alterations to the Intellectual Property; and
- not register or seek to register any of the Intellectual Property.

The Franchisee must use the Trade Marks strictly for the purpose of operating the Franchise and in the manner expressly authorised in the Franchise Agreement or by Snap-on in writing.

On the expiration or termination of the Franchise Agreement the Franchisee's right to use the intellectual property ceases and the Franchisee is obliged to return to the Franchisor (or cease using) the Franchise Operations Manual, in either hard copy or electronic format, and all materials containing the Snap-on Trade Marks and other intellectual property and comply with various other obligations as detailed in the Franchise Agreement. The Franchisee's rights and obligations in connection with the use of the intellectual property are set out in the franchise agreement, including the termination provisions.

#### (c) Whether the Intellectual Property is registered in Australia and, if so, the registration date, registration number and place of registration:



The trademark “Snap-on” (registration number 763739) was registered in Australia on 12 June 1997. “Snap-on” is the name under which Snap-on (as franchisor) and Snap-on franchisees will operate their business using the Snap-on franchise systems. There are also various trademarks, designs and patents registered in connection with particular services and products. The below table provides further information on the Intellectual Property which is owned by Snap-on and used by the Franchisee in accordance with the Franchise Operations Manual. (Note: “Int” refers to an international registration)

DRAFT

<b><u>Trademark Name</u></b>	<b><u>Registration No.</u></b>	<b><u>Classes &amp; place of registration</u></b>	<b><u>Registration Date</u></b>	<b><u>Owner Name</u></b>
ATHENA	1895624	09 int.	17-Oct-2018	Snap-on Inc.
BLACKHAWK	242911	07 Int.	06-Oct-1970	Snap-on Inc.
BLACKHAWK	A113570	07 Int.	09-Apr-1953	Snap-on Inc.
BLACKHAWK	709445	07 Int.	28-May-1996	Snap-on Inc.
BLACKHAWK	249256	07 Int.	05-Sep-2028	Snap-on Inc.
BLACKOSPACE	628726	07 Int.	29-Apr-1994	Snap-on Inc.
BLACKOSPACE	628727	09 Int.	29-Apr-1994	Snap-on Inc.
BLUE-POINT	A497236	12 Int.	13-Oct-1988	Snap-on Inc.
BLUE-POINT	A497232	07 Int.	13-Oct-1988	Snap-on Inc.
BLUE-POINT	A497233	08 Int.	13-Oct-1988	Snap-on Inc.
BLUE-POINT	A497237	20 Int.	13-Oct-1988	Snap-on Inc.
BLUE-POINT	1318374	06 Int., 07 Int., 08 Int., 09 Int.	23-Feb-2017	Snap-on Inc.
BLUE-POINT (STYLIZED)	A497235	11 Int.	13-Oct-1988	Snap-on Inc.
BLUE-POINT (STYLIZED)	A497234	09 Int.	13-Oct-1988	Snap-on Inc.
CONTROLTECH	1580204	08 Int.	14-Apr-2014	Snap-on Inc.
DOZER	196772	07 Int.	18-Aug-1965	Snap-on Inc.
DUSTAR	628724	07 Int.	29-Apr-1994	Snap-on Inc.
DUSTAR	628725	09 Int.	29-Apr-1994	Snap-on Inc.
EUROCHECK	820737	09 Int.	27-Feb-2004	Snap-on Inc.
FAST-TRACK	1038683	09 Int.	07-Sep-2005	Snap-on Inc.
FDX	1919159	08 int.	24-Oct-2018	Snap-on Inc.
FLANK DRIVE	682099	08 Int.	30-Jun-1997	Snap-on Inc.
GEARTHREADS	1587896	14 Int., 16 Int., 18 Int., 21 Int., 24 Int., 25 Int.	28-May-2014	Snap-on Inc.
JOHN BEAN	727143	07 Int., 09 Int.	04-Feb-1997	Snap-on Inc.
KOREK	A226533	07 Int.	20-Feb-1969	Snap-on Inc.
MICROSCAN	1607694	09 Int.	25-Sep-2014	Snap-on Inc.
OWN-IT	1804002	08 int.	17-May-2017	Snap-on Inc.
OWN-IT	1857810	35 int.	15-Feb-2018	Snap-on Inc.
POLARTEK	1741547	11 Int.	01-Jun-2016	Snap-on Inc.
PORTO-POWER stylized	A113572	07 Int.	09-Apr-1953	Snap-on Inc.
POWER CAGE Series	347634	07 Int.	25-Jun-1980	Snap-on Inc.
QUADRI CLAMP Series	394631	07 Int.	15-Jan-1981	Snap-on Inc.
SHARK	656677	09 Int.	20-Mar-1995	Snap-on Inc.
SHARK (AND DESIGN)	628728	09 Int.	29-Apr-1994	Snap-on Inc.
SNAP-ON	1119812	25 Int., 28 Int.	05-Sep-2013	Snap-on Inc.
SNAP-ON (block wrench logo)	871083	07 Int.	21-Feb-2002	Snap-on Inc.
SNAP-ON (block wrench logo)	784094	28 Int.	08-Jan-2001	Snap-on Inc.
SNAP-ON (block wrench logo)	1104029	25 Int., 28 Int.	05-Sep-2013	Snap-on Inc.
SNAP-ON (block wrench logo)	736739	06 Int., 07 Int., 08 Int., 09 Int.	12-Jun-1997	Snap-on Inc.
SNAP-ON TOOLS	183695	09 int., 14 int., 16 int., 21 int., 25 int., 28 int., 34 int.	18-Oct-2017	Snap-on Inc.
SNAP-ON TOOLS	1716647	25 Int.	29-Mar-2016	Snap-on Inc.
SOLUS ULTRA	1406234	09 Int.	11-Jan-2012	Snap-on Inc.
SUN	A151240	09 Int.	23-Oct-1993	Snap-on Inc.
SUN	652229	09 Int.	06-Feb-1995	Snap-on Inc.
SUNPRO and design	347974	09 Int.	02-Jul-1980	Snap-on Inc.
SUNTESTER	234362	07 Int.	25-Nov-1990	Snap-on Inc.

SUNTESTER	A371302	09 Int.	08-Feb-1982	Snap-on Inc.
SUNTESTER	A371303	37 Int.	08-Feb-1982	Snap-on Inc.
SUNTUNE	A358922	09 Int.	09-Apr-1981	Snap-on Inc.
TORQ-O-METER	308751	08 Int.	04-Jul-1977	Snap-on Inc.
V3400	1587883	09. Int.	28-May-2014	Snap-on Inc.
VERDICT	1428165	09 Int.	04-Oct-2011	Snap-on Inc.
VERUS	1375550	09 Int.	12-Feb-2015	Snap-on Inc.
VERUS PRO	1480934	09 Int.	12-Feb-2015	Snap-on Inc.

## PATENTS

A number of patents have been registered in connection with various Snap-on products.

## COPYRIGHT

Copyright subsists in documents, software and other works created or commissioned by Snap-on, Inc., the Franchisor and their associates including, but not limited to:

- (1) the Franchisee Operations Manual;
- (2) written promotional material such as brochures;
- (3) Chrome and other Point of Sale software; and
- (4) Snap-on Information Systems.

**(d) any judgment or pending proceedings that could significantly affect the ownership or use of the Intellectual Property, including:**

- (i) **name of court or tribunal; and**
- (ii) **matter number; and**
- (iii) **summary of the claim or judgement; and**

The Franchisor has made enquiries of Snap-on Asia Pacific Holdings Pte Ltd and in relation to whether there are any judgements or pending proceedings that could significantly affect ownership or use of the intellectual property listed in Item 8.1(a) above. The result of these enquiries are that, as at the date of this Disclosure Document, there are no such judgements or pending proceedings.

**(e) if the Intellectual Property is not owned by the Franchisor – who owns it:**

The intellectual property listed in Item 8.1(a) above is owned by Snap-on Incorporated.

**(f) details of any agreement that significantly affects the Franchisor's rights to use, or to give others the right to use, the Intellectual Property, including:**

Snap-on Incorporated authorises the Franchisor, to use and sub-licence others to use through a Franchise Agreement, the intellectual property of the Snap-on Program. The authority from Snap-on Incorporated provides as follows:

**(i) Parties to the agreement:**

The parties to the agreement are Snap-on Incorporated and the Franchisor.

**(ii) Nature and extent of any limitation:**

The authority is limited to the countries of Australia and New Zealand.

(iii) **Duration of the agreement:**

The authority is for an indefinite time.

(iv) **Conditions under which the agreement may be terminated:**

There are no specific conditions under which the authority may be withdrawn.

**8.2 The franchisor is taken to comply with item 8.1 for any information that is confidential if the franchisor gives:**

- (a) a general description of the subject matter; and
- (b) a summary of conditions for use by the franchise.

Refer to Item 8.1 above.

## **9. FRANCHISE SITE OR TERRITORY**

**9.1 Whether the franchise is:**

- (a) for an exclusive or non-exclusive territory:

**List of Calls Franchise Agreement**

Not applicable.

If the Franchise Agreement contains a List of Calls, the Franchisee does not have an exclusive or protective territory.

**Territory Franchise Agreement**

Subject to the Franchisor's rights to itself operate in the territory (refer to Item 9.2 of this Disclosure Document below) of the Franchise Agreement and Snap-on's rights to amend the Territory, the franchise is for an exclusive Territory that cannot be serviced by another Franchisee.

- (b) limited to a particular site:

**List of Calls Franchise Agreement**

As the franchised business is conducted from a mobile display van (Mobile Store), the franchise is not limited to a particular site. However, the Franchisee is only permitted to re-supply Snap-on products to Potential Customers at Approved Stops on the Franchisee's List of Calls.

**Territory Franchise Agreement**

As the franchised business is conducted from a mobile display van (Mobile Store), the franchise is not limited to a particular site, but is limited to the geographic boundaries of the Territory, which are determined in accordance with section 2 of the Franchise Agreement and may be amended by Snap-on in accordance with the provisions of the Franchise Agreement.

**9.2 For the territory of the franchise:**

Under a List of Calls Franchise Agreement the franchisee does not have an exclusive or protective territory. Accordingly, this Item 9.2 does not apply to a List of Calls Franchise Agreement.

However, Snap-on discloses the following information relating to a List of Calls Franchise Agreement:

- Subject to the terms of the Franchise Agreement, the franchisee may only re-supply Snap-on Products to Potential Customers at Approved Stops on that franchisee's List of Calls as adjusted from time to time.
- The List of Calls may be amended from time to time by Snap-on in accordance with the provisions of the Franchise Agreement. Refer to Item 9.2 (e) below and the Franchise Agreement for further details.
- Subject to the terms of the Franchise Agreement and the Franchisee not breaching the Franchise Agreement, Snap-on will not sell, or licence other franchisees to sell Snap-on products to Potential Customers at the Approved Stops specified on the Franchisee's List of Calls, other than those Stops which are an Industrial or Industrial/Franchisee Stop.
- If the Franchisee breaches the Franchise Agreement (for example by failing to service Potential Customers at Approved Stops in accordance with the Franchise Agreement), Snap-on may sell or licence others to sell the Products to such Potential Customers.

Unless otherwise specified, the responses below only apply where the prospective franchisee is entering into a Territory Franchise Agreement.

**(a) whether other Franchisees may own or operate a business that is substantially the same as the franchised business:**

**Territory Franchise Agreement**

Other franchisees are restricted from operating a business in the Territory that is substantially the same as the franchise.

**(b) whether the Franchisor or an associate of the Franchisor may own or operate a business that is substantially the same as the franchised business:**

**Territory Franchise Agreement**

The Franchisor may operate a business in the Territory that is substantially the same as the franchise in accordance with sections 2.C and 2.D of the Franchise Agreement.

Pursuant to sections 2.C and 2.D of the Franchise Agreement, Snap-on exclusively reserves the right to itself contact and sell Products to:

- certain customers on a national or regional basis as part of the "National Accounts" program; and
- industrial users, such as, but not limited to: commercial aviation, defence, petrochemical, industrial manufacturing, mining, the construction industry and its tradesmen, railways, central purchasing offices, government installations (civil and military) and institutions (including schools) and all other Potential Customers who require scientific information, special devices, special ordering procedures, special services and/or technical and engineering data or for whom special procurement procedures are required.

Also, pursuant to section 44(20) of the Franchise Agreement the Franchisee expressly acknowledges and agrees that Snap-on and its Related Entities sell, or may in the future sell, Products and merchandise bearing the trademarks, other trademarks owned by Snap-on or its Related Entities, and other marks through means of distribution (other than Snap-on franchisees) located in the Territory and elsewhere.

**(c) whether the Franchisor or an associate of the Franchisor may establish other franchises that are substantially the same as the franchise:**

**Territory Franchise Agreement**

The Franchisor may not establish other franchises in the Territory that are substantially the same as the franchise in accordance with section 2.A of the Franchise Agreement.

- (d) **whether the Franchisee may own or operate a business that is substantially the same as the franchised business outside the territory of the franchise:**

#### **Territory Franchise Agreement**

The Franchisee is restricted from owning or operating the franchised business outside the Territory under section 2.A of the Franchise Agreement.

The Franchisee is restricted from owning or operating a business substantially the same as the franchise whether inside or outside the Territory under sections 2.A, 9.C & 26 of the Franchise Agreement.

- (e) **whether the Franchisor may change the territory or site of the franchise and if so, the circumstances in which such a change may occur:**

Yes.

#### **Territory Franchise Agreement**

The Franchisor may change the Territory in a range of circumstances by giving notice of the change to the Franchisee.

The Franchisee acknowledges and agrees that Snap-on reserves the right to adjust the Territory by increasing or reducing the Territory. This adjustment may occur if Snap-on determines, in its sole business judgement that such adjustments are necessary due to any one or more of the following:

- existing or future competition;
- more customers or Potential Customers than the Franchisee is able to adequately service;
- an insufficient number of customers or Potential Customers for the Franchisee to service,
- to help ensure the Snap-on franchise and distribution network is able to properly and efficiently service or satisfy the needs and demands of Potential Customers;
- an adjustment being made to another Franchisee's Territory or List of Calls; or
- for such other reasons that Snap-on deems relevant..

Without limiting the above rights Snap-on may also adjust the Territory in certain circumstances if the Franchisee fails to comply with certain obligations set out in the Franchise Agreement.

Refer to the Franchise Agreement for further details.

#### **List of Calls Franchise Agreement**

The Franchisor may change the List of Calls in a range of circumstances by giving notice of the change to the Franchisee.

The Franchisee acknowledges and agrees that Snap-on may amend the List of Calls in the manner determined appropriate by Snap-on at any time by giving the Franchisee 30 days prior written notice of the amendment if Snap-on determines, in its sole business judgement that such amendments are necessary due to any one or more of the following:

- existing or future competition;

- there being more Potential Customers at the Approved Stops on the List of Calls than the Franchisee is able to adequately service;
- there being an insufficient number of Potential Customers at the Approved Stops on the List of Calls for the Franchisee to service;
- to help ensure the Snap-on franchise and distribution network is able to properly and efficiently service or satisfy the needs and demands of Potential Customers;
- an adjustment being made to another Franchisee's Territory or List of Calls; or
- such other reason that Snap-on deems relevant.

Without limiting the above rights Snap-on may also adjust the List of Calls in certain circumstances if the Franchisee fails to comply with certain obligations set out in the Franchise Agreement.

Refer to the Franchise Agreement for further details.

## 10. SUPPLY OF GOODS OR SERVICES TO A FRANCHISEE

### 10.1 For the Franchisor's requirements for supply of goods or services to a Franchisee – details of:

(a) **any requirement for the Franchisee to maintain a level of inventory or acquire an amount of goods or services:**

Snap-on have minimum inventory levels, values and standards that are required of every franchisee. These inventory levels, values and standards are outlined in the **Operations Manual** and may be changed from time to time by Snap-on (acting reasonably). The minimum inventory value is calculated at **List Price**.

The Franchisee must at all times (including when the Franchisee commences trading) carry and maintain an inventory of **Products** on their **Mobile Store** with a value of at least the minimum value set out in the **Operations Manual** from time to time or otherwise specified by Snap-on.

Under section 23.B(2)(k), it will be an event of default under the Franchise Agreement if the Franchisee fails, within ten (10) days after the Commencement Date of the Franchise Agreement, to pay the Franchisor for the initial inventory of Products.

The Franchisee must ensure that the Franchisee's average weekly purchases of Products from Snap-on over any period of fifty-two (52) consecutive weeks, measured by recommended List Prices, are not less than eighty percent (80%) of the average weekly purchases of Products by all full-time Franchisees in the same State over that period.

(b) **restrictions on acquisition of goods or services by the Franchisee from other sources:**

Unless otherwise approved in writing by Snap-on, the Franchisee may only sell the **Products**. The **Products** must be purchased from Snap-on.

The Franchisee is restricted from acquiring goods and services from sources other than the Franchisor under section 9.D of the Franchise Agreement.

(c) **ownership by the Franchisor or an associate of the Franchisor of an interest in any supplier from which the Franchisee may be required to acquire goods or services:**

The Franchisor is owned by an Associate of the Franchisor.

The Franchisee is required to acquire goods and services from the Franchisor in accordance with the Franchise Agreement, but is not required to acquire goods or services from other suppliers in which the Franchisor or its associates has an ownership interest.

**(d) the obligation of the Franchisee to accept goods or services from the Franchisor, or an associate of the Franchisor:**

Where the Franchisor elects to provide advice and assistance to the Franchisee in accordance with section 8.B of the Franchise Agreement the Franchisee must adhere to any advice or guidance given to the Franchisee by Snap-on.

The Franchisee must attend mandatory training programs in accordance with section 8.D of the Franchise Agreement. Please note that the training managers at these training sessions will communicate back to Snap-on regarding the completed training. This information will assist Snap-on in preparing for the training that will occur locally after the Franchisee's return.

The Franchisee is required to acquire goods and services from the Franchisor in accordance with sections 8.A and 9 of the Franchise Agreement.

**(e) the Franchisor's obligation to supply goods or services to the Franchisee:**

In accordance with section 8.B of the Franchise Agreement, the Franchisor may from time to time as the Franchisor deems necessary and appropriate, provide advice and assistance to the Franchisee in relation to various matters including bookkeeping and operational methods, inventory control, sales and marketing.

**(f) whether the Franchisee will be offered the right to be supplied with the whole range of the goods or services of the franchise:**

The Franchisee will be offered the right to be supplied with the whole range of the goods and services that the Franchisor makes available under the Snap-on Program.

**(g) conditions under which the Franchisee can return goods and to whom:**

The Franchisee may return Products to the Franchisor but only in accordance with the Franchisor's 'New Tool Returns Policy' as set out in the Operations Manual from time to time. This policy is subject to change.

Snap-on may at its option, elect to accept for return from the Franchisee any unsold **Products** that are new, unused, unopened and identified as returnable in Snap-on's point of sale system or in writing by Snap-on (excluding Products: no longer manufactured or distributed by Snap-on; specially made or ordered for the Franchisee or the Franchisee's customers; and which are discontinued), and such **Products** will be accepted for return in accordance with the new tools return procedures in the **Operations Manual**.

**(h) conditions under which the Franchisee can obtain a refund for services provided by the Franchisor and from whom:**

Subject to section 3.B (Cooling Off Period) of the Franchise Agreement and the requirements of any applicable laws, the Franchisee cannot obtain a refund for services provided by the Franchisor.

**(i) whether the Franchisor may change the range of goods or services and if so, to what extent:**

The Franchisor may change the range of Products offered to the Franchisee by giving notice of the change to the Franchisee in accordance with sections 7 and 8 of the Franchise Agreement.



- (j) **whether the Franchisor or an associate of the Franchisor will receive a rebate or other financial benefit from the supply of goods or services to the Franchisees, including the name of the business providing the rebate or financial benefit; and**

No

The Franchisor does not receive rebates or other financial benefits from the supply of goods or services to Franchisees.

- (k) **whether any rebate or financial benefit referred to under Item 9.1(j) is shared, directly or indirectly, with Franchisees:**

Not applicable. Refer to Item 10.1(j) above.

## **11. SUPPLY OF GOODS OR SERVICES BY A FRANCHISEE**

### **11.1 For the Franchisor's requirements for supply of goods or services by a Franchisee – details of:**

- (a) **restrictions on the goods or services that the Franchisee may supply:**

The Franchisee may only supply the Products and services that the Franchisee is authorised to supply under the Franchise Agreement.

Unless otherwise approved in writing by Snap-on, the Franchisee may only sell the Products (as defined in the Franchise Agreement).

- (b) **restrictions on the persons to whom the Franchisee may supply goods or services:**

#### **List of Calls / Approved Stops Franchise Agreement**

The persons to whom the Franchisee may supply goods and service are restricted in accordance with Sections 2 and 9.E of the Franchise Agreement.

Subject to the terms in the Franchise Agreement, the Franchisee has the right to use the Snap-on Program and purchase Products from Snap-on for resale to professional tool users responsible for purchasing their own tools, whether or not such user is an existing, actual or potential customer (**Potential Customers**) only at the Approved Stops on the List of Calls as adjusted from time to time in accordance with the Franchise Agreement.

The Franchisee must:

- not use the Snap-on Program or sell Products: at any location or Stop which is not an Approved Stop on the then current List of Calls even if the location or a Potential customer's place of business or employment (**Stop**) is near an Approved Stop on the List of Calls; or to any Potential Customer who moves to a location or Stop not identified on the List of Calls, unless otherwise agreed in writing by Snap-on;
- sell the Products only to customers at Stops who are the end-user of the Products and must not sell the Products to any person or entity for resale, or redistribution (refer to section 9.E of the Franchise Agreement); and
- sell the Products only to Potential Customers at Approved Stops within the List of Calls who are the end-user of the Products and must not sell the Products to any person or entity for resale, or redistribution.

#### **Territory Franchise Agreement**

The persons to whom the Franchisee may supply goods and service are restricted in accordance with Sections 2 and 9.E of the Franchise Agreement.

The Franchisee may only sell the Products to professional tool users responsible for the purchase of their own tools and whose place of business or employment (**Stop**) is located within the Territory. Refer to Section 2 of the Franchise Agreement.

The Franchisee must sell the Products only to customers at Stops within the Territory who are the end-user of the Products and must not sell the Products to any person or entity for resale, or redistribution. Refer to section 9.E of the Franchise Agreement.

**(c) whether the Franchisee must supply the whole range of goods or services of the franchise:**

The Franchisee is required to supply the whole range of Products or services of the Franchise in accordance with section 9.A of the Franchise Agreement.

## **12. SUPPLY OF GOODS OR SERVICES – ONLINE SALES**

### **12.1 Details of whether the franchisee may make available online:**

**(a) Goods of the same type or brand;**

The Franchisee must not sell products or make the products available online.

**(b) Services of the same type**

The Franchisee must not make available online services of the same type offered by the Franchisee.

### **12.2 If goods or services may be made available online by the franchisee, the following information:**

**(a) Whether the franchise agreement restricts, or places conditions on, the franchisee's ability to make those goods and services available online;**

Not applicable. Refer to Item 12.1 above.

**(b) Whether goods or services may be made available via a third party website, and if so, specified restrictions or conditions by the franchisor on the franchisee's use of a third party website;**

Not applicable. Refer to Item 12.1 above.

**(c) The extent to which those goods or services may be supplied outside the territory of the franchise.**

Not applicable. Refer to Item 12.1 above.

### **12.3 Details of whether:**

**(a) The franchisor or an associate of the franchisor; or**

**(b) Other franchisees;**

**Makes, or expects to make, goods or services available online.**

Snap-on Tools provides products for sale online through its website, in accordance with the Franchise Operations Manual and section 8.E of the Franchise Agreement.

Other franchisees are prohibited from selling products or services online.

**12.4 If goods or services are made, or are expected to be made, available online by the franchisor, as associate of the franchisor or other franchisees, the following information:**

**(a) The extent to which those goods or services may be supplied in the territory of the franchise;**

All Snap-on products are available for purchase from Snap-on's website. They will be supplied to all customers (whether in the Territory or near or at Approved Stops (as applicable)) who wish to purchase on-line and franchisees will be compensated as per the Snap-on Operations Manual – Internet Sales policy in effect at the time of the sale.

**(b) In the case of goods or services made available via a third party website – the domain name or URL of the third party website.**

[www.snapontools.com.au](http://www.snapontools.com.au)

It should be noted that Snap-on has no control over products being made available for sale as second hand goods through third party websites such as [www.ebay.com](http://www.ebay.com) or [www.gumtree.com.au](http://www.gumtree.com.au).

**12.5 Details of any profit sharing arrangements that apply in relation to goods or services made available online and would affect the franchisee, and whether these arrangements may be unilaterally changed by the franchisor.**

Snap-on Tools may pay a commission to franchisees for any sales that Snap-on sells through its website. The commission payment and surrounding policy are outlined in the Franchise Operations Manual and may be changed from time to time by the Franchisor.

## **13. SITES OR TERRITORIES**

**13.1 The policy of the Franchisor, or an associate of the Franchisor, for selection of as many of the following as are relevant:**

**(a) the site to be occupied by the franchised business:**

Not applicable. The franchised business does not occupy a site.

The Franchisee operates the Franchise from a Mobile Store.

**(b) the territory in which the franchised business is to operate:**

**Territory Franchise Agreement**

The Franchisor carries out detailed surveys of a geographically defined area in which the potential professional tool users who are responsible for purchasing their own tools are listed and profiled. The results of the survey are then analysed by the Franchisor who, in its best judgment and experience, determines the geographic boundary of the Territory.

Section 2.B of the Franchise Agreement outlines how changes to the Territory may be made. Also refer to Item 9 above.

**List of Calls Franchise Agreement**

Not applicable. A List of Calls Franchise Agreement does not have a Territory.

The Franchisor carries out detailed surveys in which the potential professional tool users who are responsible for purchasing their own tools are listed and profiled. The results of

the survey are then analysed by the Franchisor who, in its best judgment and experience, determines the List of Calls.

Section 2.B of the Franchise Agreement outlines how changes to the List of Calls may be made. Also refer to Item 9 above.

**13.2 Details of whether the territory or site to be franchised has, in the previous 10 years, been subject to a franchised business operated by a previous franchise granted by the Franchisor and, if so, details of the franchised business, including the circumstances in which the previous Franchisee ceased to operate.**

**13.3 The details mentioned in Item 13.2 must be provided:**

- (a) in a separate document; and
- (b) with the disclosure document.

Refer to Annexure D.

## **14. OTHER PAYMENTS**

### ***Prepayments***

**14.1 If the franchisor requires a payment before the franchise agreement is entered into – why the money is required, how the money is to be applied and who will hold the money.**

Should the Franchisee be using Snap-on Finance to fund their entry into the franchise, the Franchisor requires the Franchisee to have paid the required deposits on the Snap-on Finance loans to the Franchisor prior to the Franchise Agreement commencing.

The funds are required in order to help ensure the Franchisee is in compliance with the applicable finance conditions.

The funds are to be paid no later than three (3) working days prior to the Commencement Date.

The funds paid are held by Snap-on and then remitted to Snap-on Finance, a division of Snap-on, on behalf of the franchisee once the loans are drawn down by the franchisee.

**14.2 The conditions under which a payment will be refunded.**

These deposits (less the Franchisor's reasonable expenses being 20% of the Initial Licence Fee) may be refunded should the Franchisee not enter into the Franchise Agreement or the Franchisee terminate the agreement during any applicable cooling off period.

### ***Establishment Costs***

*The information on the following pages sets out the range of costs usually encountered by a new Franchisee when establishing a franchised business based on current practice.*

*This information is provided as a guide only and is based on the Franchisor's experience and is not to be taken as a guarantee. The information provided includes a number of assumptions which WILL VARY depending upon many factors such as the supplier, the location of the franchised business and the existing assets of the Franchisee. The assumptions are given to enable the Franchisee's independent financial advisers to test the soundness of the information on behalf of the Franchisee. The Franchisee must obtain independent financial advice.*

**14.3 Details of the range of costs to start operating the franchised business, based on current practice, for the following matters:**

- (a) Real property, including property type, location and building size;

See Item 14.3(b) below for information relating to the cost of establishing a mobile store.

Not applicable. The franchised business is operated from a mobile display van.

**(b) Equipment, fixtures, other fixed assets, construction, remodelling, leasehold improvements and decorating costs;**

**NOTE: All figures are exclusive of GST**

Description	Amount	Payment to	Due date	Is payment refundable?
Mobile Store custom built to Snap-on's minimum specification	5.5m Mobile Store – From \$163,000.00 6.0m Mobile Store – From \$168,100.00 6.5m Mobile Store – From \$194,425.00	Snap-on Tools (Australia) Pty Ltd	As agreed with Franchisor.	No
Stamp Duty	Depending on the applicable laws if stamp duty applies it will normally be calculated based on a specified percentage of the dutiable property	Dependant on State or Territory	On Registration	No

**(c) Inventory required to begin operation;**

Description	Amount	Payment to	Due date	Is payment refundable?
Inventory	Approximately \$145,000.00	Franchisor	Unless otherwise agreed in writing by Snap-on on signing the Franchise Agreement or prior to departing for FSMT1 (training), whichever occurs first.	On return of inventory, subject to section 3.B (Cooling Off Period) of the Franchise Agreement and the terms & conditions of the New Tool Returns Policy as specified in the Franchisee Operations Manual.

**(d) Security deposits, utility deposits, business licences, insurance and other prepaid expenses**

Description	Amount	Payment to	Due date	Is payment refundable?
Accounting advice, company formation costs, legal advice, upgrade of driver's licence to medium rigid.	Approximately \$4,000.00 - \$6,000.00 <b>Note:</b> Costs will vary depending on the scope of work.	Appropriate service provider	Prior to signing the Franchise Agreement	No, unless otherwise specified by the relevant body or person.
Insurance	Vehicle & Public Liability: \$276.00 per month	The Franchisor (or Franchisee's supplier)	As specified by the Franchisor (or Franchisor supplier)	No, unless otherwise specified by the relevant body or person.
Stock Insurance	\$1.00 per \$1,000 of value per month @ Net.	The Franchisor	As specified by the Franchisor (	No, unless otherwise specified by the relevant body or person.
Other insurance (eg business continuity, key man, income protection and temporary and permanent disability insurance (if applicable, for example where finance is obtained from Snap-on))	\$3,000 - \$5,000 Costs will vary depending on the Franchisee, type of insurance required and the supplier	The supplier	As specified by the supplier	No, unless otherwise specified by supplier

**(e) Additional funds, including working capital, required by the franchisor before operations begin;**

Description	Amount	Payment to	Due date	Is payment refundable?
Revolving Account Deposit.	\$65,000.00 (See section 10.A of the Franchise Agreement)	Predecessor Franchisee or Franchisor (placed in business investment reserve (BIA)).	Unless otherwise agreed in writing by Snap-on, the Revolving Account Deposit is payable by the Franchisee to the Franchisor on or prior to execution of the Franchise Agreement in accordance with section 10.A of the Franchise Agreement.	Where applicable, the Revolving Account Deposit is refundable in accordance with section 3.B (Cooling Off Period) of the Franchise Agreement.

Bank deposit. Working Capital	Minimum of \$13,000.00  <b>Note:</b> Franchisees should work with and obtain independent advice from their accountants to determine the working capital required in their business.	Held by franchisee	First day on road	N/A
----------------------------------	--	--------------------	-------------------	-----

**(f) Other payments by a franchisee to begin operations.**

Description	Amount	Payment to	Due date	Is payment refundable?
Initial Licence Fee.	\$20,000.00  (Note: The Licence Fee remains the same irrespective of where initial training included in the Fee is conducted).	Franchisor	Unless otherwise agreed in writing by Snap-on, the Initial Licence Fee is payable to the Franchisor at the time of signing of Franchise Agreement.	Not refundable, subject to section 5A of the Franchise Agreement.

**14.4 For item 14.3, the details for each payment must include:**

- (a) A description of the payment; and**
- (b) The amount of the payment or the formula used to work out the payment; and**
- (c) To whom the payment is made; and**
- (d) When the payment is due; and**
- (e) Whether the payment is refundable and, if so, under what conditions.**

Details are provided in the table under each section of item 14.3.

**14.5 For item 14.4, if the amount of the payment cannot easily be worked out – the upper and lower limits of the amount.**

If applicable, details are provided in the table under each section of item 14.3.

***Other payments***

**14.6 For each recurring or isolated payment payable by the franchisee to the franchisor or an associate of the franchisor or to be collected by the franchisor or an associate of the franchisor for another person:**

- (a) Description of the payment; and**
- (b) Amount of the payment or formula used to work out the payment; and**

- (c) To whom the payment is made; and
- (d) When the payment is due; and
- (e) Whether the payment is refundable and, if so, under what conditions.

**NOTE: Unless otherwise specified all figures are exclusive of GST**

(a) Description	(b) Amount of the payment or formula used	(c) Payment to	(d) Due date	(e) Is payment refundable? If so, under what conditions?
Monthly Management Fee ( <b>Note:</b> Snap-on may increase the Monthly Management Fee by providing Franchisee with thirty days notice of any increase in the Monthly Management Fee)	\$525.00 per month (See section 5B of the Franchise Agreement) <b>Note:</b> A higher Monthly Management Fee (referred to as Second Tier Monthly Management Fee) may be payable in circumstances set out in Section 4.A(5) or where Franchisee is in breach of Franchise Agreement. The Second Tier Monthly Management Fee applicable at time of the renewal of Franchise or where Franchisee is in breach of Franchise Agreement, will be set out in Operations Manual. The Second Tier Monthly Management Fee is double the then current Monthly Management Fee.	Franchisor	1 <sup>st</sup> of each month.	No, subject to section 3B(Cooling off) of the Franchise Agreement (if applicable).
Snap-on Software Fee )	\$112.00 per month. ( <b>Note:</b> Fee may be reviewed and adjusted annually by Snap-on. Refer to section 5.D of Franchise Agreement)	Franchisor	1 <sup>st</sup> of each month.	No.



(a) Description	(b) Amount of the payment or formula used	(c) Payment to	(d) Due date	(e) Is payment refundable? If so, under what conditions?
Accounting Integration Software Fee (including MYOB licence)	\$92.00 per month. (Note: Costs may change depending on supplier's pricing/costs)	Franchisor	1 <sup>st</sup> of each month	No.
Accounting Integration & Training Fee	\$1,595 (One Off fee)	Franchisor	Franchisor charges instalments over a 5 week period, starting 2 weeks after the Franchisee's Commencement Date	No.
Transfer Fee and Franchisor's legal costs and other expenses in connection with a transfer	<b>Transfer Fee:</b> An amount equivalent to the then current Initial Franchise Fee.  <b>Costs:</b> The amount notified by Snap-on	Franchisor	On or prior to the date of the transfer of the Franchise	No.
Interest on overdue payments	90-day Bank Bill Swap Reference Rate (Average Bid) published in the Australian Financial Review on the first business day after the due date for the relevant payment, plus 4% (See section 19 of the Franchise Agreement).	Franchisor	Upon demand	No
Additional Training	2 <sup>nd</sup> Store Manager Training Module 1 - \$800 2 <sup>nd</sup> Store Manager Training Module 2 - \$500  Other training will be as specified by the Franchisor at the time of training, e.g., first aid training, HR training, other business related training.	Franchisor	As specified by the Franchisor	No

(a) Description	(b) Amount of the payment or formula used	(c) Payment to	(d) Due date	(e) Is payment refundable? If so, under what conditions?
Audit costs (if applicable). Refer to section 12D of the Franchise Agreement	As specified by the auditor	Auditor	As specified by the auditor	No

**14.7 For each recurring or isolated payment, that is within the knowledge or control of the franchisor or is reasonably foreseeable by the franchisor, that is payable by the franchisee to a person other than the franchisor or an associate of the franchisor:**

- (a) A description of the payment; and
- (b) The amount of the payment or formula used to work out the payment; and
- (c) To whom the payment is made; and
- (d) When the payment is due; and
- (e) Whether the payment is refundable and, if so, under what conditions.

(a) Description	(b) Amount or formula used (all figures are exclusive of GST)	(c) Payment to	(d) Due date	(e) Is payment refundable? If so, under what conditions?
Wages and employee entitlements	Approximately \$60,000 to \$100,000 per employee (costs may vary depending on the number of employees and the skills and experience of employees)	The relevant employees (if applicable).	As specified in the employment contract and/or award legislation.	No
Business office supplies / stationery	\$50 - \$150 per month depending on usage.	The relevant supplier.	As specified by the relevant supplier.	No
Vehicle lease payments	\$2,500 - \$3,500 per month depending on vehicle.	The relevant finance supplier.	As specified by the relevant supplier.	No
Insurance	Vehicle Insurance \$276 per month (and is updated each year).	The Franchisor (or supplier).	As specified by the Franchisor (or supplier).	No
Other insurance (eg business continuity, key man, income protection and temporary and permanent disability insurance (if applicable, for example where finance is obtained from Snap-on))	\$3,000 - \$5,000 Costs will vary depending on the Franchisee, type of insurance required and the supplier	The supplier	As specified by the supplier	No, unless otherwise specified by supplier

(a) Description	(b) Amount or formula used (all figures are exclusive of GST)	(c) Payment to	(d) Due date	(e) Is payment refundable? If so, under what conditions?
Merchant Fees	Bank Merchant Fees – dependent upon the supplier being used  5% Merchant Fee on Snap-on Trade Card transactions.	Franchisee's EFT supplier.  The Franchisor.	As specified by the franchisee's supplier.  As specified by the Franchisor.	No
Telephone	Approx. \$175 per month, depending on provider and use.	The Franchisee's service provider.	As specified by the Franchisee's service provider.	As specified by the Franchisee's service Provider.
Internet	Approx. \$70 per month, depending on provider and use.	The Franchisee's service provider.	As specified by the Franchisee's service provider.	As specified by the Franchisee's service provider.
Fuel	\$500 - \$2,000 per month depending on the vehicle and amount of driving	The relevant fuel supplier.	As specified by the relevant supplier.	No
WHS Requirements (will vary state by state)	\$100 - \$2,000	The relevant supplier.	As specified by customers of the Franchisee and/or the Franchisor.	No
Vehicle Registration	\$750 - \$1,500 per annum, depending on the vehicle and the State	The relevant State Government body	As specified by the relevant supplier.	No
Mobile store repairs and maintenance	Costs will vary depending on the type of maintenance/repairs required.	To the relevant supplier	As specified by the relevant supplier	No, unless otherwise specified by the relevant supplier
<b>SIGNIFICANT CAPITAL EXPENDITURE</b>				
Computer Hardware, Software and/or Technology Upgrade costs	\$3,000 - \$4,000 Every three (3) years	To the Franchisor	As specified by the Franchisor	No, unless otherwise specified by the relevant supplier
Mobile store refurbishment or Mobile Store replacement costs on renewal	\$40,000 - \$200,000 Depending on the vehicle and whether it is refurbished, purchased new or second-hand.	To the relevant supplier	As specified by the relevant supplier	No, unless otherwise specified by the relevant supplier

(a) Description	(b) Amount or formula used (all figures are exclusive of GST)	(c) Payment to	(d) Due date	(e) Is payment refundable? If so, under what conditions?
Mobile store refurbishment costs / minimum specifications compliance costs	\$40,000 - \$200,000 Depending on the vehicle and whether it is refurbished, purchased new or secondhand.	To the relevant supplier	As specified by the relevant supplier	No, unless otherwise specified by the relevant supplier
Changes to Trade Marks and Brand Guidelines	\$1,000 - \$20,000	To the relevant supplier	As specified by the relevant supplier	No, unless otherwise specified by the relevant supplier
Mobile Store decommissioning and de-branding costs (where Franchisee ceases using Mobile Store or upon termination or expiry of Franchise Agreement)	\$1,500 - \$3,000	To the relevant supplier	As specified by the relevant supplier	No, unless otherwise specified by the relevant supplier

**Notes:**

The payments disclosed in Item 14.7 provide a guide for the types of payments Snap-on reasonably foresees that the Franchisee will have to pay to third parties. These payments are not an exhaustive list. The Franchisee should make an allowance for other payments in its consideration of the business. This information is provided to assist the Franchisee (and its independent financial advisers) to identify potential costs of operating a Snap-on business and to make its own assessment of what the actual costs will be for its own business. The Franchisee should obtain its own independent financial advice.

**14.8 For item 14.6 or 14.7, if the amount of the payment cannot easily be worked out – the upper and lower limits of the amount.**

**14.9 If 2 or more items 14.1, 14.3 and 14.6 apply to a payment, the information required by those items in relation to that payment need be set out only once.**

**14.10 To avoid doubt, this item covers a payment of significant capital expenditure.**

*Significant Capital Expenditure*

Refer to Item 14.7 above and also see the comments set out below.

The Franchise Agreement includes obligations on the Franchisee to undertake capital expenditure during the Term of the Franchise Agreement. Such capital expenditure may include expenditure in relation to the following matters:

**Computer Hardware:** The Franchisee must change or upgrade the computer hardware at least every three (3) years at the Franchisee's expense in order to maintain reliability and accommodate future developments of the Snap-on Program and/or Snap-on software (refer to section 9.M of the Franchise Agreement).

**Refurbishment on renewal:** On a renewal of the franchise, the Franchisee will be required to refurbish or replace the Franchisee's Mobile Store and equipment and undertake all other changes to the Franchisee's operation as Snap-on may reasonably require in order to reflect the then-current standards, image and requirements of the Snap-on Program (refer to section 4.A of the Franchise Agreement).

**Repairs and Maintenance:** The Franchisee must:

- maintain and operate the Mobile Store in good condition and repair so as to reflect the established high quality image of Snap-on and the Products; and

- maintain the Mobile Store in accordance with the minimum vehicle maintenance requirements recommended by the manufacturer or as required by the Snap-on Program from time to time (refer to section 9.J of the Franchise Agreement);

**Decommissioning and de-branding Mobile Store.** If at any time the Franchisee ceases using a Mobile Store or on termination on the Franchise the Franchisee must decommission and de-brand the Mobile Store in accordance with Snap-on's requirements including by

- removing, replacing or changing (as required by Snap-on) any signs, logos, stripes, graphics, fixtures, fittings, light covers, fit-out, colours, shelving, storage containers, built in tool boxes, speciality tool racks and Intellectual Property on the exterior and interior of the Mobile Store (as applicable); and
- changing the layout of the Mobile Store.

**Minimum Specifications:** The Franchisee must lease or purchase a Mobile Store that complies with at least the minimum standards and specifications contained in the Snap-on Program in effect on the date of the Franchise Agreement. Snap-on may in its sole discretion amend the minimum specification from time to time in which case the Franchisee must make whatever variations or additions necessary so as their Mobile Store meets the revised minimum specification. Snap-on will advise the Franchisee of the time allowed for such revisions to be made (refer to section 9.J of the Franchise Agreement),

Currently under Snap-on's minimum standards and specifications the Mobile Store must not be more than 12 years old (an extension in time may be made under exceptional circumstances at Snap-on's sole discretion) and has to be replaced after that time. When a Mobile Store is 6 years old it will need to be fully refurbished to Snap-on's then current minimum standards and specifications.

**Trademarks:** In the event Snap-on elects to use a name other than "Snap-on" to identify the Snap-on Program, Snap-on may select another name and the Snap-on Program and the Franchise Agreement shall be deemed amended to substitute that name. If Snap-on determines, in its sole discretion, that the Franchisee should modify or discontinue use of any Trademark and/or use one or more additional or substitute trademarks or service marks, the Franchisee agrees to promptly do so therewith after notice from Snap-on. The Franchisee must pay all expenses incurred in modifying or discontinuing the use of a Trademark or substituting the Trademark for a different trademark or service mark (refer to section 14 of the Franchise Agreement).

**Note:**

**Interest:** Except as otherwise agreed in writing all amounts that shall become due and owing by the Franchisee to Snap-on shall bear interest from the date due until paid. The interest rate per annum payable by Franchisee to Snap-on under section 19 of the Franchise Agreement will be the 90-day Bank Bill Swap Reference Rate (Average Bid) published in the Australian Financial Review on the first business day after the due date for the relevant payment, plus 4%.

## 15. MARKETING OR OTHER COOPERATIVE FUNDS

### 15.1 For each marketing or other cooperative fund, controlled or administered by or for the Franchisor, to which the Franchisee may be required to contribute, the following details:

There is no marketing or cooperative fund, controlled or administered by or for the Franchisor, to which the Franchisee may be required to contribute.

- (a) the kinds of persons who contribute to the fund (for example, Franchisee, Franchisor, outside supplier):

Not applicable.

- (b) **how much the Franchisee must contribute to the fund and whether other Franchisees must contribute at a different rate:**

Not applicable.

- (c) **who controls or administers the fund:**

Not applicable.

- (d) **whether the fund is audited and, if so, by whom and when:**

Not applicable.

- (e) **how the fund's financial statements can be inspected by Franchisees:**

Not applicable.

- (f) **the kinds of expense for which the fund may be used:**

Not applicable.

- (g) **the fund's expenses for the last financial year, including the percentage spent on production, advertising, administration and other stated expenses:**

Not applicable.

- (h) **whether the Franchisor or its associates supply goods or services for which the fund pays and, if so, details of the goods or services:**

Not applicable.

- (i) **whether the Franchisor must spend part of the fund on marketing, advertising or promoting the Franchisee's business:**

Not applicable.

## 16. FINANCING

- 16.1 The material conditions of each financing arrangement that the Franchisor, its agent or an associate of the Franchisor offers to the Franchisee for establishment or operation of the franchised business.**

### **Snap-on Finance Program**

The Franchisor may offer, through its division, Snap-on Financial Services, a finance facility to the franchisee for the purpose of financing the costs associated with the franchise.

Under the Snap-on Financial Services Program, at the commencement of the franchise or during the term (if applicable), the Franchisor may offer a Business Loan to cover the initial Franchise Fee, the inventory and other amounts payable to Snap-on. No repayments on this loan are due for the first three (3) months of operation of the franchise.

If finance for the Mobile Store is provided, at the commencement of the franchise it will be provided on the terms detailed in **Annexure J**. The detailed terms will be set out in the loan agreement provided to the Franchisee.

Under the Snap-on Financial Services program, at the commencement of the franchise the Franchisor will provide temporary, notional credits, to the franchisee for up to six (6) months and to a maximum value of \$65,000.00 to meet the requirements of the RA Deposit.

At the expiry of the six (6) month term or the consumption of the RA Deposit (whichever occurs first), the Franchisor will reverse the total credits extended and charge the Franchisee's weekly statement. At that time, on the basis that the Franchisee is in good standing with the Franchisor, the franchisee may apply to Snap-on Financial Services for a loan (termed RA Loan) for the amount outstanding. The terms of that loan are as detailed above.

To participate in the Snap-on Credit program, the Franchisee must be a company registered under the *Corporations Act 2001* and the person nominated by the Franchisor must be a majority shareholder of that company. The majority shareholder and such other persons as may be specified by the Franchisor will be required to guarantee the obligations of the franchisee under the finance or loan agreement and enter into a Deed of Guarantee.

### **Additional Finance Programs**

The Franchisor offers a short term financing facility referred to as 'Open Accounts', which may, in the Franchisor's discretion, be extended to franchisees. See section 10.B of the Franchise Agreement.

In accordance with section 10.B of the Franchise Agreement, Snap-on may from time to time modify or discontinue, a program for extending short term financing for the purchase of Products that is made available to certain businesses (Open Accounts), as set out in the Franchisee Operations Manual. The Open Accounts program is strictly limited to registered businesses and under no circumstances is available to individuals. Snap-on may, in its sole discretion, accept the assignment of Open Account contracts offered by the Franchisee. The parties' obligations with respect to Open Accounts will be governed by any Snap-on policies regarding such Open Accounts contained in the Snap-on Program from time to time. The Open Accounts program is not available for the sale of Approved Tools.

#### **16.2 For item 16.1, the material conditions of a financing arrangement include the following:**

- (a) **Any requirement that the franchisee must provide a minimum amount of unborrowed working capital for the franchised business;**

The Franchisee is required to pay a deposit of a minimum of **\$28,500.00** (or a higher amount if required by Snap-on) against the combined loans.

Also refer to Item 16.1 above and **Annexure J** (if applicable)

- (b) **Any requirement that a franchisee must meet a stated debt to equity ratio in relation to the franchised business.**

Not applicable.

## **17. UNILATERAL VARIATION OF FRANCHISE AGREEMENT**

#### **17.1 The circumstances in which the franchisor has unilaterally varied a franchise agreement in the last 3 financial years (including, if applicable, financial years before this code came into force), other than variations of a minor nature.**

Snap-on may from time to time change or adjust and has from time to time changed or adjusted the Territory or List of Calls (as applicable) in franchise agreements in various circumstances and has a contractual right to do so under the terms of the applicable Franchise Agreement. The circumstances in which the Franchisor has made such changes or adjustments are outlined in Item 9.2. Refer to Item 9.2(e) for further details and Item 17.2 below.

Snap-on has from time to time updated information, policies and procedures in the Operations Manual including by amending its Product return conditions and requirements.

Snap-on has from time to time updated its Product pricing by increasing the price of its Products.

## **17.2 The circumstances in which the franchise agreement may be varied unilaterally, by the franchisor in the future.**

The Franchise Agreement may not be varied unilaterally by Snap-on, with the exception of:

### **▪ Franchise Territory Franchise Agreement**

The Franchisee Territory which may be adjusted by Snap-on during the Term of the Agreement in certain circumstances in accordance with the provisions in the Franchise Agreement dealing with adjusting the Territory. Refer to item 9.2 of this Disclosure Document and the Franchise Agreement for further details on the circumstances in which the Territory may be adjusted.

### **▪ List of Calls Franchise Agreement**

The Approved Stops on the List of Calls which may be adjusted by Snap-on during the Term of the Agreement in certain circumstances in accordance with the provisions in the Franchise Agreement dealing with adjusting the List of Calls. Refer to item 9.2 of this Disclosure Document and the Franchise Agreement for further details on the circumstances in which the Territory may be adjusted.

All other amendments to the Franchise Agreement will need to be agreed in writing and signed by the Franchisee and Snap-on. Except as otherwise permitted in the Franchise Agreement, no agreement of any kind relating to the matters covered by the Franchise Agreement shall be binding upon either party unless and until the same has been agreed to in writing and signed by Snap-on and Franchisee (refer to section 32 of the Franchise Agreement). **Also see the disclosures below.**

### **Snap-on Program**

Snap-on, in its discretion, may from time to time change or modify the Snap-on Program, including:

- adding or deleting Products;
- adopting new administrative forms;
- adopting and using new or modified Trademarks or the deletion of Trademarks (as defined in section 14) or copyrighted materials;
- methods for selling Products;
- pricing or discount policies;
- the criteria for determining the Territory boundaries or List of Calls/Approved Stops; and
- the minimum stock level to be carried by Franchisee (refer to clause 8 of the Franchise Agreement),

The Snap-on Program includes the programs offered by Snap-on Financial Services, a business unit of Snap-on. Snap-on Financial Services, in its sole discretion, may from time to time change, modify, replace or cancel its programs, including the programs which involve Trade Card Contracts referred to in section 10.C (refer to section 7 of the Franchise Agreement).

The Franchisee must accept and use or display any changes or modifications in the Snap-on Program as if they were a part of the Snap-on Program at the time of execution of the Franchise Agreement within 7 days (or such longer period as specified by Snap-on) after it is notified of the change or modification by Snap-on. The Franchisee must incur such expenditures as such changes or modifications in the Snap-on Program may require (refer to section 8 of the Franchise Agreement).

### **Trading Terms**



Snap-on's Trading Terms may be updated and amended from time to time by Snap-on. Any amendments to Snap-on's Trading Terms will be effective after seven (7) days' written notice from Snap-on (refer to section 8.A of the Franchise Agreement).

### **Change in Laws**

The parties agree that if any laws are changed or introduced or any relevant authority publishes or issues any statement, rules, code or requirement which in the reasonable opinion of Snap-on or its solicitors renders or is likely to render all or part of this Agreement unenforceable, illegal or void, the parties will immediately amend this Agreement and do all things (including executing documents) necessary or desirable to ensure that this Agreement is not unenforceable, illegal or void (refer to section 36 of the Franchise Agreement).

### **Minimum Inventory Levels**

The minimum value and levels of inventory required under the **Snap-on Program** is likely to increase from time to time due to changes in Product prices and customer demand and other relevant circumstances.

Within thirty (30) days of notice of any revision (or by any later date as specified by Snap-on's notice) to the minimum inventory requirements the Franchisee must increase its inventory of Products as necessary to meet the requirements of the **Snap-on Program**.

### **Monthly Management Fee**

Snap-on may increase the Monthly Management Fee by providing the Franchisee with thirty (30) days notice of any increase in the Monthly Management Fee.

## **18. ARRANGEMENTS TO APPLY AT THE END OF THE FRANCHISE AGREEMENT**

### **18.1 Details of the process that will apply in determining arrangements to apply at the end of the franchise agreement, including:**

#### **(a) whether the prospective franchisee will have any options to:**

- (i) renew the franchise agreement; or**
- (ii) enter into a new franchise agreement; and**

Refer to the definition of Term in the Schedule of the Franchise Agreement for details of whether or not the Franchise Agreement includes any options to renew the Franchise Agreement or enter into a new Franchise Agreement.

If the Franchise Agreement ends and the Franchise Agreement includes an option for the Franchisee to enter into a new franchise agreement for a Renewal Term the Franchisee will only have a right to enter into a new franchise agreement if the renewal option conditions set out in section 4.A of the Franchise Agreement are satisfied and the Franchisee gives Snap-on written notice of the Franchisee's request to enter into a new Franchise Agreement not less than twelve (12) calendar months and no more than fifteen (15) months prior to the end of the Initial Term. If the franchise is not renewed:

- the franchisee will not be entitled to any compensation at the end of the agreement;
- the franchise agreement will end; and
- **The franchisee cannot extend the term of the franchise agreement. At the end of the franchise agreement, the franchisor may, but does not have to, extend the term of the agreement. If**

**the franchisor does not do so, the franchise agreement ends and the franchisee no longer has a right to carry on the franchised business.**

Where the Franchise Agreement does not include any express provisions giving the Franchisee a right to renew or enter into a new franchise agreement with Snap-on for a Renewal Term:

- The Franchisee will not be entitled to any compensation at the end of the agreement;
- the Franchisee does not have any option to renew, or extend, or extend the scope of the Franchise Agreement or enter into a new franchise agreement at the end of the relevant term of the Franchise Agreement; and
- **The franchisee does not have the option to renew the franchise agreement and cannot extend the term of the franchise agreement. At the end of the franchise agreement, the franchisor may, but does not have to, extend the term of the agreement. If the franchisor does not extend the term of the agreement, the franchise agreement ends and the franchisee no longer has a right to carry on the franchised business.**

- (b) **whether the prospective franchisee will be able to extend the term of the franchise agreement, and if so, the processes the franchisors will use to determine whether to extend the term of the franchise agreement; and**

No. At the end of the Franchise Agreement the Franchisee does not have a contractual right to extend the Term of the Franchise Agreement. (**Note:** this applies even if the Franchise Agreement includes a renewal option). Also, refer to Item 18.1(a) above.

- (c) **if the prospective franchisee will have an option to renew the franchise agreement – whether the prospective franchisee will be entitled to compensation at the end of the agreement if it is not renewed and, if so, how that compensation will be determined; and**

Refer to Item 18.1(a) above and Annexure L.

The Franchisee will not be entitled to an exit payment or any compensation at the end of the Franchise Agreement.

The Franchisee acknowledges and agrees that Snap-on owns any and all goodwill which may be generated in relation to the Franchisee's business during the term of the Franchise Agreement and that the Franchisee is not entitled to any compensation on either termination or non-renewal of the Franchise Agreement (refer to section 23 of the Franchise Agreement).

- (d) **details of the arrangements that will apply to unsold stock, marketing material, equipment and other assets purchased when the franchise agreement was entered into, including:**

- (i) **whether the franchisor will purchase the stock, marketing material, equipment and other assets; and**
- (ii) **if the franchisor is to purchase the stock, marketing material, equipment and other assets - how prices will be determined; and**

Section 24(2) of the Franchise Agreement outlines Snap-on's rights relating to purchasing stock, marketing material, equipment or other assets of the business from the Franchisee at the end of the Franchise Agreement.

Upon termination of the Franchise Agreement, if the Franchisee and Snap-on agree in writing to settle all accounts and resolve any outstanding issues between them, Snap-on may at its option, elect to accept for return from the Franchisee any unsold Products that are new, unused, unopened and identified as returnable in Snap-on's point of sale system or in writing by Snap-on (excluding Products: no longer manufactured or distributed by Snap-on; specially made or ordered for the Franchisee or the Franchisee's customers; and which are discontinued), and such Products will be accepted for return accordance with the new tools return procedures set out in the Operations Manual.

If Snap-on elects to accept for return such Products, the Franchisee must arrange for such Products to be freighted to Snap-on at the Franchisee's cost and in accordance with the new tools return procedures set out in the Operations Manuals.

Subject to the Franchisee complying with its obligations under the termination provisions of the Franchise Agreement Snap-on shall (subject to the provisions of Section 24) use reasonable endeavours to finalise the Franchisee's account within sixty (60) days after the termination date.

The Franchisee may offer to sell some or all of the Franchisee's RAs to Snap-on or its designee. Snap-on or its designee shall have the option, but not the obligation, to purchase some or all of the RAs offered by Franchisee. The purchase price for the RAs shall be equal to RA Percentage (specified in the Schedule to the Franchise Agreement) of the balance due of each RA being sold unless otherwise agreed to by the parties.

Snap-on may set off against payments for RA purchases all monies owed to Snap-on (or any subsidiary or Related Entity of Snap-on) by the Franchisee, including for up to forty-five (45) days credits applied under the Open Account Program (refer to Section 24(3) of the Franchise Agreement).

Snap-on has no obligation to purchase any of the assets or Products owned or used by the Franchisee in connection with the Franchise (including the Mobile Store) on the termination of the Franchise Agreement.

Upon termination of the Franchise Agreement, the Franchisee must, among other things:

- return to Snap-on any printed sections of the Franchise Operations Manual and any other Snap-on issued manuals the Franchisee has received and/or copied and, in the case of electronic copies of manuals, erase and delete them from computer hard discs and either destroy any electronic copies, or return them to Snap-on;
- any other manuals furnished to the Franchisee;
- return all other materials containing trade secrets or other Confidential Information, the Trade Marks, operating instructions or business practices of the Snap-on Program and all sales aids and sales materials provided free of charge to Franchisee by Snap-on; and
- cancel or transfer to Snap-on or its nominee all registrations relating to the Franchisee's use of the intellectual property belonging to Snap-on.

**(e) whether the prospective franchisee will have the right to sell the business at the end of the franchise agreement; and**

The Franchisee will not have the right to sell the business at the end of the Franchise Agreement unless otherwise agreed in writing by Snap-on.

**(f) if the prospective franchisee will have the right to sell the business at the end of the franchise agreement - whether the franchisor will have first right of refusal, and how market value will be determined; and**

Not applicable. Refer to Items 18.1(e) and 18.1(d) above.

**Note:** Although it has no obligation to do so, if Snap-on agreed to allow a franchisee to sell the business Snap-on retains the right of first refusal under Section 21.E (Snap-on's Right of First Refusal) of the Franchise Agreement.

- (g) **whether the franchisor will consider any significant capital expenditure undertaken by the franchisee during the franchise agreement, in determining the arrangements to apply at the end of the franchise agreement.**

The Franchisor will not, and is not contractually required to, consider any significant capital expenditure undertaken by the Franchisee during the franchise agreement, in determining the arrangements to apply at the end of the franchise agreement.

**18.2 Details of whether the franchisor has, in the last 3 financial years, considered any significant capital expenditure undertaken by franchisees, in determining the arrangement to apply at the end of franchise agreements between the franchisor and those franchisees.**

Snap-on has from time to time in its sole and absolute discretion considered significant capital expenditure relating to the recent purchase of a Mobile Store that may have been undertaken by a franchisee prior to the termination of a franchise, in determining whether to permit the Franchisee to sell the Mobile Store to another franchisee. However, Snap-on has no obligation to do so.

Also refer to Item 18.1(g) above.

**18.3, 18.4 and 18.5**

Refer to the statement in **bold** in Annexure L.

Also see Item 18.1 above.

## **19. AMENDMENT OF FRANCHISE AGREEMENT ON TRANSFER OF FRANCHISE**

**19.1 Whether the franchisor will amend (or require the amendment of) the franchise agreement on or before the transfer of the franchise.**

The Franchisee cannot transfer (whether by assignment, sale or otherwise) the Franchise Agreement or the business without Snap-on's prior written consent. As a condition of Snap-on's consent, Snap-on may at its option request that:

- the Transferee executes a franchise agreement and in the form then used by Snap-on (which may contain different terms and conditions to those set out in the Franchise Agreement); and/or
- the Transferee and Franchisee execute any other ancillary documents (which may differ from the Ancillary Agreements signed by the Franchisee) then customarily used by Snap-on for its Snap-on franchisees and outgoing franchisees respectively.

## **20. EARNINGS INFORMATION**

**20.1 Earnings information may be given in a separate document attached to the disclosure document.**

**20.2 Earnings information includes the following information:**

- (a) **Historical earnings data for:**
- (i) **The franchised business; or**

- (ii) **A franchise in the franchise system;**
- (b) **if subparagraph (a)(ii) applies – any differences between the franchise in the franchise system and the franchised business;**
- (c) **projected earnings for the franchised business and the assumptions on which those projections are based; and**
- (d) **any other information from which historical or future earnings information of the franchised business can be assessed.**

Not applicable.

### 20.3 Earnings information statement

The Franchisor does not give earnings information about a Snap-on franchise.

Earnings may vary between franchises.

The Franchisor cannot estimate earnings for a particular franchise.

**NOTE:**

*The Franchisor does not guarantee or make any promises as to the financial performance of a Snap-on Franchise, the Franchisee or any return on investment to the Franchisee.*

*Income, sales revenue and expenditure will vary between franchised business depending on several factors, including, but not limited to: the economic climate; the operational costs; distance between customers; location of the franchisee, level of service provided to customers and potential customers; the Franchisee's compliance with the Snap-on Program and Franchise Operation Manual; the Franchisee's financing costs (including personal debt); and the effort, skill and initiative of the individual franchise owner to operate, market and develop the franchised business.*

*Any information given by the Franchisor is not a promise or guarantee in respect of the matters referred to in that information or the financial performance of the franchise or the Franchisee. **The Franchisee must together with its accountant undertake and rely on the Franchisee's own and the Franchisee's accountant's assessment and evaluation of the potential of the franchise and when preparing any budget for the business.***

*If Snap-on provides any information to assist the franchisee and its accountant with preparing a budget for the first 12 month period:*

- Snap-on may provide a budget template, outlining expense categories that may be considered by the Franchisee and its accountant.*
- If finance is being provided by Snap-on Credit then monthly payments should be taken into consideration in the budget process. If the Franchisee is sourcing finance from another provider, then those monthly payments should be taken into consideration by the Franchisee and its accountant in the budget process.*
- Depreciation, interest and tax will not be taken into account in any budget template provided by Snap-on.*

*Base sales data (if any) that may be discussed will be based on the average for Australian franchisees in each state for the previous full calendar year and based on data provided to the franchisor by franchisees, which may not have been verified by the franchisor.*

***As mentioned above, sales may vary depending on a range of factors and the Franchisee together with its accountant will need to make and rely its own assessment.***

### 20.4 Earnings information that is a projection or forecast must include the following details:

- (a) **The facts and assumptions on which the projection or forecast is based;**

- (b) The extent of enquiries and research undertaken by the franchisor and any other compiler of the projection or forecast;
- (c) The period to which the projection or the forecast relates;
- (d) An explanation of the choice of the period covered by the projection or forecast;
- (e) Whether the projection or forecast includes depreciation, salary for the franchisee and the cost of servicing loans;
- (f) Assumptions about interest and tax.

Not applicable.

Refer to Item 20.3 above.

## 21. FINANCIAL DETAILS

- 21.1 In the opinion of the directors of the Franchisor as at the end of the last financial year, there are reasonable grounds to believe that the Franchisor will be able to pay its debts as and when they fall due.

.....  
P. Ajit Ponnambalam  
Managing Director

- 21.2 Financial reports for each of the last 2 completed financial years in accordance with sections 295 to 297 of the *Corporations Act 2001* (Cth) or a foreign equivalent of that Act applicable to the Franchisor, prepared by the Franchisor.

Not applicable. Refer to Item 21.4 below.

- 21.3 If:

- (a) the Franchisor is part of a consolidated entity that is required to provide audited financial reports under the *Corporations Act 2001*, or a foreign equivalent of that Act applicable to the consolidated entity; and
- (b) a Franchisee requests those financial reports;

financial reports for each of the last 2 completed financial years, prepared by the consolidated entity.

Not applicable. Refer to Item 21.4 below.

- 21.4 Items 21.2 and 21.3 do not apply if:

- (a) the statement under Item 21.1 is supported by an independent audit provided by:
  - (i) a registered company auditor; or
  - (ii) if the Franchisor is a foreign franchisor – a foreign equivalent for the Franchisor,  
  
within 4 months after the end of the financial year to which the statement relates;  
and
- (b) a copy of the independent audit is provided with the statement under Item 21.1.

The statement made under Item 21.1 above has been supported by a registered company auditor and a copy of the audit statement is attached as Annexure K. Accordingly, under Item 21.4 the Franchisor is not required to attach the Franchisor's financial reports for the last 2 completed financial years.

**21.5 If the franchisor or consolidated entity (the *Entity*) has not existed for 2 or more financial years, then instead of providing the financial reports mentioned in 21.2 or 21.3, the following:**

- (a) a statutory declaration of the entity's solvency;**
- (b) an independent audit report on the entity's solvency as at the date of the entity's declaration.**

Not applicable.

**21.6 If the franchisor or consolidated entity (the *Entity*) was insolvent in either or both of the last 2 financial years, the following;**

- (a) A statement of the period during which the entity was insolvent;**
- (b) A statutory declaration of the entity's solvency;**
- (c) An independent audit report on the entity's solvency as at the date of the entity's declaration.**

Not applicable.

## **22. UPDATES**

**22.1 Any information given under clause 17 of the Code that has changed between the date of this disclosure document and the date the disclosure document is given under the Code.**

Not applicable.

## 23. RECEIPT

I, \_\_\_\_\_, being a director of a prospective Franchisee, \_\_\_\_\_, acknowledge receipt from the Franchisor of this Disclosure Document, including the following Annexures:

- (a) **Annexure A – Snap-on Franchise Agreement.**
- (b) **Annexure B – Franchising Code of Conduct.**
- (c) **Annexure C – Territory or List of Calls (as applicable).**
- (d) **Annexure E – History of Territory or List of Calls (as applicable).**
- (e) **Annexure E – Deed of Guarantee.**
- (f) **Annexure F – Chrome Agreement.**
- (g) **Annexure G – R.A Financing Agreement**
- (h) **Annexure H – Details of Franchisees who have exited the network in the last 3 financial years.**
- (i) **Annexure I – Merchant Agreement.**
- (j) **Annexure J – Franchise Snap-on Finance Loan Details.**
- (k) **Annexure K – Statement of Financial Position.**
- (l) **Annexure L – End of Term Statement.**
- (m) **Annexure M – Information Statement**

**Franchisee Signature:** \_\_\_\_\_

**Date Disclosure Document Received:** \_\_\_\_\_

The prospective Franchisee may keep this Disclosure Document.



## **Annexure A – Snap-on Franchise Agreement**



## **Annexure B – Franchising Code of Conduct**



## **Annexure C – Territory or List of Calls**

## Annexure D – History of Territory/List of Calls

### Territory/List of Calls **Delete the words that do not apply**

The prospective franchisee is currently considering entering into a franchise agreement with Snap-on to operate a Snap-on business within the **Territory/List of Calls** described in Appendix 1 to the Franchise Agreement and currently known as **Territory/List of Calls #insert number#** (Territory/List of Calls).

**[Include this paragraph if this is a List of Calls agreement. If this is not a List of Calls agreement then delete this paragraph]** A List of Calls Franchise Agreement does not include an exclusive or protective territory. However, Snap-on discloses the following information in relation to Territory **#XXX** from which a number of the **Approved Stops** have been selected by Snap-on to include in the **List of Calls #XXX**.

Has the Territory been subject to a franchised business operated by a previous franchise granted by the Franchisor in the past 10 years?

Yes

☐

No

☐

If “yes”, the details of the history of the Territory are as follows:

Name of franchisee .....

Period of operation ..... to .....

Circumstances in which  
franchisee ceased to  
operate the franchised  
business

Name of franchisee .....

Period of operation ..... to .....

Circumstances in which  
the franchised business  
ceased to operate

Name of franchisee .....

Period of operation ..... to .....

Circumstances in which  
the franchised business  
ceased to operate

### Site

Not applicable. Snap-on franchisees operate a Mobile Store and do not operate from a particular site.







## **Annexure E – Deed of Guarantee**



## **Annexure F – Chrome Agreement**

## **Annexure G – R.A Financing Agreement**

## Annexure H – Details of Franchisees who have exited the network in the last 3 financial years

### (Item 6.5)

1 <sup>st</sup> January 2017 – 31 <sup>st</sup> December 2017			
Event	Franchisee	Location	Contact Details
(a) the franchise was transferred:	Watts Industries Pty Ltd ATF The B & N Watts Family Trust	QLD – Rockhampton Sth	Withheld
	Hickwood Enterprises Pty Ltd ATF The Hicks Family Trust	QLD	C/- Russell & Wood Credit Union Level 1, 54 – 56 Baden Powell St Maroochydore QLD 4558
	Bell Snap Pty Ltd ATF The Bell Family Trust	QLD	C/- Spectrum Accountants 74 Smith St Southport QLD 4215
	Watts Industries Pty Ltd ATF The B & N Watts Family Trust	QLD – Gladstone	Withheld
	Arctic Imports Pty Ltd	QLD	Withheld
	Watts Industries Pty Ltd ATF The B & N Watts Family Trust	QLD – Rockhampton Nth	Withheld
	Dan Robertson ATF The Robertson Family Trust	VIC	Withheld
	The Partnership between Timothy and Sandra Connolly	NSW	Withheld
	Lynic Holdings Pty Ltd	TAS	Withheld
	Hawkesbury Tools Pty Ltd	NSW	Withheld
	Midan Tools Ptd Ltd	NSW	Withheld
(b) the franchised business ceased to operate:			
(c) the franchise agreement was terminated by the franchisor:	Badgies Mechanical Pty Ltd	WA	285A Orrong Rd Kewdale WA 6105
(d) the franchise agreement was terminated by the franchisee:	Pak Tools Pty Ltd ATF The Warren and Fiona Furze Family Trust	VIC	Withheld
	Gippsland Toolman Pty Ltd which is a company wholly owned by Velmat Pty Ltd ATF The Hollingsworth Family Trust	VIC	25-31 Nish Street Echuca VIC 3564
	P & S Smith Pty Ltd ATF the P & S Smith Trust	WA	Withheld
	SJ & MP O'Halloran Pty Ltd	TAS	Shop 2, Laurena House 27 Victoria St Ulverstone, TAS 7315
	R. J & P Cartwright Pty Ltd as Trustee for The Cartwright Family Trust	ACT	Withheld
	Cheyne Andrew Miller	NSW	4 Edna Pl Ermington NSW 2115

	Smyth Tools Pty Ltd	QLD	c/- RJS Accounting Services 19/97 Poinciana Ave Tewantin QLD 4565
	D.J Berthold Tools Pty Ltd	SA	C/- Stirling Proactive Accountants 10 Druid Ave Stirling SA 5152
	J. P. Sabo Pty Ltd	VIC	1730 Daylesford Rd Little Hampton VIC 3458
(e) the franchise agreement was not extended	Tools On The Move Pty Ltd	QLD	Withheld
(f) the franchised business was bought back by the franchisor			
(g) the franchise agreement was terminated and the franchised business was acquired by the franchisor			

1 <sup>st</sup> January 2018 – 31 <sup>st</sup> December 2018			
Event	Franchisee	Location	Contact Details
(a) the franchise was transferred:	Dubdon Pty Ltd	NSW	C/- 1/381 Port Hacking Road Caringbah NSW 2229
	The Partnership of Phillip John Clarke and Sally Kathryn Clarke	NSW	Withheld
	NDF Holdings Pty Ltd	QLD	C/- John J Dixon Pty Ltd 23/10 Benson Street Toowong QLD 4066
	BK Tools Pty Ltd	VIC	c/- McMahon Osborne Group Unit 9, Level 1 57-59 Horne Street Sunbury VIC 3429
	Bayside SOT Pty Ltd	QLD	107 Bainbridge St Ormiston QLD 4160
	Manning Tools Pty Ltd ATF Karon Trust	WA	Withheld
(b) the franchised business ceased to operate:	Total Tools Pty Ltd	NSW	C/- PKF 755 Hunter St Newcastle NSW 2302
	Kennards Tools Pty Ltd	NSW	C/- RSM Bird Cameron 55 Berry St Wagga Wagga NSW 2650
(c) the franchise agreement was terminated by the franchisor:	Peter Leslie Walker ATF The Walker Family Trust	WA	Withheld
	Top Tech Tools Pty Ltd	NSW	Withheld

(d) the franchise agreement was terminated by the franchisee:	Hawkesbury Tools Pty Ltd	NSW	Withheld
	Twilight Bodyworks Pty Ltd As Trustee for Forsyth Family Trust	VIC	C/- Henderson & Veralla Pty Ltd P.O Box 332 Greensborough, Victoria 308
	DJB Tools Pty Ltd	NSW	C/- S.M Rosen & Co Unit 5, 34-36 Ralph St Alexandria NSW 2015
	Gippsland Toolman Pty Ltd which is a company wholly owned by Velmat Pty Ltd ATF The Hollingsworth Family Trust	VIC	25-31 Nish Street Echuca VIC 3564
	Westfree Pty Ltd ATF The David Jones Family Discretionary Trust	QLD	C/- Halpin Partners 155 Mulgrave Road Cairns QLD 4870
	Snappy Tools Supplies	ACT	Unit 3, Level 1 39 Geils Court Deakin ACT 2606
	Tool Werks Pty Ltd	NSW	Withheld
	RACER35 Pty Ltd	NSW	C/- Pears Pty Limited 3/24 Ross Street North Parramatta NSW 2150
	Mitchell Investments (TAS) Pty Ltd ATF K & N Mitchell Family Trust	TAS	Withheld
(e) the franchise agreement was not extended	T G Tools as trustee for TG & PL SMITH FAMILY TRUST	WA	Withheld
	Richard John Tylka ATF The Tylka Family Trust	WA	192 South St Whitegum Valley WA 6162
(f) the franchised business was bought back by the franchisor			
(g) the franchise agreement was terminated and the franchised business was acquired by the franchisor			

**1<sup>st</sup> January 2019 – 31<sup>st</sup> December 2019**

<b>Event</b>	<b>Franchisee</b>	<b>Location</b>	<b>Contact Details</b>
(a) the franchise was transferred:	Central Coast Tools Pty Ltd	NSW	Withheld
	Wakerley Tools Pty Ltd	QLD	C/- Level 3 35 Outram St West Perth WA 6005
	Legend Tools Pty Ltd ATF The Godwin Investment Trust	QLD	Withheld

	Giant Ventures Pty Ltd	QLD	C/- Office 6, Level 1 81 Byrnes St Mareeba QLD 4880
	Walben Pty Ltd	NSW	Withheld
	R. Cavanagh Pty Ltd	NSW	Withheld <i>Franchisee is still a current franchisee</i>
	Cockatoo Dreaming Pty Ltd	QLD	C/- CMA Accounting & Taxation Services 926 David Low Way Marcoola QLD 4564
<b>(b)</b> the franchised business ceased to operate:			
<b>(c)</b> the franchise agreement was terminated by the franchisor:			
<b>(d)</b> the franchise agreement was terminated by the franchisee:	The Partnership of Hendrik John Hoff and Joanne Una Hoff	NSW	Withheld
	Mastor and Co. Pty Ltd	NSW	Withheld
	Michael James Wain	QLD	Withheld
	Evcom Pty Ltd	NSW	Withheld
	BF Trading Pty Ltd As Trustee For Bodger Family Discretionary Trust	VIC	Suite 23, Level 1, 2-14 Station Street Werribee, Victoria 3030
	Springwood SOT Pty Ltd	QLD	Withheld
	Waller SOT Pty Ltd	QLD	Unit 2, 11 Natasha Street Capalaba QLD 4157
	Abbatron Pty Ltd as Trustee for The Butcher Family Trust	SA	C/- Morphett Vale Tax Services Pty Ltd Suite 2, 370 Main South Road Morphett Vale SA 5162
	O'Shaughnessy Enterprises Pty Ltd ATF O'Shaughnessy Family Trust	NT	Withheld <i>Franchisee is still a current franchisee</i>
	ANT Tools Pty Ltd	VIC	C/- Insight Accounting Shop 5, Cnr High & Sladen Sts Cranbourne VIC 3977
	Dan Robertson ATF The Robertson Family Trust	VIC	Withheld <i>Franchisee is still a current franchisee</i>
	Dan's Tools Pty Ltd	NSW	Withheld <i>Franchisee is still a current franchisee</i>
	Kris Tools Pty Ltd	NSW	Withheld
	Link Security Services Pty Ltd ATF The Link Security Trust	WA	C/- K Westaway & Associates  Unit 7/29 Hood Street Subiaco WA 6008
<b>(e)</b> the franchise agreement was not extended	W. S. Schmidt Enterprises Pty Ltd	QLD	Withheld



(f) the franchised business was bought back by the franchisor			
(g) the franchise agreement was terminated and the franchised business was acquired by the franchisor			



## **Annexure I – Merchant Agreement**



## Annexure J – Franchise Snap-on Finance Loan Details

LOAN ITEM	Costs ex-GST	COMMENTS
<b>Business Loan</b>		
Initial Licence Fee	\$20,000.00	
Initial Inventory	\$145,000.00	
Loan Administration Fee	\$350.00	
<b>Total</b>	<b>\$165,350.00</b>	
Less down payment from franchisee	\$25,000.00*	
<b>Balance to be financed</b>	<b>\$140,350.00</b>	
Interest Rate	TBC%	Subject to Australian Bond Rate at time of Draw down.
Weekly Payments Approx:	\$TBC	1 <sup>st</sup> payment due 14 weeks after commencing franchise
Term of Loan	10 years	
<b>Business Loan GST Loan</b>		
GST for Business Loan purchases	\$16,535.00	
Interest Rate	TBC%	Subject to Australian Bond Rate at time of Draw down.
Term of Loan	5 months	
Balloon Payment Approx:	\$TBC	Payable 5 months after commencing franchise
<b>Mobile Store Loan</b>		
Mobile Store custom built to Snap-on's minimum specification.	\$163,000.00	Based on Snap-on 5.5m Mobile Store
Stamp Duty	Approx. \$7,000.00	Dependant on state of registration
Loan Administration Fee	\$350.00	
<b>Total</b>	<b>\$170,350.00</b>	
Less down payment from franchisee	\$5,500.00*	<b>3% of Total On Road Costs</b>
<b>Balance to be financed</b>	<b>\$TBC</b>	
Interest Rate	TBC %	Subject to Australian Bond Rate at time of Draw down.
Term of Loan	7 Years	
Weekly Payments Approx:	\$TBC	Payments commence immediately after commencing franchise
<b>Mobile Store GST Loan</b>		
GST for mobile store purchase	\$16,335.00	

LOAN ITEM	Costs ex-GST	COMMENTS
Interest Rate	TBC%	Subject to Australian Bond Rate at time of Draw down.
Balloon Payment	\$TBC	Payable 5 months after commencing franchise
Term of Loan	5 months	
<b>RA Loan</b>		
RA Loan amount	\$65,000.00	
<b>Total to be financed</b>	<b>\$65,000.00</b>	
Interest Rate	TBC %	
Weekly Payments Approx:	\$TBC	1 <sup>st</sup> payment due 6 months after commencing franchise
Term of Loan	9.5 years	
<b>Minimum Down Payment from franchisee</b>	<b>\$30,500*</b>	

## **Annexure K – Statement of Financial Position – Audit Report (Item 21.4)**

## Annexure L – End of Term Statement

### Alternative 1 – Use where franchise agreement does NOT include a renewal option)

The Franchise Agreement does not include a renewal option or a right for the Franchisee to enter into a new Franchise Agreement with Snap-on for a Renewal Term.

At the end of the Franchise Agreement the franchisee will not have any option or contractual right to:

- renew the Franchise Agreement;
- enter into a new franchise agreement with the Franchisor; or
- extend the Term of the Franchise Agreement; and

**The Franchisee does not have the option to renew the franchise agreement and cannot extend the term of the franchise agreement. At the end of the franchise agreement, the franchisor may, but does not have to, extend the term of the agreement. If the Franchisor does not extend the term of the agreement, the franchise agreement ends and the franchisee no longer has a right to carry on the franchised business.**

### Alternative 2 – Use where franchise agreement DOES include a renewal option)

**The Franchisee cannot extend the term of the franchise agreement. At the end of the franchise agreement, the franchisor may, but does not have to, extend the term of the agreement. If the Franchisor does not do so, the franchise agreement ends and the franchisee no longer has a right to carry on the franchised business.**

The Franchise Agreement contains a conditional renewal option.

At the end of the Franchise Agreement the franchisee will have the option to enter into a new franchise agreement with the Franchisor and renew the franchise for the further term specified in the Franchise Agreement. However, the above option only applies if the renewal request notice is given within the required time frames and the other renewal conditions specified in the renewal provisions of the Franchise Agreement are satisfied.

If the renewal option is not exercised for any reason (for example, if the renewal conditions are not satisfied), at the end of the Franchise Agreement the franchisee will not have any option or contractual right to:

- renew the Franchise Agreement;
- enter into a new franchise agreement with the Franchisor; or
- extend the Term of the Franchise Agreement.



## Annexure M – Information Statement for Prospective Franchisee

### THINKING OF BECOMING A FRANCHISEE? IT IS IMPORTANT TO CONSIDER THE RISKS AND THE REWARDS

This document is not a complete guide to franchising, it is a starting point.

It should be combined with your own independent legal, accounting or business advice and the disclosure document provided by the franchisor.

Entering a franchise is a big decision. Before you do so, you should:

- **Conduct due diligence** – this means researching the franchise system and talking to current and former franchisees.
- **Get advice** - get legal, accounting and/or business advice from professionals with expertise in franchising.
- **Read all the documents** - carefully study the disclosure document, franchise agreement and any other documents provided by the franchisor.
- **Know your rights** - make your own enquiries to ensure that it is the right decision for you. The Franchising Code of Conduct sets out the rights and obligations of the people involved in a franchising relationship. It can be found at <http://www.comlaw.gov.au>.

You should also consider taking a specialist franchising or business course before making a decision to enter a franchise agreement. There are **free, online education courses** available for prospective franchisees. Some courses can be found here <https://www.accc.gov.au/about-us/tools-resources/cca-education-programs>.

#### What is franchising?

Franchising is a model for doing business. When you enter a franchise agreement, the franchisor controls the name, brand and business system you are going to use. The franchisor grants you the right to operate a business in line with its system, usually for a set period of time. There is no guarantee you will be able to keep your franchise business after the initial period of the agreement ends.

Franchisors and franchisees must comply with the Franchising Code of Conduct, which exists under the *Competition and Consumer Act 2010*, as well as consumer and company laws. The Franchising Code sets out minimum requirements for a franchisor to provide specific information to you. A franchise agreement, once entered into, is a legally binding contract that sets out the terms of the franchise.

#### Why consider franchising?

A franchise can offer particular benefits over other types of businesses. For example, franchises may have an established product or service and an existing reputation and image. It may also give you access to the franchisor's experience and knowledge in the industry, planning, marketing skills and operating procedures. Some franchise systems provide support, some do not.

You should carefully think about whether the franchise system you are considering suits your business experience, skills and needs.

#### Understanding the franchising relationship

Two important features of franchising are that the franchisor has established the business system you are using and that most franchise systems rely on each franchise maintaining consistency. For those reasons, franchisees are usually required to strictly comply with the operating procedures set down by the franchisor. As a result, you may be limited in the changes you can make to the franchise system without the agreement of the franchisor.

You will usually also be bound by confidentiality obligations. This includes limits on your rights to use the franchisor's intellectual property or business system outside the franchise.

Most businesses adjust to meet changes in the market. The franchisor might make changes to the franchise system at any time but does not have to discuss them with all franchisees.

### Unexpected expenses

In franchising, as in any business, unexpected expenses may arise. Events such as a natural disaster or a change in the law or Australian standards can impact your business. You need to have a business plan that takes this into account when working out the funds you will need for the future. You should also make sure you have the type of insurance which is right for your situation.

During the life of your franchise agreement, a franchisor might also decide to update computer systems or introduce new uniforms or change the appearance of the franchise system. These changes might not have been thought about when you entered the agreement. Those costs would normally be paid by the franchisee under the agreement.

### The risks of franchising

Statistics suggest franchises have a lower failure rate than other businesses, but franchising is not risk free. Franchising is a business and, like any business, there is the potential for a franchisor or franchisee to become **insolvent**. If this occurs this may have significant impacts on your business, for instance, you may no longer be able to use the franchise system's branding.

Some of the things you should think about are:

- How much **working capital** or **extra funds** you need for the first year or two while the business is getting established.
- Consumer demand for products or services is not the same in every **geographical area** and a franchise system might not be successful in every area.
- As a franchisee, you may not have an **exclusive territory**.
- Your franchisor may have the ability to compete with you **online**.
- As a franchisee, you won't necessarily have the **choice of where you buy the products** you need to run the business, even if you believe you can get those products for a lesser price somewhere else.
- An agreement may allow the franchisor to **terminate the agreement** even if there hasn't been a breach by a franchisee.
- Some **locations** are better for some businesses than others (ie consider a shopping centre versus a main street).
- The **economy** has its ups and downs.
- Whether the business is a **fad** or should it pass the test of time.

You may not have an automatic right to renew your agreement once the initial term is over. You should think about what happens at the end of the agreement:

- Will you be able to recover your outlay and make a profit during the term of the agreement?
- What are your rights and responsibilities around renewing your franchise agreement?
- What are the rules about you selling your business?
- Are there any restrictions on you starting a similar business if you want to?

The **Australian Competition and Consumer Commission (ACCC)** administer and enforce the Franchising Code. For example, the ACCC can provide information on how supply arrangements work in a franchising relationship.

### Further information

Further information on franchising can be found at <http://www.accc.gov.au> or by calling the ACCC Small Business Helpline on 1300 302 021.





---

# List of Calls Franchise Agreement and Associated Documents

---

**Australia**

**Issued to**

**[FRANCHISEE COMPANY NAME]**

**[FRANCHISEE NAME]  
LIST OF CALLS #XXXXXX**

## Table of Contents

<b>Schedule .....</b>	<b>7</b>
<b>1. Definitions and Interpretation .....</b>	<b>12</b>
A. Definitions .....	12
B. Interpretation .....	16
C. Parties .....	17
D. Purpose .....	17
<b>2. Franchise and List of Calls .....</b>	<b>18</b>
A. Franchise .....	18
B. Surveys, Identifying Potential Customers, High Quality Service and List of Calls .....	19
C. National Accounts Program .....	21
D. Industrial Stops .....	21
<b>3. Initial Term &amp; Cooling Off Period .....</b>	<b>21</b>
A. Initial Term .....	21
B. Cooling Off Period .....	21
<b>4. Option for Renewal Term .....</b>	<b>22</b>
A. Conditions of Exercise of Renewal Term Option .....	22
B. Snap-on Review .....	23
C. Continuation of Franchise .....	23
<b>5. Licence Fees and Payment Obligations .....</b>	<b>23</b>
A. Initial Licence Fee .....	23
B. Monthly Management Fee .....	23
C. Costs .....	24
D. Snap-on Software Fee .....	24
E. Franchisee Must Not Withhold Payment .....	24
F. Account Application and Trading Terms .....	24
G. Application of Payments .....	24
H. Set Off .....	25
I. Costs of Ongoing Training and Attending Meetings .....	25
J. Method of payment .....	25
K. Interest .....	25
L. Security .....	25
<b>6. Franchise Operations Manual .....</b>	<b>27</b>
<b>7. Modifying Snap-on Program .....</b>	<b>28</b>
<b>8. Services by Snap-on .....</b>	<b>29</b>
A. Sale of Products to the Franchisee .....	29
B. General Assistance .....	30
C. Sales Aids and Sales Material .....	30
D. Training .....	30
E. Internet Sales and Recipient Created Tax Invoices .....	31
<b>9. Performance Standards and Uniformity of Operation .....</b>	<b>32</b>
A. General Standards and Specifications .....	32
B. Snap-on Inspections .....	32
C. Operation of the Franchise .....	32
D. Approved Tools .....	33
E. Sales Only to End-User .....	34
F. Minimum Inventory Levels .....	34
G. Minimum Purchase Requirements .....	34
H. Key Performance Indicators (KPI's) .....	34
I. List Prices .....	34
J. Mobile Store .....	34
K. Decommissioning Mobile Store .....	35
L. Clothing and Uniforms .....	35
M. Computer .....	36
N. Warranties, representations and statements .....	36
O. Compliance with Law .....	36
P. Taxes and Other Indebtedness .....	37

Q.	Satisfy Customer Complaints.....	37
R.	Information and Disclosure Obligations .....	37
S.	Customer Database .....	37
T.	Meetings and Conferences .....	38
U.	Entitlements of Franchisee's Employees .....	38
V.	Compliance with Workplace Laws .....	39
W.	Fair Work Acknowledgement .....	40
X.	Snap-on may Require Franchisee Substantiation of Compliance .....	41
Y.	Cooperation with any Investigation or Request for Information .....	41
Z.	Subcontracting .....	42
AA.	Snap-on Code of Business Conduct and Ethics .....	42
BB.	Business Name .....	42
CC.	Compliance with Ancillary Agreements .....	42
<b>10.</b>	<b>Credit Sales .....</b>	<b>42</b>
A.	Revolving Accounts .....	42
B.	Open Accounts .....	43
C.	Assignment of Certain Contracts .....	43
<b>11.</b>	<b>Advertising by Franchisee .....</b>	<b>43</b>
<b>12.</b>	<b>Reports, Bookkeeping and Audit Rights .....</b>	<b>44</b>
A.	Weekly Reports .....	44
B.	Annual Reporting and Planning .....	44
C.	Bookkeeping .....	44
D.	Snap-on's Audit Rights .....	45
E.	Collection Statement and Consent .....	45
<b>13.</b>	<b>Intellectual Property .....</b>	<b>46</b>
A.	Use of Intellectual Property .....	46
B.	Snap-on's Intellectual Property .....	46
C.	Assignment of intellectual property in Franchisee's Improvements .....	46
<b>14.</b>	<b>Trademarks .....</b>	<b>47</b>
<b>15.</b>	<b>Obligations Prior to the Commencement Date .....</b>	<b>49</b>
<b>16.</b>	<b>Relationship of Parties .....</b>	<b>49</b>
	The Franchisee as Independent Contractor .....	49
<b>17.</b>	<b>Confidentiality .....</b>	<b>49</b>
<b>18.</b>	<b>Internet .....</b>	<b>50</b>
A.	Conduct of Business on the Internet .....	50
B.	Use of the Internet .....	50
<b>19.</b>	<b>Interest .....</b>	<b>50</b>
<b>20.</b>	<b>Insurance .....</b>	<b>51</b>
A.	General Insurances .....	51
B.	Insurances Required by Snap-on Finance .....	51
<b>21.</b>	<b>Transfers .....</b>	<b>52</b>
A.	Transfer by Snap-on .....	52
B.	Transfer by Franchisee .....	52
C.	Restructuring by the Franchisee .....	54
D.	Restructuring by Franchisee – Costs Allocation .....	55
E.	Snap-on's Right of First Refusal .....	55
F.	Deemed Consent .....	56
G.	Revoking Consent .....	56
<b>22.</b>	<b>Termination Upon Notice by Franchisee .....</b>	<b>56</b>
<b>23.</b>	<b>Termination by Snap-on .....</b>	<b>57</b>
A.	Immediate Termination .....	57
B.	Termination Upon Notice .....	57
C.	Termination Before Business Commences .....	60
D.	Termination by Reasonable Notice .....	60
E.	Separations .....	60
F.	Non-waiver .....	61

	G. Statutory Limitations .....	61
24.	<b>Effect of Expiration or Termination</b> .....	<b>61</b>
25.	<b>Death or Incapacity</b> .....	<b>63</b>
26.	<b>Covenant Not to Compete</b> .....	<b>64</b>
27.	<b>Goodwill</b> .....	<b>66</b>
28.	<b>Waiver</b> .....	<b>66</b>
29.	<b>Indemnification</b> .....	<b>66</b>
30.	<b>Dispute Resolution</b> .....	<b>67</b>
	A. Definitions .....	67
	B. Agreement on Procedure to be Followed .....	67
	C. Dispute Resolution Procedure .....	67
	D. Right to Take Legal Proceedings and Costs of Mediation.....	68
31.	<b>Power of Attorney</b> .....	<b>68</b>
	A. Appointment .....	68
	B. Powers .....	68
	C. Powers continue despite the Franchise ending .....	68
	D. Ratification .....	68
32.	<b>Entire Agreement</b> .....	<b>69</b>
33.	<b>Governing Law &amp; Taxes</b> .....	<b>69</b>
	A. Governing law .....	69
	B. Stamp duty .....	69
34.	<b>GST</b> .....	<b>69</b>
	A. GST on <i>Supply</i> made to the Franchisee.....	69
	B. GST on <i>Supply</i> made to Snap-on .....	69
	C. <i>Tax Invoices</i> .....	69
	D. GST Definitions .....	69
35.	<b>Severability</b> .....	<b>69</b>
36.	<b>Changes in Laws</b> .....	<b>70</b>
	A. Taxes and Charges.....	70
	B. Amend Agreement to Comply with Future Laws .....	70
37.	<b>Solvency and Security Interests</b> .....	<b>70</b>
38.	<b>Non-merger</b> .....	<b>71</b>
39.	<b>Execution of Counterparts</b> .....	<b>71</b>
40.	<b>Further assurance</b> .....	<b>71</b>
41.	<b>Time of the essence</b> .....	<b>71</b>
42.	<b>Force Majeure</b> .....	<b>71</b>
43.	<b>Notices</b> .....	<b>72</b>
44.	<b>Representations by the Franchisee</b> .....	<b>72</b>
45.	<b>Acknowledgments</b> .....	<b>73</b>
46.	<b>Owning Additional Snap-on Franchises</b> .....	<b>73</b>
47.	<b>Additional Sections</b> .....	<b>74</b>
	A. Franchisee a Company .....	74
	B. Franchisee a Trustee .....	75
	C. Assignment of Units .....	76
	D. Recourse Against Trust and Other Assets .....	76
	E. Special Conditions .....	77

---

**Appendix 1 – List of Calls .....82**

**Appendix 2 – Deed of Guarantee .....83**

**Appendix 3 – Chrome Agreement .....84**

**Appendix 4 – R.A. Financing Agreement .....85**

**Appendix 5 – Merchant Agreement .....86**

**Appendix 6 – Mobile Store Rental Agreement.....87**



---

# SNAP-ON TOOLS FRANCHISE AGREEMENT

This Franchise Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (Agreement Date)

**PARTIES**      **SNAP-ON TOOLS (AUSTRALIA) PTY. LTD.** ABN 55 010 793 683 of 80 Holbeche Road, Arndell Park NSW, 2148 (**Snap-on**)

**AND**            **The person or persons described in Item 1 of the Schedule (Franchisee)**

**AND**            **The person or persons described in Item 10 of the Schedule (Guarantor)**

## INTRODUCTION

Snap-on is wholly owned by Snap-on Asia Pacific Holdings Pty Ltd which is a subsidiary of Snap-on Incorporated (**Snap-on, Inc.**), a manufacturing and distribution company, among other things, of tools and equipment based in the United States of America. Since its inception in 1920, Snap-on, Inc. has invested time, effort and money in developing a program for selling and servicing the tools, products and equipment either manufactured and/or distributed by the company and which program includes the distinguishing features set out below (**Snap-on Program**).

The Snap-on Program includes, but is not limited to:

- the name "Snap-on";
- the tools and equipment manufactured and/or distributed by Snap-on (**Products**) and made available by Snap-on for resale by its franchisees, special confidential techniques for selling and marketing the Products;
- any applicable Trade Card programs;
- know-how, systems, computer programs, processes, procedures, databases, signs, emblems, trade names, Trademarks (as defined in Section 14), and service marks;
- instructional materials and training courses, and
- the policies, procedures, systems, business formats, standards, instructions and information contained in the **Operations Manual** from time to time all of which may be changed, improved, or further developed from time to time.

The Franchisee wishes to be licensed by Snap-on to be a Snap-on Franchisee and to use the Snap-on Program on the terms and conditions contained in this Agreement.

The Franchisee recognises the importance to Snap-on, other Snap-on franchisees and to the public of maintaining the distinctive standards, qualities and attributes of products and services identified by the Trademarks associated with the Snap-on Program and the Franchisee is willing to maintain those standards, qualities and attributes in the operation of a Snap-on Franchise.

The Franchisee acknowledges that it has received, read and had a reasonable opportunity to understand the Snap-on Disclosure Document and the Franchising Code of Conduct.

Snap-on hereby grants a Snap-on Franchise (as defined in Section 1.A) to the Franchisee on the terms and conditions set out in this Agreement.

The Guarantor has agreed to give a guarantee and indemnity to Snap-on for the performance of the Franchisee's obligations under this Agreement on the terms set out in the deed of guarantee and indemnity entered into or to be entered into between Snap-on and the Guarantor.

## Schedule

### Item 1 Franchisee

[Insert Company Name]

[Insert Company Name] and ACN as Trustee of a [Insert name of trust]

### Item 2 Franchisee Contact

[Insert Name Here]

### Item 3 Franchisee ACN and ABN

ACN: [Insert number here]

ABN: [Insert number here]

### Item 4 Trust Details (if applicable)

**Section 47.B** – Franchisee a Trust, where sub-Section 47.B(1) applies:

**Trust** means the trust created by the Trust Deed and named

.....

**Trust Deed** means the Deed between .....and

..... dated ..... appointing the Trustee as trustee.

**Trustee** means .....

### Item 5 Franchisee Registered Address

[Insert Address Line 1 Here]

[Address Line 2]

[Address Line 3]

### Item 6 Franchisee Listed Contact No

Mobile: +61 (0) XXX XXX XXX

Landline: +61 (X) XXXX XXXX

### Item 7 Franchisee Listed Email Address

[\[franchiseename\]@snaupon.com](mailto:[franchiseename]@snaupon.com)

or

[non@snauponemail.com.au](mailto:non@snauponemail.com.au)

(this email address to be used at the conclusion of this Agreement)

### Item 8 Franchise Manager (if different to the person listed in Item 2)

Not applicable.

### Item 9 Franchise Manager Contact Details (only complete if Item 8 is applicable)

Not applicable.

### Item 10 Guarantor Name and Address

[Insert Name Here]

[Address Line 1]

[Address Line 2]

[Address Line 3]

**Item 11 Commencement Date**

[Insert Commencement Date Here]

**Item 12 Term**

Initial Term: **Alternative 1:** Six (6) years **Alternative 2:** #number# (##) years

Renewal Term (if offered): **Alternative 1** Six (6) years **Alternative 2:** #number# (##) years

**Alternative 2: Not applicable. Note: This Agreement does not include a renewal term or right for the Franchisee to enter into a new franchise agreement with Snap-on at the end of the term. Snap-on has no obligation to extend or renew the agreement or enter into a new franchise agreement with the franchisee at the end of the term.**

**Item 13 Initial Licence Fee (Clause 5.A)**

The Licence fee is \$20,000 ex-GST.

**Item 14 Monthly Management Fee (Clause 5.B)**

The amount published from time to time in the Operations Manual. The monthly management fee at the time of the Commencement Date is \$525.00 ex-GST.

**Note:** A higher Monthly Management Fee (referred to as the Second Tier Monthly Management Fee) may be payable in the circumstances set out in Section 4.A(5) or where the Franchisee is in breach of this Agreement. The Second Tier Monthly Management Fee applicable at the time of the renewal of the Franchise or where the Franchisee is in breach of this Agreement, will be set out in the Operations Manual.

**Item 15 Snap-on Software Fee**

The amount of this fee payable as at the Commencement Date is \$112.00 plus GST per month.

**Note:** This fee may be reviewed and adjusted from time to time by Snap-on in accordance with **Section 5.D**

**Item 16 Renewal Agreement Terms (This item ONLY applies if this is a renewal agreement)**

There is no cooling off period for a renewal Agreement as per Section 3.B(2)

**Item 17 RA Deposit (Clause 10.A)**

\$65,000

**Item 18 RA Percentage (Clause 10.A)**

Sixty five percent (65%)

---

**Item 19      Special Conditions (Clause 47.A)**

[Insert special conditions]

DRAFT

IN WITNESS WHEREOF the parties hereto have agreed the information contained in this Schedule.

[Use if Franchisee has two directors] – Delete this line after completion

Executed by  
**[insert Franchisee inc A.B.N]**  
in accordance with Section 127 of the  
*Corporations Act 2001:*

Signed for and on behalf of  
**Snap-on Tools (Australia) Pty Ltd**  
**A.B.N 55 010 793 683**  
by its Authorised Representative in the  
presence of

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Stacey Gilbert – National Franchise Manager

\_\_\_\_\_  
Name of Director/Co. Secretary (BLOCK LETTERS)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (BLOCK LETTERS)

**LORETTA JONES**  
\_\_\_\_\_  
Name of Witness (BLOCK LETTERS)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director (BLOCK LETTERS)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (BLOCK LETTERS)

\_\_\_\_\_  
Address of Witness

[Use if Franchisee has sole director who is also company secretary] – Delete this line after completion

Executed by  
**[insert Franchisee inc A.B.N]**  
in accordance with Section 127 of the  
*Corporations Act 2001*:

Signed for and on behalf of  
**Snap-on Tools (Australia) Pty Ltd**  
**A.B.N 55 010 793 683**  
by its Authorised Representative in the  
presence of

\_\_\_\_\_  
Name of Sole Director and Sole Company  
Secretary (BLOCK LETTERS)

\_\_\_\_\_  
**Stacey Gilbert – National Franchise Manager**

\_\_\_\_\_  
Signature of Sole Director and Sole  
Company Secretary

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (BLOCK LETTERS)

\_\_\_\_\_  
**LORETTA JONES**  
Name of witness (BLOCK LETTERS)

\_\_\_\_\_  
Address of Witness

# 1. Definitions and Interpretation

## A. Definitions

In this Agreement, unless a contrary intention appears:

- (1) **Ancillary Agreement** means any agreement between the Franchisee and Snap-on or any agreement between the Franchisee and a Related Entity of Snap-on in connection with this Agreement and the Franchise (as defined in Section 2.A) including any agreement in connection with the supply of goods or services to the Franchisee.
- (2) **Agreement** means this document, including any schedule or annexure to this document.
- (3) **Agreement Date** means the date specified in the front page of this Agreement. The Agreement Date may pre-date or post-date the **Commencement Date**.
- (4) **Approved Stop** means a **Stop** approved by Snap-on and specified in the **List of Calls**.
- (5) **Approved Tools** has the meaning given in Section 9.D.
- (6) **Business Name** has the meaning given in Section 15.
- (7) **Business Name Information** has the meaning given in Section 15(4).
- (8) **Collateral** means the **Personal Property** to which the **Security Interest** is attached and, in relation to **Registration** with respect to the **Security Interest**, includes the **Personal Property** described by the **Registration** (whether or not the **Security Interest** is attached to the **Personal Property**) and all other present and after-acquired rights and interests in land and any other property, rights and interests that is not **Personal Property**.
- (9) **Commencement Date** means the date specified in Item 11 of the Schedule, being the first day of the **Initial Term** of this Agreement.
- (10) **Company** means the company to which the Franchisee proposes to transfer this Agreement.
- (11) **Complainant** means the person which starts any dispute resolution procedure under Section 30 of this Agreement.
- (12) **Conditions Notice** has the meaning given in Section 4.B.
- (13) **Confidential Information** means the **Snap-on Program**, all business and financial information relating to Snap-on, Snap-on Inc or their **Related Entities**; all trade secrets know how, marketing strategies, product pricing information and strategies, computer programs models and databases, all information which is marked confidential, any information that would at law be considered a secret or confidential information of Snap-on, Snap-on Inc or their **Related Entities** and all other information which by its nature places or potentially places or potentially places Snap-on, Snap-on Inc or any of their **Related Entities** at an advantage over their present or future business competition but does not include information which:
  - a) at the time of first disclosure by Snap-on to the Franchisee is already in the public domain; or
  - b) after disclosure by Snap-on to the Franchisee becomes part of the public domain otherwise than by disclosure in breach of the terms of this Agreement.
- (14) **Dispose** or **Disposal** includes in relation to a share or a unit, entering into a transaction in relation to the share or the unit (or any interest in the share or the unit), which results in a person other than the registered holder of the share or the unit:
  - a) acquiring any legal or equitable interest in the share or the unit, including an equitable interest arising from a declaration of trust, an agreement for sale and purchase or an

- option agreement or an agreement creating a charge or other Security Interest in the share or the unit;
- b) acquiring any right to receive directly or indirectly any dividends payable in respect of the share or the unit;
  - c) acquiring any rights of pre-emption, first refusal or like control over the disposal of the share or the unit;
  - d) acquiring any rights of control over the exercise of any voting rights or rights to appoint directors attaching to the share or the unit; or
  - e) otherwise acquiring legal or equitable rights against the registered holder of the share or the unit which have the effect of placing the person in the same position as if the person had acquired a legal or equitable interest in the share or the unit itself.
- (15) **Domestic Partners** means a married or de facto couple, as those terms are defined by the state or territory law in the jurisdiction in which the **Territory** is located.
- (16) **Enforce** means exercise all of the **Secured Party's** rights, under the **Security Agreement** or otherwise, in relation to the **Security Interest**.
- (17) **Enforceability** means the **Secured Party's** ability to exercise all of its rights, under the **Security Agreement** or otherwise, in relation to the **Security Interest**.
- (18) **Franchise** has the meaning given in Section 2.A.
- (19) **Franchisee** means the party described as the Franchisee in Item 1 of the Schedule and includes its successors in title and permitted assigns and those claiming through or under them respectively;
- (20) **Franchisee Contact** means the person specified in Item 2 of the Schedule;
- (21) **Franchising Code of Conduct** means the Franchising Code of Conduct, as prescribed under Section 51AE of the *Competition and Consumer Act 2010* (Cth).
- (22) **Franchise Store Manager Training Program or FSMT** has the meaning given in Section 8.D(1).
- (23) **Grantor** means those of the Franchisee and/or Guarantor granting the **Security Interest** under Section 5.I and if the **PPSA** applies, includes the meaning given to that word in the **PPSA**.
- (24) **Industrial Stop** means **Potential Customer/s** who require scientific information, special devices, special ordering procedures, special services and/or technical and engineering data or for whom special procurement procedures are required, or who are involved in the activity of manufacturing and/or assembly of goods and is further defined in Section 2.D.
- (25) **Initial Term** means the period specified in Item 12 of the Schedule.
- (26) **Intellectual Property** means all copyright, trade mark rights, patent rights, design rights or any other intellectual property rights (whether registered or unregistered) subsisting in or created during the development of the, **Trademarks, Operations Manual, Snap-on Program** and any advertising and promotional materials provided to the Franchisee, including software, source and object codes, scripts, records, documents, specifications, plans, program listings, calculations or drawings; and all **Confidential Information** necessary for, or which may be used in connection with the administration, operation and marketing of a Snap-on business.
- (27) **Key Performance Indicators (KPIs)** means the performance measurements and criteria set out in Section 9.H.
- (28) **Licensed Products** has the meaning given in the 'Chrome' software licence and support agreement between the Franchisee and Snap-on.



- (29) **List of Calls** means the list of **Approved Stops** specified in Appendix 1 as updated and amended by Snap-on from time to time in accordance with the provisions of this Agreement. A **List of Calls** is a series of **Approved Stops** (business addresses) at which Snap-on has determined that there are, or should be, professional tool users who purchase their own tools as at the **Commencement Date** of this Agreement.
- (30) **List Price** means the suggested or recommended retail price for the Products.
- (31) **Mediation Adviser** means the person appointed as mediation adviser by the Federal Minister for Workplace Relations and Small Business under Section 44 of the Franchising Code of Conduct.
- (32) **Mobile Store** means the vehicle designated by Snap-on via the **Operations Manual** which is used as a mobile showroom and office and from where **Products** are sold.
- (33) **Open Accounts** has the meaning given in Section 10.B.
- (34) **Operations Manual** includes the policies, procedures, instructions and information relating to the **Snap-on Program**, **Trademarks** and the conduct of the **Franchise**, which may be provided to the Franchisee in electronic or any other form.
- (35) **Personal Property** means:
- a) if the **PPSA** applies, means all the **Grantor's** present and after-acquired personal property (as defined in the **PPSA** and to which the **PPSA** applies) and/or all present and after-acquired personal property (as defined in the **PPSA** and to which the **PPSA** applies) in which the **Grantor** has rights and includes all of the **Collateral** and any other assets, property and rights over which the **Security Interest** is permitted by law; and
  - b) in all other circumstances, means all assets, property and rights, real or personal of any nature whatsoever owned by the **Grantor** and/or in which the **Grantor** has rights, at present or in the future,
- and, where applicable, includes:
- c) the proceeds from the sale of any of the **Personal Property**; and
  - d) if the **PPSA** applies, the **Grantor's** security interest in any **Collateral**.
- (36) **Potential Customer/s** means all professional tool users responsible for purchasing their own tools, whether or not such user is an existing, actual or potential customer, including the person or entity operating the business at the **Stop**.
- (37) **Post Termination Restraint Period** has the meaning given in Section 26(1)c).
- (38) **PPSA** means the *Personal Properties Securities Act 2009 (Cth)* and the *Personal Property Securities Regulations 2010 (Cth)*.
- (39) **Products** means the products, including tools and merchandise set out set out in the **Operations Manual** or otherwise approved in writing by Snap-on that are either manufactured by, or for, Snap-on, or distributed by Snap-on and which are approved by Snap-on for resale by the Franchisee and must be purchased only from Snap-on (unless Snap-on authorises in writing in its sole and absolute discretion that a particular Product may be purchased from another supplier which authorisation will be set out in the **Operations Manual**.)
- (40) **RA** means revolving account;
- (41) **RA Deposit** means the amount specified in Item 17 of the Schedule;
- (42) **RA Percentage** means the percentage specified in Item 18 of the Schedule;
- (43) **Registration** means:
- a) if the **PPSA** applies, has the same meaning as in the **PPSA**; and

- b) in all other circumstances, means registration of the **Security Interest** on the relevant register to enable the **Security Interest** to have priority in accordance with Section 5.L(2).
- (44) **Related Entity** means a related entity as defined in Section 9 of the *Corporations Act 2001* (Cth) and in the case of Snap-on includes Snap-on Tools of Canada Co., Snap-on Asia Pacific Holdings Pty Ltd and Snap-on Inc. (as defined in the Introduction).
- (45) **Relative** in relation to the Franchisee, means any of the following:
- a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, child or adopted child of the Franchisee or of the Franchisee's spouse; and
  - b) the spouse of that person or of any other person specified in a).
- (46) **Renewal Term** means the period (if any) specified in Item 12 of the Schedule.
- (47) **Respondent** means the person with whom the complainant has a dispute under Section 30 of this Agreement.
- (48) **Second Tier Management Fee** means the amount referred to in Item 14 of the Schedule.
- (49) **Secured Party** means Snap-on Group and if the **PPSA** applies, includes the meaning given to those words in the **PPSA**.
- (50) **Security Agreement** means:
- a) any agreement, arrangement or transaction between the **Grantor** and the **Secured Party** that creates or evidences the **Security Interest**, in the form prepared by the **Secured Party** at the cost of the **Grantor** and, where applicable, in accordance with any relevant Legislation; and
  - b) in relation to a **Security Interest** granted by the Franchisee and/or Guarantor to Snap-on Group includes any agreement between Snap-on Group and the Franchisee and/or the Guarantor which creates or evidences the **Security Interest**, which may include this Agreement.
- (51) **Security Interest** means:
- a) If the **PPSA** applies, means a security interest (as defined in the **PPSA**); and
  - b) In all other circumstances, means any mortgage, charge, pledge, lien, hypothecation, trust, power, title retention or conditional sales agreement, hire or hire purchase agreement, option, subordination or other security interest,
- granted by the **Grantor** in the **Grantor's Personal Property** to the **Secured Party** under the **Security Agreement** to secure payment of all money by the **Grantor** and performance of all the **Grantor's** obligations under the **Security Agreement** and, if the **PPSA** applies, includes a purchase money security interest.
- (52) **Security Related Confidential Information** means the **Security Agreement** and the terms of the grant of the **Security Interest** and any information and/or documents relating to these outlined in Section 5.L.
- (53) **Separation** means the taking of formal or permanent steps to dissolve a **Domestic Partnership** (including by the parties permanently ceasing to live together) as reasonably determined by Snap-on.
- (54) **Snap-on Disclosure Document** means the disclosure document prepared by Snap-on and required under the Franchising Code of Conduct.
- (55) **Snap-on Program** has the meaning given in the Introduction to this Agreement.
- (56) **Snap-on Software Fee** means the monthly fee payable by the Franchisee to Snap-on in connection with the Licensed Products and computer or software maintenance related to the

Licensed Products or certain other technology used by the Franchisee. (For the avoidance of doubt, this excludes MYOB (or similar software), integration fee and licensed costs payable by the Franchisee).

- (57) **Spouse** means, in relation to a person, includes another person who, although not legally married to the person, lives with the person on a bone fide domestic basis as the husband or wife of the person.
- (58) **Stop** means the address of a **Potential Customer's** place of business or employment.
- (59) **Term** means the **Initial Term** and includes, where appropriate and applicable, any **Renewal Term** granted under Section 4 of this Agreement or holding over under Section 4.C.
- (60) **Territory** means a geographical area with specific boundaries, which represents an exclusive area for another Snap-on franchisee or Snap-on distributor to service **Potential Customers**.
- (61) **Trademarks** refers to all words, symbols, designs, trade names, service marks or combinations thereof owned or controlled under licence by Snap-on used to identify the **Snap-on Program** and the **Products** sold and services performed in connection with the **Snap-on Program** which are registered or capable of being registered by Snap-on or its **Related Entities** or over which Snap-on or its **Related Entities** claims common law protection.
- (62) **Trade Card** has the meaning given in Section 7.
- (63) **Trading Terms** means Snap-on's current terms and conditions of sale on which the Franchisee must purchase the **Products** and other goods and services (if applicable) from Snap-on as specified in the Operations Manual or otherwise in writing by Snap-on and as updated and amended by Snap-on from time to time. The **Trading Terms** as at the **Commencement Date** are supplied in the **Operations Manual**.
- (64) **Transfer Fee** has the meaning given in Section 21.B(5)c);
- (65) **Workplace Laws** means Australian laws relating to workplace relations including the *Fair Work Act 2009* (Cth), *Fair Work Regulations 2009* (Cth), the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Migration Act 1958* (Cth) and the *Migration Regulations 1994* (Cth) as amended or replaced from time to time.
- (66) **Weekly Statement** means the statement of account issued by Snap-on to the Franchisee, outlining all purchases and charges payable by the Franchisee to Snap-on. This term is taken as being interchangeable with the term **Tool Bill**.

## B. Interpretation

- (1) Reference to:
  - a) one gender includes the others;
  - b) the singular includes the plural and the plural includes the singular;
  - a) a person includes a body corporate or company;
  - c) a party includes the party's executors, administrators, successors and assigns;
  - d) a statute, regulation or provision of a statute or regulation (Statutory Provision) includes:
    - i) that Statutory Provision as amended or re-enacted;
    - ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
    - iii) another regulation or other statutory instrument made or issued under that Statutory Provision;
  - e) money is to Australian dollars, unless otherwise stated;

- f) Sections, subsections, paragraphs, sections and schedules by number are to Sections, subsections, paragraphs, sections and schedules respectively so numbered in this Agreement;
  - g) anything (including any amount) is to the whole and each part of it;
  - h) to a group of persons is to all of them collectively, to any two (2) or more of them collectively and to each of them individually;
  - i) writing is to typewriting and lithography and other methods of producing words in a visible form; and
  - j) Potential Customer includes existing and potential customers;
- (2) "Including" and similar expressions are not words of limitation.
  - (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
  - (4) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
  - (5) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for preparing the Agreement or including the provision in the Agreement.
  - (6) Unless otherwise defined in this Agreement, expressions defined in the *Corporations Act 2001* (Cth) as at the date of this Agreement have the same meaning when used in this Agreement.

## C. Parties

- (1) If a party consists of more than one (1) person, this Agreement binds each of them separately and any two (2) or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than one (1) person is for the benefit of them separately and jointly.

## D. Purpose

- (1) The purpose of this Agreement is to:
  - a) set out the terms and conditions on which the Franchisee is to be granted the Franchise;
  - b) set out the requirements for the Franchisee's membership of the network of Snap-on Franchisees, and the Franchisee's payment and other obligations during the Term and upon termination of this Agreement; and
  - c) enable Snap-on to regulate the Franchisee's use of the Trade Marks, Snap-on Program and Intellectual Property to protect the value and integrity of such items and help ensure a consistent customer experience throughout the Snap-on network.
- (2) The parties agree that:
  - a) the purpose of this Agreement is not to provide the Franchisee with any guaranteed or projected income or return on investment, or any ongoing right to operate the Franchise after the Agreement ends; and
  - b) no other purpose is intended, or to be implied.

## 2. Franchise and List of Calls

### A. Franchise

Subject to the terms and conditions set out in this Agreement, Snap-on grants to the Franchisee the right to use the Snap-on Program and purchase Products from Snap-on for resale to **Potential Customers** only at the **Approved Stops** on the **List of Calls** as adjusted from time to time in accordance with this Agreement (**Franchise**). Appendix 1 contains the **List of Calls**.

The business located at a **Stop** and/or the number of **Potential Customers** located at a **Stop** may change from time to time during the **Term** of this Agreement. The Franchisee acknowledges and agrees that it is not possible for Snap-on to assure the Franchisee that there will be the same number of **Potential Customers** during the entire **Term** of this Agreement, particularly in markets which have negative economic changes.

Subject to the provisions of Sections 2.B (especially referring to 2.B(6)) and 2.C and the Franchisee not being in breach of this Agreement, during the Term of this Agreement Snap-on shall not sell, or licence others to sell, **Products to Potential Customers** at the **Approved Stops** specified on the **List of Calls** as adjusted from time to time during term of this Agreement, other than those which qualify as an **Industrial** or **Industrial/Franchisee Stop** (as defined in Section 2.D(2) below). If the Franchisee breaches this Agreement (including by failing to service **Potential Customers** at **Approved Stops** in accordance with the provisions of this Agreement), Snap-on may sell or licence others to sell the Products to such **Potential Customers**.

The Franchisee must not use the **Snap-on Program** or sell **Products**:

- at any location or **Stop** which is not an **Approved Stop** on the then current **List of Calls** even if the location or **Stop** is near an **Approved Stop** on the **List of Calls**;
- or to any **Potential Customer** who moves to a location or **Stop** not identified on the **List of Calls**, unless otherwise agreed in writing by Snap-on.

The Franchisee acknowledges and agrees that there may be circumstances where other Snap-on franchisees or distributors are authorised to sell **Products to Potential Customers** located at **Stops** which are near to **Approved Stops** on the **List of Calls**, including for example where such **Stop** is included in another Snap-on franchisee's or distributor's **Territory**, or already on another Snap-on franchisee's or distributor's **List of Calls**.

Any exception to this condition will only be permitted in extraordinary circumstances and then only with the express written authority of and to the extent permitted by Snap-on. Snap-on, in its sole discretion, shall determine if, when, and for how long, its approval to any exception will be granted.

Snap-on may revoke any authority or right given to the Franchisee to use the **Snap-on Program** or sell **Products** at a location or **Stop**:

- (1) not on the **List of Calls** at any time by giving thirty (30) days written notice to the Franchisee; and/or
- (2) which is an **Approved Stop** on the **List of Calls** at any time by giving thirty (30) days written notice to the Franchisee. It may be necessary for Snap-on to exercise its rights under this Section 2.A(2) for a range of reasons, including any one or more of the following: where the relevant Approved Stop or location is or becomes an Industrial Stop and/or a National Account as part of the National Accounts Program; where complaints are made against the Franchisee by Potential Customers at the Stop; or for any other reason that Snap-on reasonably determines is appropriate.

Without limiting Snap-on's other rights and remedies, any unauthorised sale of **Products** made by the Franchisee to a **Potential Customer** who is not located at an **Approved Stop** may be reversed by Snap-on in favour of the franchisee or distributor for the franchisee Territory or franchisee **List of Calls** in which the unauthorised sale was made. The reversal will be for the amount of the normal profit margin for the relevant **Products** charged by the Franchisee and such amount will be credited to the franchisee or distributor for the franchisee **Territory** or **List of Calls** in which the unauthorised sale

was made. In addition, any unauthorised sale made by the Franchisee to a **Potential Customer** who is not located at an **Approved Stop** may be excluded from the Franchisee's purchase volume discount calculation.

## B. Surveys, Identifying Potential Customers, High Quality Service and List of Calls

*Franchisee may request that additional Stops be added to List of Calls*

- (1) If the Franchisee desires to use the **Snap-on Program** or sell **Products** to **Potential Customers** at any **Stop** not identified on the **List of Calls**, the Franchisee must notify Snap-on in writing of such **Stops** and request that the additional **Stops** be added to the **List of Calls** in accordance with the procedures set out in the Operations Manual. Snap-on will not unreasonably withhold its consent to add such Stops to the Franchisee's **List of Calls**. Without limiting the above, and for the avoidance of doubt, it will not be unreasonable for Snap-on to withhold consent where: such Stop is already on another Snap-on franchisee's or distributor's **List of Calls** or Territory or due to conditions which may arise in section 2.B(6).

Where the Franchisee has requested Snap-on's approval of a **Stop** in accordance with this Section 2.B(1), the **Stop** is not assigned to the Franchisee until approved by the Business Manager and the Franchisee is formally notified by the National Franchise Manager the Franchisee. The Franchisee may not sell **Products** to **Potential Customers** at such **Stop** until such approval has been given.

### *Surveys*

- (2) Snap-on may conduct such surveys from time to time as Snap-on, in its sole discretion, believes are necessary or advisable, for the purpose of determining or assessing the service being extended to customers and **Potential Customers** at the **Approved Stops** on the **List of Calls**, the frequency and quality of the Franchisee's service to **Potential Customers**, the number of **Potential Customers** at the **Approved Stops** or other **Stops**, or for any other purpose that Snap-on reasonably determines is appropriate. Please refer to the **Operations Manual** for further information on surveys.
- (3) If the Franchisee believes on reasonable grounds that there is an insufficient number of Potential Customers at the **Approved Stops** on the **List of Calls** or the number of Potential Customers is substantially less than the threshold number (if any) set out from time to time in the Operations Manual, the Franchisee may request that a survey be conducted of the geographic area in which most of the **Approved Stops** on the **List of Calls** are located. If Snap-on receives a request from a Franchisee to conduct a survey and Snap-on in its sole discretion agrees to conduct the survey then it will do so within the timeframe determined by Snap-on.

### *High Quality Service*

- (4) The Franchisee must offer high quality service to all customers or **Potential Customers** at **Approved Stops** on the **List of Calls** and acknowledges that the provision of high quality service is an essential element of the **Snap-on Program**. High quality service includes, but is not limited to:
  - a) actively promoting the business to **Potential Customers** at the **Approved Stops** on the **List of Calls**;
  - b) actively soliciting **Potential Customers** at the **Approved Stops** on the **List of Calls**;
  - c) fully utilising the **Snap-on Program**; and
  - d) visiting **Potential Customers** at the **Approved Stops** on the **List of Calls** weekly (any variation to the frequency of visits is only permitted with the prior specific written authorisation of Snap-on).
- (5) Without limiting Snap-on's other rights and remedies under this Agreement or any applicable law, if the Franchisee:
  - a) fails to do any of the following:

- i) actively promote the business to **Potential Customers** at the **Approved Stops** on the **List of Calls**;
  - ii) actively solicit **Potential Customers** at the **Approved Stops** on the **List of Calls**;
  - iii) fully utilise the **Snap-on Program**; or
  - iv) maintain weekly visits (unless a variation has been authorised in writing by Snap-on) to **Potential Customers** at the **Approved Stops** on the **List of Calls**;  
or
- b) engages in any conduct that adversely effects the Franchise or Snap-on,

Snap-on may, in its sole discretion, advise the Franchisee in writing of the deficiency and the Franchisee must (in a period of not more than thirty (30) days) either rectify the deficiency in the manner required by Snap-on, or an acceptable written plan for rectification of the default must be provided to Snap-on.

After the prescribed period has elapsed, Snap-on will re-evaluate the previously identified deficiency and reserves the right, in its sole discretion, to take the action that Snap-on believes necessary, using its best business judgement and experience and as permitted by law, to rectify the deficiency, including, but not limited to, amending the **List of Calls**.

If Snap-on deems that amending the **List of Calls** is the appropriate course of action, Snap-on may amend the **List of Calls** by providing the Franchisee with a further written notice setting out the amendments to the **List of Calls** which notice must be given at least thirty (30) days prior to the amendment taking effect. At the end of the notice period specified in Snap-on's adjustment notice the **List of Calls** will be deemed to have been amended in the manner set out in that notice. This clause does not limit or vary Snap-on's right to adjust the **List of Calls** pursuant to any other provision of this Agreement, including section 2.B(6).

#### *Adjusting List of Calls Generally*

- (6) Despite any provision to the contrary, the Franchisee acknowledges and agrees that Snap-on may amend the **List of Calls** in the manner determined appropriate by Snap-on at any time by giving the Franchisee at least thirty (30) days prior written notice of the amendment if Snap-on determines, in its sole business judgement that such amendments are necessary due to any one or more of the following:
- a) existing or future competition;
  - b) there being more **Potential Customers** at the **Approved Stops** on the **List of Calls** than the Franchisee is able to adequately service;
  - c) there being an insufficient number of **Potential Customers** at the **Approved Stops** on the **List of Calls** for the Franchisee to service;
  - d) to help ensure the Snap-on franchise and distribution network is able to properly and efficiently service or satisfy the needs and demands of Potential Customers;
  - e) an adjustment being made to another Franchisee's Territory or **List of Calls**, or
  - f) such other reason that Snap-on deems relevant.

At the end of the notice period specified in Snap-on's amendment notice the **List of Calls** will be deemed to have been amended in the manner set out in that notice. Snap-on will consult with the Franchisee before making any amendments to the **List of Calls** under this Section 2B(6).

- (7) Snap-on:
- a) may from time to time set out in the Operations Manual its policies and procedures relating to surveys, adjusting franchisee Territories or Lists of Calls and preferred minimum or threshold Potential Customer or Stop numbers for Snap-on franchisee Territories or **List of Calls**;

- b) does not warrant or guarantee that there will be minimum or particular number of **Potential Customers** or **Approved Stops** on the **List of Calls** or the number of **Potential Customers** or **Approved Stops** on the **List of Calls** will not fall below the *preferred* minimum or threshold number (if any) of **Potential Customer** or **Stops** for a **List of Calls** set out in the **Operations Manual** from time to time; and
  - c) has no obligation to amend the **List of Calls** if the number of Potential Customers or Approved Stops (as applicable) on the **List of Calls** is lower than such preferred threshold number (if applicable).
- (8) Snap-on must provide the Franchisee with written notice (which may be by electronic means) of an amendment to the **List of Calls** at least thirty (30) days prior to any amendment to the **List of Calls** taking effect.
- (9) For the avoidance of doubt and without limiting the Franchisee's obligations under any other provision of this Agreement, the Franchisee acknowledges that it must not operate the Franchise in another Franchisee's **Territory** or at **Stops** on another Franchisee's list of calls.

### C. National Accounts Program

Snap-on exclusively reserves the right to develop and operate the Snap-on National Accounts Program through which **Products** are sold and/or distributed to purchasers on a national or regional contract basis. The policies and procedures pertaining to specific Snap-on National Accounts will be prepared by Snap-on and made available to the Franchisee and may be changed from time to time by Snap-on.

### D. Industrial Stops

- (1) Snap-on exclusively reserves the right to contact and sell **Products** to industrial users, including users involved in (but not limited to) the following business and industries: commercial aviation, defence, petrochemical, industrial manufacturing, mining, the construction industry and its tradesmen, railways, central purchasing offices, government installations (civil and military) and institutions (including schools) and all other **Potential Customers** at locations that are **Industrial Stops**.
- (2) If an **Industrial Stop** employs professional tool users who are responsible for purchasing their own tools, Snap-on may, but is not obligated to, include that **Industrial Stop** as an industrial/franchisee stop (**Industrial/Franchisee Stop**), but only for the purpose of permitting the Franchisee to sell **Products** to those professional tool users responsible for purchasing their own tools. The determination whether a **Stop** or customer, in whole or in part, is an **Industrial Stop** shall be made by Snap-on at its sole discretion.

## 3. Initial Term & Cooling Off Period

### A. Initial Term

Subject to Section 3.B, this Agreement and the Franchise commences on the **Commencement Date** (as defined in Item 11 of the Schedule) and continues for the Initial Term unless terminated sooner in accordance with Sections 22 or 23 of this Agreement.

### B. Cooling Off Period

- (1) The Franchisee may terminate this Agreement within seven (7) days after the earlier of:
- a) execution of this Agreement; or
  - b) making any payment (whether of money or other valuable consideration) to Snap-on under this Agreement.
- (2) This cooling off period does not apply to any renewal, extension or transfer of this Agreement.



- (3) Subject to Section 3.B(4), if the Franchisee terminates this Agreement, Snap-on must, within fourteen (14) days of the date of termination, repay all payments made by the Franchisee (whether of money or other valuable consideration) to Snap-on under this Agreement.
- (4) Snap-on may deduct Snap-on's reasonable expenses from any payment made to a Franchisee under Section 3.B(3). The parties agree that Snap-on's reasonable expenses will be equivalent to 20% of the Initial Licence Fee (as defined in Section 5.A) payable by the Franchisee under this Agreement.

## 4. Option for Renewal Term

The Franchisee may apply to enter into a new franchise agreement with Snap-on for a **Renewal Term** by giving written notice to Snap-on (**Renewal Term Notice**) not less than twelve (12) calendar months and no more than fifteen (15) calendar months prior to the end of the Initial Term.

### A. Conditions of Exercise of Renewal Term Option

To exercise the option for the **Renewal Term**, the Franchisee must meet or have met (as applicable) each of the following conditions to Snap-on's satisfaction:

- (1) The Franchisee meeting all Snap-on's franchisee standards in effect at the time of giving the **Renewal Term Notice** and complying with the terms, requirements and conditions of the **Operations Manual**, as amended from time to time, including:
    - a) refurbishing or (where required by Snap-on) replacing the Franchisee's **Mobile Store** and equipment; and
    - b) undertaking all other changes to the Franchisee's operation as Snap-on may reasonably require in order to reflect the then-current standards, image and requirements of the **Snap-on Program**.
  - (2) The Franchisee has not been in repeated or persistent breach of this Agreement (whether remedied or not).
  - (3) The Franchisee is and has at all times been in compliance with its obligations under all provisions of this Agreement including its obligation to comply with **Ancillary Agreements** and remains in compliance with all such obligations at the end of the **Initial Term**.
  - (4) The Franchisee satisfies all monetary obligations the Franchisee owes to Snap-on, its subsidiaries and **Related Entities**.
  - (5) The Franchisee executes Snap-on's then current franchise agreement (which will supersede this Agreement and may contain different terms and conditions to those set out in this Agreement and will exclude any option to enter into a new franchise agreement for a **Renewal Term**) and all other documents required by Snap-on in connection with the new franchise agreement within one (1) calendar month after Snap-on has delivered those documents to the Franchisee (no renewal will occur until the renewal documents have been executed).
- If the Franchisee fails to return the franchise documents to Snap-on within the above timeframe and such failure is not due to an act or omission by Snap-on then Snap reserves its rights to require the Franchisee to pay the **Second Tier Management Fee** until such documents are returned. If the **Second Tier Management Fee** is payable Snap-on will give the Franchisee fourteen (14) days' notice of the change to the fee.).
- (6) The Franchisee complies with all then-current qualifications and training requirements.
  - (7) If Snap-on completes a performance or compliance review of the Franchise and the Franchise operation and identifies areas where the Franchisee is not complying with its obligations under this Agreement, the Franchisee has taken all of the action (if any) required by Snap-on in order to remedy to Snap-on's satisfaction the non-compliance.

## B. Snap-on Review

If Snap-on receives a Renewal Term Notice within the timeframe set out in Section A above, then within sixty (60) days of receipt of the Renewal Term Notice, Snap-on may, at its sole discretion, elect to evaluate the Franchise and the Franchisee's operation. If Snap-on elects to evaluate the Franchise it will advise the Franchisee in writing (**Conditions Notice**):

- (1) whether the Franchisee has satisfied the renewal conditions set out in Section 4A; and
- (2) if not, the conditions that have not been satisfied.

If any of the renewal conditions which have not been satisfied are capable of being remedied or satisfied (as applicable) Snap-on may at its option elect to allow the Franchisee an opportunity to satisfy the relevant conditions and if Snap-on makes such election Snap-on will specify in the Conditions Notice the period of time within which the Franchisee must satisfy those conditions.

## C. Continuation of Franchise

If Snap-on permits the Franchisee to continue to operate the **Franchise** after the expiry of the Initial Term then (but without prejudice to any other right or remedy of Snap-on):

- (1) the Franchisee must continue to operate the **Franchise** on a monthly basis;
- (2) the **Franchise** continues on the same terms and conditions so far as applicable to a monthly licence as are contained in this Agreement; and
- (3) the monthly licence may be terminated by either party giving to the other 30 days written notice which may expire on any day.

## 5. Licence Fees and Payment Obligations

### A. Initial Licence Fee

The Franchisee must pay Snap-on the **Initial Licence Fee** as stated in Item 13 of the Schedule, on execution of this Agreement. The **Initial Licence Fee** is paid by Franchisee in consideration of Snap-on granting the Franchise to Franchisee and, subject to Section 3.B, is not refundable for any reason.

### B. Monthly Management Fee

In addition to all other amounts to be paid by the Franchisee to Snap-on, the Franchisee must pay Snap-on the **Monthly Management Fee** (as referenced in Item 14 of the Schedule) that will be invoiced on the Franchisee's **Weekly Statement** during the first week of each calendar month during the Term of this Agreement.

The **Monthly Management Fee** payable by the Franchisee is published in the Snap-on **Operations Manual**. Snap-on may increase the **Monthly Management Fee** by providing the Franchisee with thirty (30) days notice of any increase in the **Monthly Management Fee**. The increased **Monthly Management Fee** will be payable from the time the Franchisee's **Weekly Statement** reflects the increased **Monthly Management Fee**.

Without limiting the Franchisee's other rights and remedies, Snap-on may charge the Franchisee a higher **Monthly Management Fee** (referred to as the **Second Tier Management Fee**) if the Franchisee breaches this Agreement and until the Franchisee is no longer in breach of this Agreement. If the **Second Tier Management Fee** is payable Snap-on will give the Franchisee fourteen (14) days' notice of the change to the fee.

## C. Costs

The Franchisee must pay, or reimburse Snap-on within seven (7) days of receipt of a written demand for payment from Snap-on for, all Snap-on's costs (including reasonable legal costs) in connection with or incidental to:

- (1) the instructions for, and the negotiation, preparation, execution and stamping (if applicable) of this Agreement and all **Ancillary Agreements**;
- (2) any default by the Franchisee in observing or performing any of its obligations under this Agreement, including its obligation to comply with any **Ancillary Agreement**;
- (3) termination of this Agreement;
- (4) variation of this Agreement where the variation is requested by the Franchisee or Guarantor or required as a result of a breach by the Franchisee or Guarantor of any of its obligations under this Agreement; and
- (5) the attempted or actual enforcement, preservation or exercise of any right under this Agreement, including the obtaining by Snap-on of any advice or information as to its rights under this Agreement.

## D. Snap-on Software Fee

In addition to all other amounts to be paid to Snap-on by the Franchisee, the Franchisee must pay the Snap-on Software Fee to Snap-on on the due date specified on the Franchisee's Weekly Statement. The Snap-on Software Fee will be invoiced on the Franchisee's Weekly Statement. The Snap-on Software Fee will be reviewed and adjusted by Snap-on each calendar year (or at such other period as may be notified by Snap-on from time to time). The adjusted fee will be effective at the end of the calendar month in which it is reviewed. Refer to the Operations Manual for further details regarding the review process. The Franchisee acknowledges and agrees increases in the fee may be necessary in a range of circumstances, including for example where Snap-on's costs increase or where the fees payable by Snap-on or Snap-on Inc relating to or connected with the software used by the Franchisee increase.

## E. Franchisee Must Not Withhold Payment

- (1) The Franchisee must not for any reason withhold payment of any amount due to Snap-on.
- (2) Section 5.E(1) applies even if the Franchisee alleges that Snap-on has not performed or is not performing an obligation imposed upon it under this Agreement or an Ancillary Agreement.
- (3) Snap-on may accept any part payment without prejudice to its right to recover the balance due or pursue any other remedy.

## F. Account Application and Trading Terms

Acceptance and signing of this Agreement is taken as approval for opening a Snap-on account and acceptance of the Trading Terms.

## G. Application of Payments

Snap-on may apply any payments made by the Franchisee against any past due indebtedness of the Franchisee as Snap-on may see fit.

## H. Set Off

Snap-on may set off against any payment due to the Franchisee by Snap-on any unpaid debts of the Franchisee to Snap-on.

## I. Costs of Ongoing Training and Attending Meetings

The Franchisee must pay for all reasonable costs (including its own travel and accommodation costs) of attending any ongoing training reasonably required by Snap-on and attend meetings organised or scheduled by Snap-on. Snap-on reserves its rights to charge a training or administrative fee to the Franchisee for such training fee, which will be charged on the Franchisee's Weekly Statement.

## J. Method of payment

- (1) With the exception of the Initial Licence Fee and if required by Snap-on, the Franchisee must make all payments to Snap-on in respect of amounts owed by the Franchisee to Snap-on pursuant to or in connection this Agreement by means of direct debit into a bank account nominated by Snap-on and must, on or prior to the Commencement Date:
  - a) nominate in writing to Snap-on a bank account from which Snap-on will direct debit the payments; and
  - b) sign and give to Snap-on all necessary forms and consents permitting the direct debit of funds from the bank account in the manner and on the dates specified in writing by Snap-on.
- (2) Snap-on may by notice in writing to the Franchisee, specify a different method for payment of money from the method specified under this Agreement. The Franchisee must comply with method for payment of money within seven (7) days after receipt of a written notice from Snap-on.
- (3) The Franchisee must reimburse Snap-on for any costs incurred by Snap-on in connection with or related to a failure of the Franchisee's direct debit facility within seven (7) days after receipt of a written notice from Snap-on requesting that such costs be paid.

## K. Interest

Snap-on is entitled to charge the Franchisee, and the Franchisee shall pay to Snap-on within seven (7) days after receipt of a written demand for payment from Snap-on, **Default Interest** on any unpaid amount payable by the Franchisee under this Agreement from the date it falls due until payment is actually received by Snap-on. The interest rate applied is as per Section 19 of this Agreement.

## L. Security

- (1) Security Interest
  - a) The Franchisee and/or Guarantor:
    - i) must, if required by Snap-on, grant a **Security Interest** to Snap-on; and/or
    - ii) may, by entering into this Agreement or any other agreement, arrangement or transaction with Snap-on, be considered under the **PPSA** to have granted a **Security Interest** to Snap-on,

to secure the payment of money by the Franchisee and/or Guarantor and performance of obligations by the Franchisee and/or Guarantor under this Agreement and/or any other agreement between Snap-on Group and the Licensee and/or the Guarantor, in which case Sections 5.L(2) to 5.L(9) inclusive will apply.
- (2) Grantor's Obligations

The **Grantor** must, within the timeframe notified by the **Secured Party**, sign all documents, including the **Security Agreement**, and do all things necessary, as notified by the **Secured Party** to:

- a) enable **Registration** with respect to the **Security Interest** and for that **Registration** to continue until such time as all of the **Grantor's** obligations under the **Security Agreement** and this Agreement have been satisfied, including providing the **Grantor's** details and any serial numbers required for **Registration**;
- b) if the **PPSA** applies, enable the **Security Interest** to be perfected and continue to be perfected until such time as all of the **Grantor's** obligations under the **Security Agreement** and this Agreement have been satisfied;
- c) ensure that the **Security Interest** has priority over all other **Security Interests** in the **Personal Property**, whether registered, perfected or otherwise and whether created or arising before or after the creation of the **Security Interest**, except those **Security Interests** which the **Secured Party** agrees will have priority over the **Security Interest** or which by law have priority over the **Security Interest**;
- d) ensure that the **Secured Party** is able to **Enforce** the **Security Interest** until such time as all of the **Grantor's** obligations under the **Security Agreement** and this Agreement have been satisfied and the **Grantor** must not do anything which affects the **Enforceability** of the **Security Interest**;
- e) make any changes to the **Registration** relating to the **Security Interest** as the **Secured Party** may require from time to time, including to enable correction of any defects in the **Registration**;
- f) if the **PPSA** applies, enable any **Security Interest** that forms part of the **Collateral** to be perfected and continue to be perfected until such time as all of the **Grantor's** obligations under the **Security Agreement** and this Agreement have been satisfied;
- g) if the **PPSA** applies, ensure that the **Grantor's Security Interest** in any **Collateral** has priority over all other **Security Interests** in the **Collateral**, except those **Security Interests** which the **Secured Party** agrees will have priority over the **Grantor's Security Interest** in the relevant **Collateral** or which by law have priority over the **Grantor's Security Interest** in the **Collateral**; and
- h) if the **PPSA** applies, ensure that a third person cannot acquire an interest in any **Collateral** free of the **Secured Party's Security Interest** other than, where applicable, as a result of the **Grantor** dealing with inventory in the ordinary course of business.

(3) Confidentiality

The **Grantor** must keep the **Security Related Confidential Information** confidential at all times and must not, except with the **Secured Party's** prior consent, disclose the **Security Related Confidential Information** at any time (unless required by law or if the information is already public knowledge) except with the **Secured Party's** prior consent.

If the **Grantor** is required, or anticipates or has cause to anticipate that it may be required, by law or court order, to disclose the **Security Related Confidential Information**, the **Grantor** must:

- a) immediately notify the **Secured Party** of the actual or anticipated requirement and use its best endeavours (without breach of the applicable law) to delay and withhold disclosure until the **Secured Party** has had a reasonable opportunity to oppose disclosure by lawful means; and
- b) if after the **Secured Party** has exhausted all lawful means of opposing disclosure, the **Security Related Confidential Information** needs to be disclosed, only disclose so much of the **Security Related Confidential Information** as is required to be disclosed by law and is approved by the **Secured Party**.

The **Grantor** must use its best endeavours to ensure that all of its nominees, employees, contractors and agents comply with this Section.

(4) Secured Party May Exercise Rights

The **Secured Party** may exercise its rights in relation to the **Security Interest** any time after the **Grantor** fails to comply with its obligations under the **Security Agreement** and/or this Agreement.

(5) Notices

To the extent permitted by Legislation relating to the **Security Interest**, the **Grantor** waives its rights to receive any notices required to be issued or which would ordinarily be issued, whether by the **Secured Party** or any other person, to the **Grantor** under any such Legislation.

(6) Release of **Security Interest**

The Franchisee will be entitled to a release of the **Security Interest** when all its obligations under the **Security Agreement** and this Agreement have been satisfied.

(7) Costs

The **Grantor** will be responsible for its own costs in relation to:

- a) the **Security Agreement** and the grant of the **Security Interest, Registration** with respect to the **Security Interest** and, if the **PPSA** applies, perfection of the **Security Interest**; and
- b) complying with its obligations under this Section 5.L.

The **Grantor** must pay to the **Secured Party** on request, all the **Secured Party's** Expenses in connection with the **Security Agreement** and the grant of the **Security Interest, Registration** with respect to the **Security Interest** and, if the **PPSA** applies, perfection of the **Security Interest**.

(8) PPSA

The Franchisee and Guarantor agree to sign any documents varying this Agreement and/or the Security Agreement and do anything which Snap-on considers necessary as a result of changes made to the **PPSA**.

Where permitted under the **PPSA**, the provisions contained in this Agreement will prevail over the **PPSA**, to the extent of any inconsistency.

(9) Definitions

In this Section 5.L:

**Collateral, Enforce, Enforceability, Grantor, Personal Property, PPSA, Registration, Secured Party, Security Agreement, Security Interest and Security Related Confidential Information** means those definitions provided in Section 1.A.

If the **PPSA** applies, words and phrases not defined in this Section 5.L or Section 1.A will have the meaning given to them in the **PPSA**.

## 6. Franchise Operations Manual

The Franchisee acknowledges and agrees that it has access to Snap-on's **Operations Manual** (as defined in the Introduction) and must:

- (1) comply with the **Operations Manual**, including any changes, amendments or variations to the **Operations Manual**;
- (2) ensure that the **Operations Manual** is kept confidential;
- (3) not reproduce or copy the **Operations Manual** or any part of it;

- (4) not disclose the contents of the **Operations Manual** to anyone; and
- (5) within three (3) days of Snap-on's written demand, return any printed or digital copies of the **Operations Manual** including superseded, replaced or outdated copies that may be issued from time to time. If the copies are stored electronically the Franchisee must delete them if requested to do so by Snap-on.

Snap-on loans to the Franchisee a copy of the **Operations Manual** for the **Term** of this Agreement (which may be in the form of a digital portal). The **Operations Manual** remains the property of Snap-on at all times and forms part of Snap-on's **Intellectual Property**. If the **Operations Manual** is provided electronically, Snap-on will provide access to the **Operations Manual** (and any updates or amendments).

Upon termination of this Agreement, the Franchisee must return to Snap-on any printed Sections of the **Operations Manual** and any other Snap-on issued manuals the Franchisee has received and/or copied and, in the case of electronic copies of manuals, erase and delete them from computer hard discs or any other electronic device and either (as required by Snap-on) destroy any electronic copies, or return them to Snap-on.

## 7. Modifying Snap-on Program

Snap-on, in its discretion, may from time to time change, update or modify the **Snap-on Program**, including, but not limited to, by:

- (1) adding or deleting **Products**;
- (2) adopting new administrative forms;
- (3) amending the **Operations Manual**;
- (4) adopting and using new or modified **Trademarks** or deleting **Trademarks** (as defined in Section 14) or copyrighted materials;
- (5) varying methods for selling **Products**;
- (6) varying pricing or discount policies;
- (7) varying the criteria or policies for determining the **Territory** boundaries or **List of Calls**; and
- (8) varying minimum stock levels to be carried by Franchisee.

The **Snap-on Program** includes the Programs offered by Snap-on Financial Services, a business unit of Snap-on. Snap-on Financial Services, in its sole discretion, may from time to time change, modify, replace or cancel its programs, including the programs which involve Extended Revolving Account Contracts ('**Trade Card**') referred to in Section 10.C.

Snap-on may add to, delete, update or otherwise modify the Snap-on Program (including the **Operations Manual**) by giving written notice to the Franchisee of the change. Notice of the change may be given:

- personally to the Franchisee; or
- via any publication issued to the Franchisee; or
- via the Operations Manual or any website or other means of communication used by Snap-on to communicate with the Franchisee.

The Franchisee must accept, use, implement, adopt or display any changes or modifications in the **Snap-on Program** within seven (7) days (or such longer period as specified by Snap-on) after it is notified of the change or modification by Snap-on. The Franchisee must incur such expenditures as such changes or modifications in the **Snap-on Program** may require.

The purpose of this Section 7 is to assist Snap-on with, among other things:

- (i) ensuring the Franchisee meets the demands and expectations of **Potential Customers** and provides high quality customer service;
- (ii) ensuring **Potential Customers** have a positive and consistent customer experience;
- (iii) maintaining and controlling the quality and integrity of the **Intellectual Property**;
- (iv) providing relevant training;
- (v) communicating the values of the Snap-on brand;
- (vi) ensuring the **Snap-on Program** is current and relevant;
- (vii) providing meaningful and relevant information to the Franchisee and the Snap-on network;
- (viii) introducing new systems and procedures;
- (ix) maintaining the high standards of the **Snap-on Program** and the Snap-on network;
- (x) improving or adjusting the **Snap-on Program**; and
- (xi) making changes required for compliance or consistency with applicable laws.

## 8. Services by Snap-on

### A. Sale of Products to the Franchisee

The Franchisee must purchase **Products** from Snap-on at the prices specified in Snap-on's then current price listings, less any Franchisee discounts and in accordance with Snap-on's then current **Trading Terms** in effect when orders are received by Snap-on.

The **Products**, prices, and available Franchisee discounts are subject to change as advised by Snap-on from time to time.

Upon receipt of orders from the Franchisee, Snap-on must use reasonable efforts to deliver the **Products** ordered (at the Franchisee's cost) promptly to the Franchisee, or such other person or entity as the Franchisee directs.

Snap-on will not be liable to the Franchisee for any delays delivering the **Products**, or for failure to deliver **Products**, if the **Products** were not shipped because the Franchisee has not paid Snap-on for prior amounts due, or if Snap-on's reasonable efforts are inadequate to effect delivery of the **Products**.

Snap-on imports a range of **Products**, predominantly from its United States of America based parent company, considered most suitable for the Australian market. Product that is not normally carried as a stock item in Australia can normally be ordered by Snap-on, but such orders are termed '**Special Orders**', as are tools specifically made to a customer's requirements. In these cases, and at Snap-on's sole discretion, the Franchisee may be required to pay a security deposit prior to order, and when a **Special Order** is available for delivery to the Franchisee, the **Special Order** must be paid for in full in accordance with Snap-on's **Trading Terms** effective on the date of receipt of the order by Snap-on. A **Special Order** cannot be cancelled by the Franchisee nor can the **Products** subject of the **Special Order** be returned for credit at any time.

The Franchisee must pay all amounts due to Snap-on as set out in the **Weekly Statement** at the time and on the day of the week set out in the **Operations Manual** from time to time (or otherwise notified in writing by Snap-on) following the date of the **Weekly Statement** (subject to change at Snap-on's discretion on seven (7) days' written notice from Snap-on), or any later due date specified by Snap-on in writing (**Payment Terms**). The Franchisee acknowledges that the Franchisee's obligation to pay



all amounts payable to Snap-on the applicable due date (time being of the essence) is a fundamental and essential term of this Agreement.

Snap-on may decline to deliver additional **Products** while any such amounts are unpaid. Snap-on may, in its sole discretion, require pre-payment for **Products** for whatever period Snap-on considers appropriate if the Franchisee fails to comply with the **Payment Terms**.

The Franchisee acknowledges and agrees that:

- (1) the Franchisee must comply with the **Trading Terms**;
- (2) the Franchisee must pay for all **Products** and other goods and services (if applicable) supplied by Snap-on on the due date for payment;
- (3) the **Trading Terms** will apply to all Snap-on franchisees, but may be varied by Snap-on to cater for individual circumstances; and
- (4) Snap-on may add to, delete or otherwise amend and update the **Trading Terms** from time to time by notifying the Franchisee of the change. A change to the **Trading Terms** takes effect thirty (30) days after it is notified to the Franchisee. Notice may be given: personally to the Franchisee; or via any publication issued to the Franchisee; or via the **Operations Manual** or any website or other means of communication used by Snap-on to communicate with the Franchisee.

The **Trading Terms** are set out in in the **Operations Manual**.

## B. General Assistance

Snap-on may provide advice and assistance to the Franchisee as Snap-on deems necessary and appropriate, including advice and guidance in relation to:

- (1) the **Snap-on Program**;
- (2) business forms, bookkeeping and operational methods;
- (3) inventory control methods;
- (4) products; and
- (5) sales and marketing.

This assistance and guidance may be provided by a Snap-on representative accompanying the Franchisee during visits to customers, the distribution of printed and filmed material, meetings, telephone communications, Intranet communication and other communications. The Franchisee must adhere to any advice or guidance given to the Franchisee by Snap-on.

## C. Sales Aids and Sales Material

From time to time, Snap-on may supply the Franchisee, at no charge or a nominal charge determined by Snap-on, reasonable quantities of catalogues, charts, sales literature, uniforms and other sales aids prepared by Snap-on that are requested by the Franchisee. Snap-on may also from time to time offer to sell the Franchisee various promotional items at prices determined by Snap-on. The **Operations Manual** has further information on promotional item price lists.

## D. Training

- (1) Snap-on shall make available to the Franchisee, and the Franchisee and any employee or director of the Franchisee nominated by Snap-on must attend and complete to Snap-on's satisfaction, Snap-on's new franchisee training Program (**Franchise Store Manager Training Program** or **FSMT**). If required by Snap-on, the **Franchise Store Manager Training Program** must be completed before the Franchisee commences business. Training Programs conducted

by Snap-on are subject to change by Snap-on without notice and shall be at such times and places as Snap-on reasonably may designate.

Please note that the training managers at these training sessions will communicate back to Snap-on regarding the completed training. This information will assist Snap-on in preparing for the training that will occur locally after the Franchisee's return.

- (2) The Franchisee must pay all expenses the Franchisee may incur in connection with attending any such Training Programs, unless the then current Snap-on Training Program covers expenses incurred in connection with attending such Programs. The **Operations Manual** covers how Franchisees may pay for these training programs.
- (3) The Franchisee acknowledges that attending **FSMT** may include travel by the Franchisee to the United States of America or other states within Australia than the home state or territory, to attend a Snap-on training facility.
- (4) The Franchisee acknowledges that Snap-on may from time to time organise industry specific training required by various government bodies. These training courses may be organised by Snap-on and provided by an external organisation. These courses are compulsory and the Franchisee and any other employee or director of the Franchisee nominated by Snap-on must attend and complete to Snap-on's satisfaction such training when required to do so by Snap-on.
- (5) The Franchisee acknowledges that Snap-on may charge the Franchisee for any other training Programs conducted by it, or an external training organisation, and some additional training Programs may be mandatory, in which case the Franchisee and any employee or director nominated by Snap-on must attend.

Refer to the **Operations Manual** for further information about training provided by Snap-on and external training required.

## E. Internet Sales and Recipient Created Tax Invoices

Snap-on may offer **Products** for sale through its website, [www.snapontools.com.au](http://www.snapontools.com.au) (**Internet Sales**). Snap-on may remit a commission to the Franchisee for any **Internet Sales** which are made to **Potential Customers** located at **Approved Stops** on the **List of Calls**. Please refer to the **Operations Manual** for more specifics on **Internet Sales**.

For the payment of this commission, Snap-on may need to generate a **Recipient Created Tax Invoice**. This would occur by Snap-on (**Recipient**) and the Franchisee (**Supplier**) agreeing to the following conditions:

- (1) The Recipient can issue tax invoices in respect of the goods supplied.
- (2) The Supplier will not issue tax invoices in respect of the goods supplied.
- (3) The Supplier acknowledges they are registered for GST upon entering the agreement and if so needed will notify the recipient if it ceases to be registered.
- (4) The Recipient acknowledges that they are registered for GST upon entering the agreement and, if so needed, will notify the supplier if it ceases to be registered, or if it ceases to satisfy any of the Recipient Created Tax Invoice requirements.
- (5) The recipient indemnifies the supplier for any liability for GST and penalty that may arise from an understatement of the GST payable on any supply for which it issues a Recipient Created Tax Invoice.

This is known as the **Recipient Created Tax Invoice Agreement**.

Acceptance and signing of this Agreement is taken as agreement that the Franchisee will comply with these obligations.

## 9. Performance Standards and Uniformity of Operation

### A. General Standards and Specifications

The Franchisee must operate the Franchise, fully utilise the **Snap-on Program**, render all services, sell all **Products** and make all payments due to Snap-on in accordance with the specifications, standards, business practices, policies and procedures of Snap-on now in effect or subsequently published for its Franchisees, and comply with all written requirements of the **Snap-on Program**, including changes that may be made to it from time to time by Snap-on pursuant to the applicable provisions of this Agreement.

### B. Snap-on Inspections

Snap-on and its duly authorised representatives have the right to inspect and audit the Franchise and Franchisee's operations to ensure compliance with the Franchisee's obligations under this Agreement, including by:

- (1) speaking with **Potential Customers**;
- (2) speaking with any officer, employee, contractor of the Franchisee, or any other person working in the Franchise, whether or not the Franchisee or a director of the Franchisee is present, and without obligation to advise the Franchisee as to the content of any discussion;
- (3) inspecting the Franchisee's **Mobile Store** and inventory display;
- (4) conducting a stocktake of the **Products** and other items on the Franchisee's **Mobile Store** as well as **Products** held in any other storage facility (or conducting spot checks on the inventory levels);
- (5) accompanying the Franchisee in the **Mobile Store** to ensure that the Franchisee is complying with all requirements of the **Snap-on Program**;
- (6) examining the Franchisee's records to determine **Potential Customers** being serviced by the Franchisee;
- (7) accessing the Franchisee's on-board computer system (currently the Chrome POS system) as outlined in Appendix 3 of this Agreement; and
- (8) doing such acts and things as Snap-on shall reasonably consider necessary or desirable to assess the Franchisee's compliance with this Agreement.

The Franchisee must co-operate fully with Snap-on and its authorised representatives in a timely manner and comply with any reasonable requests made by Snap-on or its representatives during such inspections or audits. The Franchisee must immediately take such steps as may be necessary to correct any breach of the **Snap-on Program** detected during such inspections in accordance with Snap-on's requirements or directions.

### C. Operation of the Franchise

The Franchisee must ensure that the Franchise and the Franchisee's business is at all times operated, managed and supervised by the Franchisee Contact on a full time basis. The Franchisee Contact must devote his or her full time and attention to the Business.

Unless otherwise permitted by Snap-on in writing, the Franchisee must make weekly sales and service calls on **Potential Customers** at **Approved Stops** on the **List of Calls** who are professional tool users at their places of business and may not use anyone else to make such calls.

Where the Franchisee is a corporation as defined in the *Corporations Act 2001* (Cth), then without limiting the obligations of the Franchisee and Guarantor under this Agreement, the Franchisee Contact

must perform and fulfil the requirements of the operation of the Franchise as set out in this Agreement and the **Snap-on Program**.

The Franchisee must use its best efforts to aggressively promote and develop fully the sales of **Products** to all **Potential Customers** at **Approved Stops** on the **List of Calls** and maintain a sufficient quantity and range of inventory of **Products** in order to maximise the sale of **Products**, efficiently operate the Franchise and meet customer demand. Snap-on reserves its right to specify in the **Operations Manual** the specific quantity, range and mix of **Products** which the Franchisee must purchase and display in the **Mobile Store** from time to time.

The Franchisee must call weekly (unless a variation is authorised in writing by Snap-on) on all **Potential Customers** at **Approved Stops** on the **List of Calls** as specified in the **Snap-on Program** in order to maximise the sale of **Products** and provide the service expected by **Potential Customers**.

Neither the Franchisee nor the Guarantor may engage in activities that would conflict with the operation of the Franchise and the Franchisee must devote its full time, attention and efforts to the Franchise. The Franchisee must, at all times, act in a competent, fair, honest, ethical, and courteous manner in its dealings with **Potential Customers** and Snap-on staff and Snap-on representatives in accordance with the image and reputation of Snap-on and the **Snap-on Program**.

The Franchisee must maintain a neat and clean appearance while wearing approved uniform as prescribed in the **Operations Manual** and present as a professional business person consistent with the Snap-on image.

## D. **Approved Tools**

In the operation of the Franchise, except as otherwise provided below, the Franchisee may only sell the **Products**, as defined in Section 1.

The Franchisee may sell or offer for sale tools, products or merchandise other than the **Products** only with Snap-on's express, prior written consent (**Approved Tools**) which consent may be given or withheld by Snap-on in its sole and absolute discretion. Consent given under this Section may subsequently be revoked by Snap-on at any time by giving seven (7) days written notice to the Franchisee (a shorter period of notice may be given if Snap-on must revoke the approval in order to comply with an applicable law). If consent is revoked the Franchisee must cease selling the relevant tools, products or merchandise.

The Franchisee must purchase **Approved Tools** from Snap-on.

The Franchisee must supply Snap-on with a sample of the tool, product or merchandise, together with a written request stating Franchisee's desire to sell the tools, products or merchandise in advance of offering them for sale. Snap-on may verify manufacturer and specification data and test such tools, products or merchandise for conformity with the appearance, uniformity, quality, standards and other specifications of Snap-on. Snap-on may periodically require that the testing be performed again to ensure that the manufacturer continues to meet Snap-on's specifications. In addition, the Franchisee must seek from the supplier of the tools, products or merchandise, details of the liability insurance held for the tools, products or merchandise including coverage limits, and forward copies of the insurance documentation to Snap-on.

Without limiting Snap-on's rights under this Section, Snap-on may refuse to approve tools, products and merchandise as **Approved Tools** in its sole discretion, including if such tools, products or merchandise directly compete with any of the **Products**.

The Franchisee must report all purchases and sales to Snap-on on forms generated by any software program or system owned or controlled under licence by Snap-on. The restrictions contained in this Section do not apply to merchandise which the Franchisee has taken as a trade-in from a customer. The Franchisee may sell such trade-ins without obtaining Snap-on's prior written consent; however, the onus is on Franchisee to ensure compliance with any licencing requirements relating to second hand goods that may be applicable depending on the state in which the Franchisee operates the Franchise.

## E. Sales Only to End-User

The Franchisee must sell the **Products** only to **Potential Customers** at **Approved Stops** within the **List of Calls** who are the end-user of the **Products** and must not sell the **Products** to any person or entity for resale, or redistribution.

## F. Minimum Inventory Levels

Snap-on have minimum inventory levels, values and standards that are required of every franchisee. These inventory levels, values and standards are outlined in the **Operations Manual** and may be changed from time to time by Snap-on (acting reasonably). The minimum inventory value is calculated at **List Price**.

The Franchisee must at all times (including when the Franchisee commences trading) carry and maintain an inventory of **Products** on their **Mobile Store** with a value of at least the minimum value set out in the **Operations Manual** from time to time or otherwise specified in writing by Snap-on.

The minimum value and levels of inventory required under the **Snap-on Program** is likely to increase from time to time due to changes in **Product** prices and customer demand and other relevant circumstances.

Within thirty (30) days of notice of any revision (or by any later date specified in Snap-on's notice) to the minimum inventory requirements, the Franchisee must increase its inventory of **Products** as necessary to meet the requirements of the **Snap-on Program**.

## G. Minimum Purchase Requirements

The Franchisee must ensure that the Franchisee's average weekly purchases of **Products** from Snap-on over any period of fifty-two (52) consecutive weeks, measured by recommended **List Prices**, are not less than eighty percent (80%) of the average weekly purchases of **Products** by all full-time Franchisees in the same State over that period.

## H. Key Performance Indicators (KPI's)

Without limiting the Franchisee's other obligations under this Agreement, the Franchisee must achieve the following key performance indicators which the Franchisee accepts are minimum criteria which the Franchisee must perform or achieve.

- (1) Minimum inventory – the minimum inventory value and levels in accordance with Section 9.F.
- (2) Purchases - the minimum purchase requirements in accordance with Section 9.G.

## I. List Prices

Snap-on may recommend the retail prices of **Products**. These recommended retail prices are known as **List Prices**. Nothing in this Section 9.I imposes any obligation on the Franchisee to accept Snap-on's recommendations or guidance as to retail prices and the Franchisee may determine the retail prices of **Products**.

## J. Mobile Store

The Franchisee must lease or purchase a **Mobile Store** from a source of the Franchisee's choice that complies with at least the minimum standards and specifications contained in the **Snap-on Program** in effect on the **Commencement Date** of this Agreement.

Snap-on may in its sole discretion amend the minimum specifications from time to time in which case the Franchisee must make whatever variations or additions necessary to ensure that the Franchisee's **Mobile Store** meets the revised minimum specification. Snap-on will advise the Franchisee of the time allowed for such revisions to be made.

The Franchisee must:

- (1) maintain and operate the **Mobile Store** in good condition and repair so as to reflect the established high quality image of Snap-on and the **Products**;
- (2) maintain the **Mobile Store** in accordance with the minimum vehicle maintenance requirements recommended by the manufacturer or as required by the **Snap-on Program** from time to time;
- (3) update the livery of the **Mobile Store** when required by Snap-on. Such updates are to occur no more than three (3) months after the update is communicated by Snap-on;
- (4) ensure that the **Mobile Store** will be no more than twelve (12) years old at the end of the **Term**. Refer to the **Operations Manual** for further requirements regarding **Mobile Store** age and acceptability;
- (5) not modify, add, remove or in any way change the internal displays, layout or presentation of the **Mobile Store** without the express written permission of Snap-on;
- (6) at all times ensure that the livery of the **Mobile Store** is consistent with the **Snap-on Program** as per the requirements in the **Operations Manual** as may be revised from time to time;
- (7) not display any unauthorised material on the exterior or interior of the **Mobile Store**. The Franchisee understands and acknowledges that only decals, signs or other material obtained from, or approved by Snap-on, may be displayed on or in the **Mobile Store**;
- (8) display at least the minimum value of inventory of **Products** as specified in the **Operations Manual** in the **Mobile Store** in a clean and neat manner and as required by the **Snap-on Program** from time to time;
- (9) except as expressly permitted by Snap-on, operate only one **Mobile Store**;
- (10) ensure the **Mobile Store** is used when the Franchisee makes all regular sales and service calls;
- (11) completely decommission the **Mobile Store** as per the **Operations Manual** when this Agreement is terminated; and
- (12) in order to ensure the image of Snap-on and other Snap-on Franchisees is not damaged, at all times observe the applicable State and Federal road regulations when driving the **Mobile Store** and act in a courteous and considerate manner to other road users and the general public.

## K. Decommissioning Mobile Store

If at any time the Franchisee ceases using a Mobile Store for any reason, the Franchisee must immediately notify Snap-on and decommission and de-brand the Mobile Store in accordance with Snap-on's requirements as set out in Section 24(1)g). The decommissioning and de-branding must be completed within 30 days of the date on which the Franchisee ceased using the Mobile Store, unless otherwise agreed in writing by Snap-on. This Section does not apply if Snap-on has consented in writing to the Franchisee selling the Mobile Store to an existing Snap-on franchisee.

## L. Clothing and Uniforms

At all times when operating the Franchise, the Franchisee (and their employees if relevant) must:

- (1) wear an approved uniform conforming to specifications contained in the **Snap-on Program** from time to time;
- (2) maintain such uniform in good condition;
- (3) wear appropriate workplace health and safety (WHS) uniforms when required; and
- (4) always be dressed in a professional and businesslike manner.

Refer to the **Operations Manual** for the current uniform offering and standards.

## M. Computer

On entering this Agreement, the Franchisee will be supplied with a computer by Snap-on that complies with the specifications and requirements contained in the **Snap-on Program** as of the **Commencement Date**.

The Franchisee must:

- (1) change or upgrade the computer hardware every three (3) years or earlier and within the timeframe notified by Snap-on at the Franchisee's expense, in order to maintain reliability and accommodate future developments of the **Snap-on Program** if Snap-on considers the computer, technology or software is obsolete or superseded or no longer satisfies Snap-on's then current functionality and specification requirements;
- (2) obtain a mobile internet connection from a service provider of their choice for use with the computer utilised in the Franchise;
- (3) only use a computer, software and technology in connection with the Franchise that meets the specifications and standards of the **Snap-on Program**;
- (4) ensure that all computer hardware and software is secure from unauthorised access or use;
- (5) ensure that all data relating to the **Snap-on Program** is regularly backed up in accordance with the standards outlined in the **Operations Manual**;
- (6) allow Snap-on to have access to the extent and in any manner reasonably requested by Snap-on, to the Franchisee's computer hardware and software and to all information that is stored in it including by any instantaneous means of telecommunication or Internet protocol; and
- (7) licence from Snap-on the computer software owned or controlled under licence by Snap-on, (currently known as 'Chrome'), that conforms to specifications contained in the **Snap-on Program** from time to time and comply with the terms of all applicable software licence agreements.

Refer to the **Operations Manual** for further information on the Computer policy.

## N. Warranties, representations and statements

The Franchisee must assist Snap-on in honouring all warranties provided by Snap-on in relation to the **Products**. The warranty given by Snap-on in relation to the **Products** is detailed in the Snap-on catalogue, and the Franchisee has no authority to vary the warranty on a **Product** in any way unless expressly authorised in writing by Snap-on. The Franchisee must not:

- (1) make any representations or statements or give any warranties about Snap-on, the Snap-on Program or the Products except as provided for in this Agreement or otherwise authorised by Snap-on in writing; or
- (2) be misleading or deceptive in any way in its dealings with any person in the conduct of the Franchise.

The Franchisee must communicate to Snap-on, in the manner set out in the **Operations Manual**, all **Product** claims.

## O. Compliance with Law

The Franchisee must, at its own expense, comply with all laws, ordinances, statutes, industry codes, by-laws, including the *Privacy Act 1988*, the *Competition and Consumer Act 2010 (Cth)*, the Franchising Code of Conduct and the occupational and workplace health and safety legislation and

regulations applicable to the operation of the Franchise, including obtaining and maintaining all necessary accreditations, permits, licences and approvals required to operate the Franchise.

Additionally, the Franchisee must notify Snap-on if the Franchisee, or any of the Franchisee's employees:

- (1) are in breach of any applicable law or receive any notice, warning or indication that they or any of their employees are in breach of any applicable laws; or
- (2) receive any road or parking infringements from any state or territory, whether they impact the day to day running of the Franchise or not.

Refer to the **Operations Manual** for the procedure for this notification.

## P. Taxes and Other Indebtedness

The Franchisee must pay, when due, all taxes (including superannuation) levied and assessed and all accounts and other indebtedness of every kind incurred by the Franchisee in connection with the Franchise.

Superannuation is overseen and collected by the Australian Taxation Office and the Franchisee is reminded that superannuation is a compulsory payment.

## Q. Satisfy Customer Complaints

- (1) The Franchisee must inform Snap-on in writing of, and promptly act to redress, all customer complaints at the Franchisee's cost and in accordance with any relevant provision set out in the **Operations Manual**.
- (2) If the Franchisee fails to redress a customer complaint within two (2) days, Snap-on may attempt to redress the complaint.
- (3) If Snap-on acts to redress a customer complaint due to the failure of the Franchisee to satisfactorily redress the complaint, the Franchisee must pay the reasonable costs incurred by Snap-on in attempting to redress the complaint.
- (4) If a Franchisee fails to address customer complaints, or has multiple customer complaints in a six (6) month period, this may be considered to be a breach of this Agreement.

## R. Information and Disclosure Obligations

The Franchisee must fully disclose to Snap-on all information concerning the Franchise and must:

- (1) give to Snap-on all information which the Franchisee receives which may be of use or benefit to Snap-on in developing and maintaining the **Snap-on Program** and the network of Snap-on franchisees; and
- (2) refer to Snap-on all enquires relating to the **Snap-on Program** which the Franchisee receives from any person which is supplying or considering supplying products or services which might compete with products or services supplied via the network of Snap-on franchisees.

## S. Customer Database

- (1) **Customer and staff information**
  - a) The Franchisee must comply with the *Privacy Act 1988 (Cth)* (**Privacy Act**), all other applicable laws and Snap-on's privacy policy, when collecting, storing, disclosing or using, in any manner, any information, including personal information as that term is defined in the Privacy Act, from customers, prospective customers and its employees.



- b) The Franchisee must obtain all the necessary consents from individuals providing information to the Franchisee to enable the Franchisee to fully comply with its obligations under this Section 9.S.

(2) **Provide customer details to Snap-on**

Subject to any applicable law, the Franchisee must:

- a) collect the information from customers specified in the **Operations Manual** or otherwise in writing by Snap-on;
- b) collect customer information only in the manner specified in the **Operations Manual** or otherwise in writing by Snap-on; and
- c) provide Snap-on with all customer information, in the form specified by Snap-on within twenty-four (24) hours after receiving a request from Snap-on.

(3) **Customers are property of Snap-on**

All customers and customer information is and remains the sole property of Snap-on.

(4) **Customer database**

Snap-on may establish and maintain a customer database to store customer information.

(5) **Transactional data**

All data generated by or contained in the Chrome Software is accessible by the Franchisee. Financial data generated is owned by the Franchisee and must be accessible by Snap-on.

## **T. Meetings and Conferences**

- (1) Snap-on may convene meetings of, and conferences for, Snap-on franchisees or groups of Snap-on franchisees whenever Snap-on considers this is necessary or appropriate.
- (2) The location, agenda, duration and all procedures and formats of each meeting and conference shall be determined by Snap-on.
- (3) Snap-on must give the Franchisee reasonable notice of meetings and conferences.
- (4) The Franchisee must, at the Franchisee's cost, attend such meetings and conferences.

## **U. Entitlements of Franchisee's Employees**

- (1) The Franchisee must:
  - a) pay all costs associated with the Franchisee's employees including:
    - i) workers' compensation insurance premiums;
    - ii) sick, annual and long service leave entitlements;
    - iii) fringe benefits tax, superannuation and other statutory charges; and
    - iv) all other costs payable under any applicable laws.
  - b) deduct and remit PAYG or other income tax instalment deductions;
  - c) remit payroll tax in respect of any statutory liability to make payroll tax payments in relation to the conduct of the Franchise; and
  - d) maintain registrations and certificates under the applicable occupational or workplace health and safety and workers' compensation laws, in respect of Franchisee's employees, agents and contractors.
- (2) Employee costs not recoverable by the Franchisee:

- a) None of the costs, payments or remittances referred to in this Section 9.U are recoverable by the Franchisee from Snap-on.
  - b) If Snap-on has an obligation to pay any employee entitlement or statutory charge in respect any of the Franchisee's employees or the Guarantor, the Franchisee must pay the entitlement or charge on Snap-on's behalf. If Snap-on pays the entitlement or statutory charge, the Franchisee must immediately reimburse Snap-on an amount equal to the amount paid out by Snap-on.
  - c) To the maximum extent permitted by law, the Franchisee indemnifies Snap-on in respect of any fine, penalty or other charge imposed on Snap-on as a result of this Section 9.U or this Section 9.U(2) or any non-compliance by Snap-on with its statutory obligations in connection with Franchisee's employees as determined by a relevant authority.
- (3) The Franchisee must supply to Snap-on immediately upon request, any documentation relating to employee entitlements or conditions of employment.
- (4) For the avoidance of doubt, Snap-on is not responsible for any costs, results, behaviour or training of any the Franchisee's employees.
- (5) Without limiting the Franchisee's obligation to comply with all applicable laws and regulations, the Franchisee must:
- a) comply with and take all reasonable steps and measures to ensure compliance with all applicable workplace laws;
  - b) promptly advise Snap-on of any notification received by the Franchisee from any person (including an employee; the Fair Work Ombudsman; the media; a Snap-on Franchisee, or any other person) relating to a failure or alleged failure by the Franchisee or any Snap-on Franchisee to comply with any workplace law;
  - c) notify Snap-on immediately if the Franchisee or any of the Franchisee's employees or personnel are contacted by the media about any matter, including any employee related matter;
  - d) promptly review and investigate any alleged underpayment of wages or entitlements raised by any employee, past or present;
  - e) rectify without delay, including making back payment to employees where necessary, any identified non-compliance with any workplace law;
  - f) actively and honestly participate in any operational and/or self-assessment review relating to compliance with workplace law initiated by Snap-on;
  - g) accurately, honestly and fully:
    - i) complete any operational and/or self-assessment review relating to compliance with workplace law initiated by Snap-on; and
    - ii) promptly and within the timeframe reasonably requested by Snap-on, respond to any of Snap-on's questions or information requests relating to any operational and/or self-assessment review initiated by Snap-on or the Franchisee's compliance with workplace law or other laws;
    - iii) provide Snap-on with evidence of compliance with any workplace law upon request and within the timeframe reasonably requested by Snap-on;
    - iv) keep a register of all complaints made by the Franchisee's employees or personnel against the Franchisee; and
  - h) retain all records as required by the Law.

## V. Compliance with Workplace Laws

Without limiting the Franchisee's obligation to comply with all applicable Laws, the Franchisee must:

- (1) comply with and take all reasonable steps and measures to ensure compliance with all applicable Workplace Laws;
- (2) promptly advise Snap-on of any notification received by the Franchisee from any person (including an employee; the Fair Work Ombudsman; the media; a Franchisee, or any other person) relating to a failure or alleged failure by the Franchisee or any Franchisee to comply with any Workplace Law;
- (3) notify Snap-on immediately if the Franchisee or any of the Franchisee's employees or personnel are contacted by the media about any matter concerning the Franchise, including any employee related matter;
- (4) promptly review and investigate any alleged underpayment of wages or entitlements raised by any employee, past or present;
- (5) rectify without delay, including making back payment to employees where necessary, any identified non-compliance with any Workplace Law;
- (6) establish and maintain, and ensure the manager and persons involved in managing the Franchise participate in an effective workplace compliance training program, to ensure that management within the Franchise are effectively trained in all aspects of their duties and obligations arising from any Workplace Law;
- (7) implement systems and processes to ensure ongoing compliance with the obligations arising from any Workplace Law including, obligations relating to pay, taxation, superannuation and record keeping;
- (8) actively and honestly participate in any operational and/or self-assessment review relating to compliance with Workplace Law initiated by Snap-on;
- (9) accurately, honestly and fully:
  - a) complete any operational and/or self-assessment review relating to compliance with Workplace Law initiated by Snap-on; and
  - b) promptly and within the timeframe reasonably requested by Snap-on, respond to any of Snap-on questions or information requests relating to any operational and/or self-assessment review initiated by Snap-on or the Franchisee's compliance with Workplace Law;
- (10) provide Snap-on with evidence of compliance with any Workplace Law upon request and within the timeframe reasonably requested by Snap-on;
- (11) keep a register of all complaints made by the Franchisee's employees or personnel against the Franchisee; and
- (12) establish and conduct at least once each Financial Year (or more frequently if reasonably required by Snap-on), internal audit processes to verify compliance with Workplace Law (this clause does not limit the Franchisee's obligations under clause 9.V(8) or Snap-on's rights to audit the Franchisee and the Franchise pursuant to the audit or inspection provisions of this Agreement).

## **W. Fair Work Acknowledgement**

- (1) The Franchisee acknowledges that it is fully aware of its obligations under the *Fair Work Act 2010* as amended (Act) to all workers engaged by the Franchisee, including the Franchisee's obligations as an employer to:
  - a) pay all workers in accordance with the relevant awards, including paying correct rates of pay, penalty rates, allowances and entitlements;

- b) comply with the provisions of the Act (as defined above) concerning the preparation, provision and retention of pay slips and records concerning all workers, including retaining records for 7 years;
  - c) comply with the provisions of the Act in relation to methods and frequency of payment;
  - d) not require workers to comply with unreasonable requirements or spend or pay amounts to the Franchisee for other services; and
  - e) not require cash back or other illegal cash back or other reimbursement payments to the Franchisee.
- (2) The Franchisee acknowledges that Snap-on has provided access to information, resources and training in relation to the Act to assist Snap-on with its compliance obligations, but the Franchisee accepts that ongoing compliance with the Act and remaining aware of any changes in the law generally is solely the Franchisee's responsibility.

## **X. Snap-on may Require Franchisee Substantiation of Compliance**

- (1) Snap-on may at any time require the Franchisee to provide a certificate or statutory declaration signed by a director of the Franchisee to verify its compliance with any Workplace Law or any provision of this Agreement, or to verify any statement by the Franchisee or any fact or allegation.
- (2) The Franchisee acknowledges and agrees that:
- a) Snap-on will be entitled to rely on the truth and accuracy of any statutory declaration or certificate;
  - b) Snap-on could be exposed to liability under the Workplace Law and could suffer significant adverse publicity and brand damage should the Franchisee breach any Workplace Law or the content of any certificate or statutory declaration not be true and correct;
  - c) if any part of any statutory declaration or certificate provided by the Franchisee is false, and Snap-on determines that the Franchisee has materially breached any Workplace Law, then Snap-on may consider that the Franchisee has been acting fraudulently in connection with the operation of the Business and may seek to immediately terminate this Agreement pursuant to clause 29(1)(g) of the Franchising Code of Conduct; and
  - d) in forming any view as to breach of any Workplace Law, Snap-on may rely on confidential evidence from workers, circumstantial evidence, the opinion of any auditor or assessor and failure of the Franchisee to provide adequate explanations or responses to questions from Snap-on or any auditor or assessor.

## **Y. Cooperation with any Investigation or Request for Information**

- (1) The Franchisee, and all employees of the Franchisee, must at Franchisee's expense immediately take such action as Snap-on shall reasonably require to cooperate with any regulatory body or comply with any investigation, prosecution, inquiry or request for information from any regulatory body. This obligation applies to any investigation, prosecution, inquiry or request concerning the Franchisee, Snap-on, any other franchisee of Snap-on or any employee of the Franchisee.
- (2) Without limiting Section 9.Y(1), the obligations of the Franchisee extend to providing any records of the Franchisee, giving access to the Franchisee's computer records and giving sworn testimony or evidence.

## Z. Subcontracting

- (1) Where the Franchisee subcontracts any aspect of its compliance obligations under the Workplace Laws, the Franchisee must ensure that:
  - a) any arrangement is a genuine contracting arrangement with a party operating a genuine contracting business in full compliance with all legal obligations including those under Workplace Law;
  - b) any arrangement does not breach prohibitions on sham contracting under Workplace Laws; and
  - c) its contract with the sub-contractor obliges the subcontractor to provide all access, information, documents and records as necessary to allow the Franchisee to comply with all of its obligations under this clause and the Agreement.
- (2) Nothing in this Section is intended to contradict or override any requirement under this Agreement that either prohibits sub-contracting or requires that the Franchisee must obtain Snap-on's prior written consent to any sub-contracting arrangement.

## AA. Snap-on Code of Business Conduct and Ethics

Franchisees are expected to comply with all Snap-on standards, which include behaviour standards, outlined in the Snap-on Code of Conduct and Ethics. This code can be found on the Snap-on website as well as in the **Operations Manual**.

## BB. Business Name

- (1) The Franchisee must: do all things, including executing any documents required by Snap-on in connection with registering or de-registering the Business Name; and if any of the Business Name Information changes or is no longer accurate, immediately provide Snap-on with the revised Business Name Information.
- (2) The Franchisee authorises Snap-on to:
  - a) access the registration of the Business Name at any time where the Franchisee fails to comply with its obligations under this Agreement relating to the Business Name; and
  - b) exercise the power of attorney under Section 31 to change or de-register the Business Name or change the details on the registration of the Business Name using the Franchisee's online registration if the Franchisee has not complied with its obligations under this Agreement at the end of the Term or on the earlier termination of this Agreement.

## CC. Compliance with Ancillary Agreements

The Franchisee must comply with the terms of any Ancillary Agreement.

## 10. Credit Sales

### A. Revolving Accounts

Revolving Accounts (**RA**) are accounts generated by a Franchisee's sales of **Products** on the Franchisee's credit that are to be paid by the customer on a weekly basis over a period of time agreed to by the Franchisee and the Franchisee's customer. The Franchisee must deposit with Snap-on an amount not less than the **RA Deposit** identified in **Item 17** of the **Schedule** either at the time of, or prior to, the signing of this Agreement. The Franchisee can use the **RA Deposit** for any or all of the following purposes:

## (1) RA Acquisition

The **RA Deposit** may be wholly or partially used by the Franchisee to purchase **RA** that may be offered by a franchisee who previously sold **Products** to customers at **Approved Stops** on the **List of Calls** termed the "**Predecessor**".

The Franchisee acknowledges that the decision to purchase **RA** from a **Predecessor** is made by the Franchisee alone and Snap-on neither guarantees, nor infers any guarantee, nor gives any evaluation of a **RA** customer that should in any way be perceived as an opinion by Snap-on that a **RA** will necessarily be sound.

The **Operations** Manual contains an established procedure for transferring **RA** accounts between two franchisees. Snap-on recommends the utilisation of this procedure in **RA** transfers.

**Item 18** of the **Schedule** outlines the transfer rate of the **RA** from the **Predecessor** to the Franchisee.

## (2) RA Development

The **RA Deposit**, or any balance if the **RA Deposit** is partially applied to **RA** acquisitions, is to be utilised in the development of the Franchisee's **RA Program**.

The funds may be used to pay for purchases of **Products** from Snap-on, subsequent to the Franchisee's initial purchase of **Products** from Snap-on.

Please refer to the **Operations Manual** for specific details on how the **RA** Development progresses, to enable the Franchisee to build their **RA Program**.

## B. Open Accounts

Snap-on has established, and from time to time may modify or discontinue, a Program for extending short term financing for the purchase of **Products** that is made available to certain businesses (**Open Accounts**), as set out in the **Operations Manual**.

The **Open Accounts Program** is strictly limited to registered businesses and under no circumstances is available to individuals. Snap-on may, in its sole discretion, accept the assignment of **Open Account** contracts offered by the Franchisee. The parties' obligations with respect to **Open Accounts** will be governed by any Snap-on policies regarding such **Open Accounts** contained in the **Snap-on Program** from time to time. The **Open Accounts Program** is not available for the sale of **Approved Tools** (as defined in Section 9.D).

## C. Assignment of Certain Contracts

Snap-on, through its business unit Snap-on Financial Services, may, in its sole discretion, offer a Franchisee the opportunity of becoming an accredited merchant of Snap-on Financial Services. As an accredited merchant, a Franchisee may participate in the Extended Revolving Account Program (referred to as the '**Trade Card**') as offered by Snap-on Financial Services. The parties' obligations with respect to the **Trade Card** will be governed by the terms of separate agreements between the Franchisee and Snap-on Financial Services and any policies regarding such assignments contained in the **Snap-on Program** from time to time.

# 11. Advertising by Franchisee

- (1) The Franchisee is prohibited from engaging in any advertising of whatever nature, including advertising in telephone directories, newspapers, magazines, the Internet and associated electronic mediums without the prior and express written permission of Snap-on.

- (2) Subject to Section 11(1) above, the Franchisee must ensure that all marketing and promotional activities are not in any way misleading or deceptive and conform to the highest standards of ethical marketing and to the policies prescribed by Snap-on from time to time.
- (3) Any social media account opened by the Franchisee must be approved by Snap-on. Snap-on's social media policy for franchisees will be set out in the **Operations Manual** and the Franchisee must comply with that policy. Snap-on is to be given administration rights to any Franchisee social media account that utilises Snap-on branding, trademarks or other intellectual property (including photos of Snap-on products).
- (4) The Franchisee has a specified **Territory** and there are restrictions on where the Franchisee is able to advertise. Please refer to the **Operations Manual** for specific policy details.

## 12. Reports, Bookkeeping and Audit Rights

### A. Weekly Reports

By Tuesday of each week, or such other day as Snap-on may designate, the Franchisee must inform Snap-on by way of the reports generated by Snap-on's computer software (currently known as **Chrome On-Line**) of the amount of:

- (1) **Products** and **Approved Tools** sold and purchased in the past week;
- (2) collections made in the past week;
- (3) the amount of inventory on hand;
- (4) the status of credit accounts; and
- (5) such other information and reports as Snap-on may reasonably designate from time to time.

The Franchisee acknowledges and agrees that information contained within the weekly reports may and will be used to calculate the Franchisee's position in various contests that Snap-on may run from time to time, as well as determining the Franchisee's standing in relation to other Franchisees.

The Franchisee acknowledges and agrees that weekly standings or position may be displayed by Snap-on to other Snap-on employees and franchisees.

The Franchisee must, upon request by Snap-on, provide a verbal analysis of any reports, statements and other financial information provided or requested by Snap-on under this Section.

Please refer to the **Operations Manual** for the procedure relating to submitting these reports.

### B. Annual Reporting and Planning

- (1) If requested by Snap-on, the Franchisee must provide to Snap-on a copy of its annual returns and any other financial statements or reports relating to the Franchise requested by Snap-on. Such annual returns, statements or reports (as applicable) must be provided within the timeframe specified by Snap-on in Snap-on's request, or if no timeframe is specified by Snap-on, no later than 30 days after the date of Snap-on's request.
- (2) The Franchisee must prepare and submit to Snap-on accurate budgets for both personal and business expenses prepared in the format specified in the **Operations Manual** or notified in writing by Snap-on in November of each year.

### C. Bookkeeping

The Franchisee must keep and maintain complete and accurate books and records of the Franchisee's business operations in accordance with generally accepted accounting principles and the Australian Accounting Standards. The Franchisee must preserve all books, records and tax returns applicable

to the Franchise for at least seven (7) years (or longer if prescribed by the Australian Tax Office or other legislative requirement) after preparation and make them available to Snap-on upon request.

The Franchisee must participate in the Snap-on Franchise Program's Accounting Integration Program, as defined in the **Operations Manual**. Snap-on may change the Accounting Integration Program requirements from time to time by providing the Franchisee with thirty (30) days' notice.

## D. Snap-on's Audit Rights

Without limiting Snap-on's rights under Section 9.B, Snap-on may at reasonable times, both during and after the Term of this Agreement:

- (1) examine inspect, audit or require external assessment of the Franchise, the Franchisee's operations and the Franchisee's records (including employee records), books (including the shareholding register of the Franchisee, if the Franchisee is a company or this Agreement is assigned to a company pursuant to Section 21.C) and tax returns, compliance training or training programs, processes or documentation and such other forms, reports, information, financial statements and data as Snap-on reasonably may designate concerning the operation of the Franchise; and
- (2) do such acts and things as Snap-on shall reasonably consider necessary or desirable to assess the Franchisee's compliance with this Agreement and all Workplace Laws.

Snap-on may appoint an auditor or external representative to conduct an audit, inspection or assessment on its behalf. The Franchisee must fully co-operate in a timely manner with the reasonable requirements of Snap-on, the auditor, or any external representative or assessor (as applicable) during any such examination, inspection, assessment or audit, including by:

- (3) promptly responding to and complying with any requests for information made by Snap-on or its representatives or auditors;
- (4) providing to them (and/or where required giving them access to) all information reports, financial statements, books, transaction records and other records (including employee records) of the Franchise requested for the purposes of the audit, examination, inspection or assessment;
- (5) promptly responding to Snap-on's or its auditor's or representative's questions and queries relating to the: audit, inspection or assessment; or the information and reports; and
- (6) facilitating and giving Snap-on, the auditor or its representatives access to the Franchisee's employees and personnel for the purpose of interviewing them, where such access is required by Snap-on, its representatives or the auditor.

In the event any examination, inspection, assessment or audit discloses any breach of this Agreement or any Ancillary Agreement or if such examination or audit is made necessary by the Franchisee's failure to furnish reports, supporting records, financial statements or other documents or information as herein required, or to furnish such reports, records, financial statements, documents or information on a timely basis, the Franchisee must reimburse Snap-on, within fifteen (15) days after receipt of the examination or audit report, for the cost of such audit, examination, inspection or assessment including the reasonable charges and disbursements of any accountants, auditors, representatives or assessors and travel expenses, room and board (if any) and compensation of Snap-on's employees. The foregoing remedies are in addition to all of Snap-on's other remedies and rights under this Agreement or applicable law.

## E. Collection Statement and Consent

- (1) Snap-on may collect information (**Information**) obtained by it under this Section 12.E for the purposes of controlling, administering and promoting the Snap-on network. Information that Snap-on collects may be disclosed to:
  - a) current and prospective Snap-on franchisees;
  - b) persons engaged by Snap-on to assist in the recruitment of Snap-on franchisees;



- c) persons who provide administrative or other services to Snap-on, including Snap-on's professional advisers;
  - d) current and prospective financiers and lenders of Snap-on; and
  - e) on a confidential basis, parties proposing to acquire an interest in Snap-on or its Related Entities.
- (2) The Franchisee consents to the use and disclosure of the Information in the manner detailed in Section 12.E(1). The Franchisee acknowledges that its consent extends to any Information that is "personal information" for the purposes of the *Privacy Act 1988* (Cth).
- (3) To the extent that the Franchisee is entitled pursuant to the *Privacy Act 1988* (Cth), the Franchisee may request access to information held by Snap-on about the Franchisee by making a written request to Snap-on.

## 13. Intellectual Property

### A. Use of Intellectual Property

- (1) In this Agreement, **Intellectual Property** is defined in Section 1.A.
- (2) The Franchisee must:
- a) subject to Section 14 not register, or seek to register, any of the Intellectual Property without the prior written consent of Snap-on;
  - b) not cause any of the **Intellectual Property** to be prejudicially affected or contested;
  - c) use the **Intellectual Property** only in the manner prescribed by Snap-on;
  - d) not make any alterations to the **Intellectual Property**;
  - e) not interfere with or inhibit the authorised use of the **Intellectual Property** by any other Snap-on franchisee;
  - f) advise Snap-on immediately of any infringement, potential infringement or challenge of the rights of Snap-on in the **Intellectual Property** by a third party;
  - g) subject to Section 14 not use the words "Snap" and/or "On" in the Franchisee's corporate or business name; and
  - h) not register a non-Snap-on issued email address using the words "Snap" and/or "On" and any variation thereof.

### B. Snap-on's Intellectual Property

The Franchisee acknowledges that:

- (1) all rights in and relating to the **Intellectual Property** are and remain the property or under the control of Snap-on or a **Related Entity** of Snap-on; and
- (2) The Franchisee does not acquire any right, title or interest in any of the **Intellectual Property**.

### C. Assignment of intellectual property in Franchisee's Improvements

- (1) If any Improvements are developed by or on behalf of the Franchisee during the Term to the **Snap-on Program (Franchisee's Improvements)**, in respect of which the Franchisee obtains any intellectual property rights, the Franchisee assigns all of the Franchisee's rights to and intellectual property in the Franchisee's Improvements to Snap-on or its nominee as and when the intellectual property rights are created, free of all encumbrances.
- (2) If the Franchisee's rights to or intellectual property rights in the Franchisee's Improvements are not capable of assignment to Snap-on, the Franchisee grants to Snap-on or its nominee as and when the intellectual property rights are created an exclusive, worldwide, royalty free, fully

assignable perpetual licence in respect of the **Franchisee's Improvements**, which may only be terminated by Snap-on, for Snap-on to use the **Franchisee's Improvements** and grant others the right to use the **Franchisee's Improvements**.

- (3) If Snap-on wishes to register the intellectual property rights in any of the **Franchisee's Improvements** and the Franchisee is the owner, or a necessary applicant for that registration, the Franchisee must immediately upon the request by Snap-on apply in the Franchisee's own name for registration and then sign all documents and deeds, perform all acts and do all things necessary to assign that registration or application to Snap-on or its nominee.
- (4) If the Franchisee is the author (**Author**) of **Franchisee's Improvements** for the purposes of Part IX of the *Copyright Act 1968* (**Copyright Act**), the Franchisee must provide, or if the Franchisee is not the Author, procure from the Author, for the benefit of Snap-on or its nominee and any further assignee, licensee or successor in title of any of Franchisee's Improvements or copyright in any of Franchisee's Improvements:
  - a) consent to all acts or omissions done in relation to Franchisee's Improvements including:
    - i) not naming the Author as an author of Franchisee's Improvements;
    - ii) naming another person as the author of Franchisee's Improvements; and
    - iii) amending or modifying (whether by changing, adding, deleting or removing) any part of Franchisee's Improvements;that would, but for this Section 13.C, constitute an infringement of the Author's moral rights under Part IX of the Copyright Act in relation to Franchisee's Improvements; and
  - b) an acknowledgment that each of the provisions in this Section 13.C(4) is fair and reasonable to enable Snap-on or its nominee to obtain the full benefit of the rights intended to be conferred on Snap-on by this Section 13.C.

## 14. Trademarks

The term **Trademarks** as used in this Agreement is defined under Section 1.A of this Agreement.

The Franchisee must use the **Trademarks** only in the manner approved by Snap-on and Snap-on Inc., which is the registered owner of the **Trademarks** and intellectual property rights contained in the **Snap-on Program**. Snap-on Inc. has licenced Snap-on to both use and sub-licence others to use, through a franchise agreement, the **Trademarks** and the **Snap-on Program**. Snap-on may, from time to time, advise the Franchisee which **Trademarks** have been registered and any additions or deletions to the **Trademarks** and the Franchisee's right to use the **Trademarks** shall be deemed modified by those additions or deletions.

The Franchisee must:

- (1) use the **Trademarks** strictly for the purpose of operating the Franchise and in the manner expressly authorised in this Agreement and the **Operations Manual**;
- (2) use the **Trademarks** as the sole identification of the Franchise, provided that the Franchisee must identify itself as the independent franchised owner of the Franchise in the manner Snap-on prescribes.
- (3) not use any **Trademark** as part of any corporate or trade name, Internet domain name or other associated Internet function, or with any prefix, suffix or other modifying words, nicknames, terms, designs or symbols, or in any modified form (including any local or special adaptations or artistic variations of any of the **Trademarks**);
- (4) not use any **Trademark** in connection with the sale of any unauthorised product or service or in any other manner not expressly authorised in writing by Snap-on;

- (5) not use any **Trademark** or any other word which is confusingly similar to any **Trademark** (for example, snapon, SnapOn) as an Internet domain name; and
- (6) display the **Trademarks** prominently and in the manner prescribed in the **Snap-on Program** on signs, forms and other materials and articles. Further, the Franchisee agrees to give such notices of trademark or service mark ownership or registration and copyrights as Snap-on specifies and to advise Snap-on of any breach of use of the **Trademarks** that Franchisee becomes aware of.

Any and all uses of any of the **Trademarks** are subject to Snap-on's prior written approval, and a request for such approval must be made to Snap-on as the licenced agent of Snap-on Inc. and include such information and samples as Snap-on may require.

In no event may the Franchisee file any record or sign any form indicating the Franchisee is "d/b/a Snap-on", "doing business as Snap-on" or anything substantially similar. The Franchisee must use the symbol ® with all registered trademarks and the symbol ™ with all other trademarks or service marks so as to protect Snap-on Inc.'s ownership rights.

In the event Snap-on elects to use a name other than "Snap-on" to identify the **Snap-on Program**, Snap-on may select another name and the **Snap-on Program** and this Agreement shall be deemed amended to substitute that name. If Snap-on determines, in its sole discretion, that the Franchisee should modify or discontinue use of any **Trademark** and/or use one or more additional or substitute trademarks or service marks, Snap-on will notify the Franchisee and the Franchisee agrees to comply with that notice. The Franchisee must pay all expenses incurred in modifying or discontinuing the use of a **Trademark** or substituting a trade mark for a different trademark or service mark. Neither Snap-on nor Snap-on Inc. or their **Related Entities** shall be obligated to reimburse the Franchisee or any other person for any loss of goodwill by the Franchisee associated with any modified or discontinued **Trademark** or for any expenditure made by the Franchisee to promote a modified or substitute trademark or service mark.

The Franchisee agrees that nothing in this Agreement gives to the Franchisee any right, title or interest in the **Trademarks** (except the right to use the **Trademarks** in accordance with the terms of this Agreement); that the **Trademarks** are the sole property of Snap-on Inc.

The Franchisee must not directly or indirectly contest the validity of Snap-on Inc.'s ownership of the **Trademarks** or Snap-on's licence of the **Trademarks** and other intellectual property (whether during or after the term of this Agreement); and that any and all uses by the Franchisee of the **Trademarks** and the goodwill arising therefrom shall inure exclusively to the benefit of Snap-on and Snap-on Inc. The Franchisee must notify Snap-on, as the authorised agent of Snap-on Inc., immediately in writing of:

- a) any apparent infringement of, or challenge to, the Franchisee's use of any **Trademark**; or
- b) any claim by any person other than Snap-on or its **Related Entities** of any rights in any **Trademark**; or
- c) any similar trade name, trademark or service mark, of which the Franchisee becomes aware.

The Franchisee must not communicate with any person other than Snap-on or Snap-on Inc. and its **Related Entities** and their counsel in connection with any such infringement, challenge or claim. Snap-on Inc. and its **Related Entities** shall have sole discretion to take such action as they deem appropriate and the right to control exclusively any litigation, trademark proceeding or any other administrative proceeding arising out of any such infringement, challenge or claim or otherwise relating to any Trademark.

The Franchisee agrees to execute any and all instruments and documents, render such assistance and do such acts and things as may, in the opinion of Snap-on Inc. and its **Related Entities'** counsel, be necessary or advisable to protect and maintain Snap-on Inc. and its **Related Entities'** interests in any such litigation, trademark proceeding or other administrative proceeding or otherwise to protect and maintain Snap-on Inc. and its **Related Entities'** interests in the **Trademarks**.

Please refer to the **Operations Manual** for the current list of Snap-on **Trademarks**.

## 15. Obligations Prior to the Commencement Date

The Franchisee must, on or prior to the **Commencement Date**:

- (1) procure an Australian Business Number and register for GST purposes and generally establish the Franchise as required by law;
- (2) register the business name approved by Snap-on (**Business Name**);
- (3) open an Australian bank account under the Franchisee's company name and ABN; and
- (4) provide Snap-on with all information, codes, keys (including the ASIC key), passwords and documents required to access the registration of the Business Name or otherwise requested by Snap-on (**Business Name Information**).

The Franchisee must only conduct the Franchise under the **Business Name**.

## 16. Relationship of Parties

### The Franchisee as Independent Contractor

This Agreement does not create a fiduciary or other special relationship between the parties. The Franchisee is an independent contractor with entire control and direction of the Franchise and its operations, subject only to the conditions and covenants established by this Agreement. No agency, employment, or partnership is created or implied by the terms of this Agreement and the Franchisee is not and must not hold itself out as agent, legal representative, partner, subsidiary, joint venture partner or employee of Snap-on (its subsidiaries or **Related Entities**).

Except as otherwise specifically provided in this Agreement, or any other written agreement between the Franchisee and Snap-on (its subsidiaries or **Related Entities**), the Franchisee has no right or power to, and must not, bind or obligate Snap-on (its subsidiaries or **Related Entities**) in any way or manner whatsoever, nor represent that Franchisee has any right to do so. The sole relationship between the Franchisee and Snap-on (its subsidiaries and **Related Entities**) is a commercial, arms' length business relationship and, except as provided in Section 29, there are no third party beneficiaries to this Agreement.

The Franchisee's business is, and must be kept, totally separate and apart from any business that may be operated by Snap-on (its subsidiaries and **Related Entities**). In all public records, in relationships with other persons and on letterheads, business cards and business forms, the Franchisee must indicate that the Franchise is an independently owned "Franchisee" of Snap-on.

## 17. Confidentiality

The Franchisee acknowledges that Snap-on Inc. owns the **Snap-on Program** and licences its use to Snap-on. The Snap-on Program includes, but is not limited to, trade secrets, the **Territory**, the **Operations Manual** and all other manuals provided to Franchisee by Snap-on. The Franchisee acknowledges that the **Confidential Information** is disclosed to the Franchisee in confidence and solely for the purpose of enabling the Franchisee to operate the Franchise, and the Franchisee must not disclose or permit to be disclosed any part of it to anyone other than Snap-on employees to the extent necessary for the conduct of the Franchise. The Franchisee acknowledges that such disclosure could inflict irreparable injury on Snap-on and Snap-on Inc., and that Snap-on and Snap-on Inc. may seek injunctive relief in addition to any other legal or equitable remedies it may have upon a breach of this Section 17. The Franchisee must:

- (1) implement proper systems and procedures as may be necessary and as required by Snap-on to maintain the confidentiality of the **Confidential Information**;

- (2) if required by Snap-on, ensure that all its employees, personnel, directors, shareholders and agents who will receive or have access to the **Confidential Information**, sign a contract before they receive or are granted access to any part of the **Confidential Information** by which they are bound to maintain confidentiality in the same manner and to the same extent as the Franchisee is bound by this Agreement; and
- (3) use its best endeavours to cause its employees, personnel, directors, shareholders and agents who receive or have access to the **Confidential Information** to observe all of the Franchisee's obligations and undertakings contained in Section 17.

## 18. Internet

### A. Conduct of Business on the Internet

- (1) The Franchisee must not, without the prior written consent of Snap-on, conduct business or advertise for business on the Internet, whether through a website or a mobile application, or any other use of the Internet.
- (2) Snap-on may offer for sale **Products** and services via the Internet and Snap-on is not liable to the Franchisee for any money or benefits received by Snap-on or any of its **Related Entities** in connection with the sales.
- (3) Refer to the **Operations Manual** for guidelines on how the Franchisee may utilise the Snap-on branding and associated tools on a website or other Internet-based application.

### B. Use of the Internet

The Franchisee must:

- (1) acknowledge at all times that ownership and control of Snap-on's web sites and domain names remain with Snap-on or its Related Entities;
- (2) not alter or allow to be altered the structure or layout of any of Snap-on's web sites;
- (3) not publish the **Trademarks** or any information or material on the Internet concerning the Franchisee or the **Snap-on Program** or any of its **Related Entities** without the prior consent of Snap-on; and
- (4) not interfere in the use of any of Snap-on's web sites by Snap-on, any of its **Related Entities** or by any other person.

The Franchisee should refer to the **Operations Manual** for Snap-on's specific policies on the use of the Internet and Social Media.

## 19. Interest

Except as otherwise expressly provided in writing, any and all amounts that shall become due and owing by the Franchisee to Snap-on shall bear interest from the date due until paid. The interest rate per annum payable by the Franchisee to Snap-on under this Section 19 will be the 90-day Bank Bill Swap Reference Rate (Average Bid) published in the Australian Financial Review on the first business day after the due date for the relevant payment, plus 4%. Except as otherwise expressly provided in writing, any and all funds held by Snap-on for the benefit of the Franchisee shall bear no interest.

Any interest due under this Section will be charged to the Franchisee's Weekly Statement and will be due and payable in accordance with Section 5.K.

## 20. Insurance

### A. General Insurances

The Franchisee shall be responsible for all loss or damage originating in, or incurred in connection with, the operation of the Franchise and for all claims or demands for damages to property or for injury, illness, or death of persons directly or indirectly resulting there from.

The Franchisee must at all times carry the driver's licence required by the applicable state or Federal law, maintain current motor vehicle registration and Compulsory Third Party insurance on the **Mobile Store**.

Unless otherwise agreed in writing by Snap-on, it is a requirement that the Franchisee obtains and keeps effective at all times insurance policies that provide:

- (1) all risks property coverage for full replacement value of the Franchisee's new product inventory being offered for sale; and
- (2) product liability coverage; and
- (3) public liability coverage; and
- (4) fully comprehensive motor vehicle insurance coverage for the Franchisee's **Mobile Store**; and
- (5) if the Franchisee has employees, relevant workers compensation insurance and any other necessary employer insurances.

These insurance policies must meet the requirements of the **Snap-on Program** and which are set out in the **Operations Manual**. Snap-on offers an Insurance Program that fully meets the requirements of this Agreement and the **Snap-on Program** with the exception of any individual Australian state or territory requirements for compulsory third party motor vehicle insurance.

If requested by Snap-on, the Franchisee must give to Snap-on the evidence requested by Snap-on that each insurance policy exists and is current, such evidence may include a copy of the insurance policies and certificate of currency.

In addition to the insurance cover described above and without limiting the Franchisee's obligations under Section 20.B below, it is also recommended that the Franchisee obtain suitable insurance coverage on such items as health, income protection, business continuity, computers, computer ancillaries and mobile phones.

### B. Insurances Required by Snap-on Finance

Should the Franchisee obtain finance from Snap-on Finance, a division of Snap-on, the Franchisee must obtain and keep effective at all times the following additional insurances:

- (1) business continuity insurance; and
- (2) key man insurance; and
- (3) income protection and temporary and permanent disability insurance; and
- (4) any other insurances required by Snap-on.

The Franchisee must provide Snap-on with a copy of these insurances and evidence that they are current prior to the finance or loans being settled or advanced. The amount of the insurance must (at a minimum) cover the total finance repayment obligations of the Franchisee, including any loan balances owned to Snap-on Finance.

## 21. Transfers

### A. Transfer by Snap-on

- (1) **Assignment or novation** – Snap-on may transfer all or any part of its rights, interests, obligations or liabilities under this Agreement by assignment or novation to any person or legal entity.
- (2) **Refinancing and restructuring** – Snap-on may, in addition to or as part of an assignment or novation pursuant to Section 21.A(1):
  - a) sell itself, its assets and any of the **Snap-on Program** which it owns to a third party;
  - b) engage in a private placement of some or all of its securities; and
  - c) undertake a refinancing, recapitalisation, leveraged buyout or other economic or financial restructuring.
- (3) **Acknowledgment and agreement to assignment** – If Snap-on elects to assign all or any part of its rights, interests, obligations or liabilities under this Agreement the Franchisee must upon request by Snap-on execute any deed, agreement or notice of assignment acknowledging and agreeing to, and reasonably necessary to give effect to the assignment by Snap-on.
- (4) **Novation agreement** – If Snap-on elects to transfer all or any part of its rights, interests, obligations or liabilities under this Agreement by novation to a third party the Franchisee and the Guarantor must upon request by Snap-on execute a deed or agreement of novation, in a form prepared by Snap-on, substituting in place of Snap-on a third party as being entitled to the benefits and responsible for the rights, obligations and liabilities of Snap-on under this Agreement.
- (5) **Merger** – Snap-on may purchase, merge, acquire or **Related Entity** with an existing competitive or non-competitive franchise network, chain or any other business and: operate, franchise or licence those businesses to operate using the **Trademarks** and **Snap-on Program**; and require the Franchisee to use or cease to use any **Trademarks**, corporate colours, trade dress, decor, uniforms, designs, appearances or attributes in accordance with Section 14.
- (6) **Consent** – The Franchisee consents to Snap-on at any time assigning or novating any of its rights, interests, obligations or liabilities under this Agreement or undertaking any of the actions outlined in Sections 21.A(1), 21.A(3) and 21.A(5) and waives any requirement for prior notice to the Franchisee or Guarantor of the action.
- (7) **Power of Attorney** – Without limiting the power of attorney in Section 31 in any way, the Franchisee irrevocably appoints Snap-on and each of its officers severally to be the Franchisee's attorney (**Attorney**) to do anything required to be done by the Franchisee under this Agreement which the Franchisee has not done or not done properly (including the execution and delivery of documents, transfers, assignments, deeds, forms, notices or other instruments) to assist Snap-on to carry out any of the acts referred to in Sections 21A(1) and 21A(2) and the Franchisee:
  - a) ratifies and confirms anything an Attorney lawfully does under this Section 21.A; and
  - b) must pay within seven (7) days of Snap-on's written demand for payment all the reasonable costs or other liabilities incurred by or on behalf of Snap-on or the Attorney under this Section 21A.

### B. Transfer by Franchisee

The Franchisee agrees that the obligations of the Franchisee to Snap-on set out in this Agreement are purely and irrevocably personal to the Franchisee. Accordingly, the Franchisee must not, directly or indirectly, sell, assign, transfer, convey, give away, pledge, mortgage or otherwise encumber or **Dispose** of any partial interest in this Agreement, or the Franchise (other than an interest in the **Mobile Store**, inventory, or accounts receivable as security for borrowing to finance the operation of the

Franchise in the ordinary course of Franchisee's business) without the prior written consent of Snap-on.

A request by the Franchisee for Snap-on's consent to a transfer of its interest in this Agreement and the Franchise must be in writing and accompanied by all information that Snap-on reasonably requires to make an informed decision about whether or not to consent to the transfer. If Snap-on requires further information to make an informed decision, Snap-on may, in writing, request the Franchisee to provide additional information relevant to making the decision and the Franchisee must comply with that request. Any purported assignment or transfer, by operation of law or otherwise, not having the written consent of Snap-on shall be ineffective.

Snap-on must not unreasonably withhold its consent to a transfer of the Franchisee's interest in this Agreement and the Franchise provided the transfer, assignment or other **Disposal** of shares or units is of the whole of the Franchisee's interest in the Franchise and each of the following conditions are met:

- (1) The Franchisee must have first offered to sell the interest being transferred to Snap-on, pursuant to Section 21.E of this Agreement, and Snap-on must have declined to exercise its right of first refusal.
- (2) The terms of the sale shall not, in Snap-on's good faith judgment, jeopardise the ability of the transferee to maintain, operate and promote the Franchise and meet the financial obligations to Snap-on and creditors. This provision shall not create any liability on the part of Snap-on to the transferee in the event that Snap-on approves the transfer and the transferee experiences financial difficulties.
- (3) All of the Franchisee's monetary obligations to Snap-on (and Snap-on's subsidiaries and **Related Entities**) and all other outstanding obligations related to the Franchise (including, but not limited to, taxes, judgments and any required governmental reports, returns, affidavits or bonds) must have been satisfied. Snap-on reserves the right to require that a reasonable sum of money be placed in escrow to ensure that all such obligations will be satisfied.
- (4) The Franchisee must both, when seeking consent to the transfer and when the transfer is to occur, be in compliance with all provisions of this Agreement or any other agreement between the Franchisee and Snap-on, its subsidiaries, approved vendors and **Related Entities**, including any Ancillary Agreement.
- (5) The Transferee must:
  - a) demonstrate to Snap-on's satisfaction that it meets Snap-on's managerial, operational and business standards for a new Franchisee; possesses a good moral character, business reputation, and credit rating; has the aptitude, business acumen and ability to operate the Franchise (as may be demonstrated by prior related business experience or otherwise); has adequate financial resources and capital to operate the Franchise and otherwise meets Snap-on's criteria for the selection of new Snap-on franchisees;
  - b) complete Snap-on's Initial Training Program required for all new Franchisees; and
  - c) pay Snap-on a transfer fee equivalent to the then current Initial Franchise Fee (**Transfer Fee**), unless a variation is made by Snap-on in its sole discretion, to reimburse Snap-on for its legal, training, and other expenses in connection with the transfer of the Franchise.
- (6) At the option of Snap-on:
  - a) Transferee executes a franchise agreement in the form then used by Snap-on (which may contain different terms and conditions to those set out in this Agreement); or
  - b) the Transferee and the Franchisee execute a deed of assignment of the Franchisee's rights and obligations under this Agreement to the transferee in a form required by Snap-on;

and the Transferee and the Franchisee execute any other ancillary documents (which may differ from the **Ancillary Agreements** signed by the Franchisee) then customarily used by Snap-on for its Snap-on franchisees and outgoing franchisees respectively which may include a deed of



surrender or termination of this Agreement and Ancillary Agreements (as applicable). For the avoidance of doubt this Section 21.B(6) also applies where the transfer occurs by way of a sale of shares in the Franchisee.

- (7) Where the transferee is a company:
- a) its directors and shareholders satisfy the criteria in Section 21B(5)a); and
  - b) those directors and shareholders or other **Related Entities** of the transferee nominated by Snap-on each give a guarantee and indemnity and undertake similar personal restraints to those given by the Guarantors (if any) of Franchisee's obligations under this Agreement, in favour of, and in a form required by, Snap-on.
- (8) The Franchisee and the Transferee execute all agreements necessary in Snap-on's judgment to accomplish the transfer and assumption of obligations under this Agreement and provide Snap-on with whatever information and/or documentation regarding the transfer that Snap-on shall request and must comply with Snap-on's other reasonable requirements related to the transfer.

Snap-on's consent to a transfer shall not constitute a waiver of any claims it may have against the Franchisee, nor shall it be deemed a waiver of Snap-on's right to demand exact compliance with any of the terms of this Agreement by the Transferee, nor shall it be deemed a waiver of Snap-on's continuing right to give or withhold consent to any future transfers.

The Franchisee must provide the Transferee with complete and accurate information regarding the Franchise being transferred and the customers to be served, as well as take all other steps that may be reasonably required to effect an orderly transition of the Franchise.

## C. Restructuring by the Franchisee

### Definitions

In this Section 21 **company**, **relative** and **spouse** are taken as defined in Section 1A.

### Restructuring by Franchisee

- (1) If the Franchisee is:
- a) a company and one (1) or more of the shareholders in the Franchisee want to **Dispose** of their shares in the Franchisee to an existing shareholder of the Franchisee and that existing shareholder is the Franchisee Contact; or
  - b) the trustee of a Trust which is a unit trust and one (1) or more of the unit holders in the Trust want to **Dispose** of their units in the Trust to an existing unit holder of the Trust; or
  - c) made up of one (1) or more individuals who want to assign the Franchise to a company beneficially owned by them and a relative and newly incorporated by them for the sole purpose of conducting the Franchise; then

Snap-on must not unreasonably withhold its consent to the assignment nor require payment of a Transfer Fee if each of the following conditions are satisfied:

- e) the Transferor assigns to the Transferee all of its interest in the Franchise, the Franchise and any **Ancillary Agreement**;
- f) the assignment does not affect the Transferor's obligations to Snap-on before the assignment;
- g) Snap-on has been given details of the proposed assignment and any other details requested by Snap-on (which may include a copy of the sale agreement and in the case of a company transferee may include the company's constitution, incorporation documents and copy of the share certificates) at least thirty (30) days before the proposed assignment is to take effect;

- h) the person or persons who will make up the Franchisee after the assignment have the financial capacity and the ability, business acumen, skills and experience to operate the Franchise successfully without the transferor's involvement;
- i) at the option of Snap-on:
  - i) the Transferee executes a franchise agreement in the same terms as this Agreement for the balance remaining of the **Initial Term** (including any existing right to enter into a new franchise agreement for a **Renewal Term**); or
  - ii) the Transferee and the Franchisee execute a deed of assignment of the Franchisee's rights and obligations under this Agreement to the Transferee in a form required by Snap-on;

and the Transferee and the Franchisee execute any other documents or agreements then customarily used by Snap-on for its Snap-on franchisees and outgoing franchisees respectively which may include a deed of surrender or termination of this Agreement and Ancillary Agreements (as applicable);
- j) if the Transferee is a company, those directors and shareholders or other **Related Entities** of the Transferee nominated by Snap-on each:
  - i) give a guarantee and indemnity and undertake similar personal restraints to those given by the Guarantors (if any) of the Franchisee's obligations under this Agreement;
- k) the person identified in **Item 2** of the **Schedule** remains the majority shareholder/beneficiary of the new arrangement.

#### D. Restructuring by Franchisee – Costs Allocation

If the Franchisee restructures their franchise, the Franchisee agrees to:

- (1) meet the obligations under this Agreement, in favour of, and otherwise in a form required by, Snap-on; and
- (2) execute the new franchise agreement or deed of assignment in their personal capacities; and
- (3) pay Snap-on's legal costs in connection with the assignment.

#### E. Snap-on's Right of First Refusal

Subject to the conditions as set out in this Section 21, if the Franchisee receives a bona fide offer from a third-party buyer and desires to sell, transfer or assign all of the Franchisee's interest in this Agreement and the Franchise, the Franchisee must offer the same to Snap-on in writing at the same price and on the same terms. The offer to Snap-on must state the cash value of the offer received by the Franchisee, and Snap-on may exercise its purchase option by paying the Franchisee such cash value. If the offer received by the Franchisee involves assets other than this Agreement, the offer to Snap-on must state the cash value of that portion of the offer related to this Agreement and Snap-on may exercise its purchase option by paying the Franchisee such cash value. Snap-on shall have thirty (30) days in which to accept an offer from Franchisee.

This time period for Snap-on's acceptance of the Franchisee's offer begins upon the Franchisee's receipt of a statement acknowledging Snap-on's receipt of an enforceable contract to purchase all of the Franchisee's interest in this Agreement and the Franchise, as well as any information and documentation requested by Snap-on from the Franchisee necessary to evaluate the offer and the sale of the Franchise. If Snap-on accepts any such offer, it may offset against the purchase price paid to the Franchisee any monies owed by the Franchisee to Snap-on, or its subsidiaries and Related Entities.

If Snap-on does not advise the Franchisee of its acceptance or rejection of the offer within the specified thirty (30) day period, then Snap-on is presumed to have declined to purchase the Franchise from the Franchisee.

If Snap-on fails to advise the Franchisee of its approval or disapproval of the Franchisee's sale of the Franchise in accordance with Section 21.F below, then the Franchisee may sell, transfer or assign the Franchisee's interest, but not at a lower price, nor on more favourable terms, than have been offered to Snap-on as long as the Franchisee complies with its obligations under Section 21.B.

In no event shall the Franchisee offer any interest for sale, transfer or assignment at public auction, nor at any time shall an offer be made to the public to sell, transfer or assign such interest through an advertisement, either in the newspapers or otherwise, without Snap-on's prior written consent to such advertisement or publication.

The Franchisee's failure to settle any approved sale within 120 days following the Franchisee's receipt of a statement acknowledging Snap-on's receipt of an enforceable contract to purchase all of the Franchisee's interest in the Franchise Agreement, as well as any information and documentation requested by Snap-on from the Franchisee necessary to evaluate the offer and the sale of the Franchise, will immediately revive Snap-on's right of first refusal and Franchisee must not permit any sale, transfer or assignment without first offering the Franchise to Snap-on in accordance with this Section 21.E.

## F. Deemed Consent

Snap-on will be taken to have agreed to a request for consent to a Transfer of the Franchisee's rights made under this Section 21 or Section 25 if Snap-on does not, within forty-two (42) days after the request was made, give the Franchisee (or, where relevant, the Franchisee's executor) written notice:

- (1) that consent is withheld; and
- (2) setting out why consent is withheld.

## G. Revoking Consent

- (1) Snap-on may revoke any consent provided under this Section within fourteen (14) days of giving consent, provided that:
  - a) it informs the Franchisee in writing that Snap-on's consent is revoked, and the reasons why; and
  - b) it does not unreasonably revoke its consent.

## 22. Termination Upon Notice by Franchisee

The Franchisee may terminate this Agreement prior to its expiration provided that:

- (1) the Franchisee provides Snap-on with at least one hundred and eighty (180) days written notice of its intention to terminate this Agreement and requiring Snap-on's consent to such termination; and
- (2) the notice is accompanied by a written request for Snap-on's consent to the termination of this Agreement which also sets out the reasons for the Franchisee's wish to terminate; and
- (3) Snap-on consents in writing to the termination which consent will not be unreasonably withheld. Snap-on's consent may be subject to certain conditions notified by Snap-on being satisfied and these may include a condition to the effect that that the Franchisee and Guarantors execute a deed of termination in a form acceptable to Snap-on (acting reasonably) and that parties mutually agree to an alternative termination date.

Any monies outstanding between Snap-on and the Franchisee will be settled as per the current **Operations Manual** processes and for the avoidance of doubt the provisions set out in Section 24 apply.

Snap-on will not withhold its consent to the requested termination, if:

- (4) Snap-on amends the **List of Calls** and the amendment materially reduces the total number of **Potential Customers** at **Approved Stops** on the **List of Calls**; or
- (5) Snap-on increases the **Monthly Management Fee** and such increase is not acceptable to the Franchisee acting reasonably, and
- (6) the Franchisee gives notice of its intention to terminate this Agreement pursuant to this Section 22 for any of the above reasons.

If Snap-on consents to the requested termination and the termination does not occur on the applicable termination date then such consent will be revoked with effect from the applicable termination date unless otherwise agreed in writing by Snap-on.

## 23. Termination by Snap-on

### A. Immediate Termination

Snap-on may, at its option, without prejudice to any and all other rights and remedies it may have under this Agreement or under applicable law, terminate this Agreement immediately by giving the Franchisee written notice effective immediately, if the Franchisee:

- (1) no longer holds a licence that the Franchisee must hold to carry on the Franchise;
- (2) becomes bankrupt, insolvent under administration or a Chapter 5 body corporate;
- (3) is a company and the Franchisee becomes deregistered by the Australian Securities and Investment Commission ("ASIC");
- (4) voluntarily abandons the Franchise or the franchise relationship;
- (5) is convicted of a serious offence (as defined in the Franchising Code of Conduct);
- (6) operates the Franchise in a way that endangers public health or safety;
- (7) acts fraudulently in connection with this Agreement or the operation of the Franchise, the Snap-on Program, any other agreement with Snap-on, or Snap-on Inc.; or
- (8) agrees to termination of this Agreement.

### B. Termination Upon Notice

- (1) Snap-on may, without prejudice to any and all other rights and remedies it may have under this Agreement or under applicable law, terminate this Agreement immediately by written notice to the Franchisee if:
  - a) the Franchisee breaches any of the provisions of this Agreement (including, but not limited to, the events of default set out in Section 23.B(2)) below or an event of default occurs, and;
  - b) Snap-on gives to the Franchisee a written notice which specifies:
    - i) the alleged breach;
    - ii) what Snap-on requires to be done by the Franchisee to remedy the breach;
    - iii) a reasonable number of days within which Snap-on requires the Franchisee to remedy the breach (the number of days must be reasonable, however Snap-on does not have to allow more than thirty (30) days); and
    - iv) that Snap-on proposes to terminate this Agreement because of the breach; and
  - c) the Franchisee does not remedy the breach within the time allowed by a notice issued under Section 23.B(1)b).

- (2) Events of default under this Agreement include any one or more of the following:
- a) if the Franchisee fails to satisfy any material judgment against the Franchisee within thirty (30) days after the judgment is entered and becomes final; or
  - b) the Franchisee breaches any covenant, warranty, agreement or obligation contained or implied in this Agreement or any Ancillary Agreement or imposed by law to be observed and performed by Franchisee; or
  - c) the Franchisee repudiates this Agreement (without limiting the other rights and remedies available to Snap-on); or
  - d) if the Franchisee falsifies any report required to be furnished to Snap-on, or has made a material misrepresentation in connection with the approval of the Franchisee as a Franchisee, or engages in conduct involving dishonesty in dealing with Snap-on; or
  - e) if the Franchisee, although not voluntarily abandoning the Franchise for the purposes of Section 23.A(2) above, ceases to operate the Franchise for a period in excess of fourteen (14) consecutive days, unless such business cessation is approved in writing in advance by Snap-on; or
  - f) if the Franchisee is convicted or pleads guilty or "no contest" to a charge which, although not constituting a serious offence for the purposes of Section 23.A(4) above, nonetheless constitutes a crime involving moral turpitude; or any other crime or offence that is reasonably likely, in the sole opinion of Snap-on, to adversely affect the **Snap-on Program**, the **Trademarks**, the goodwill associated with the **Trademarks** or the **Snap-on Program**, or Snap-on's interest in the **Trademarks** or the **Snap-on Program**; or
  - g) if the Franchisee sells **Products** to a customer at a **Stop** or location which is not on the **Approved Stops** on the **List of Calls**, or whose place of work where the **Products** will be predominantly used, is not an **Approved Stop** on the **List of Calls**; or
  - h) if the Franchisee, after notice from Snap-on to cease such activity, sells any **Products** to any customer located at any **Stop** not within the Franchisee's specified **Territory**, whether or not such sales are subsequently credited to another Franchisee or Snap-on and whether or not such customers are located at a **Stop** in any other Franchisee's specified **Territory**; or
  - i) if the Franchisee sells or supplies **Products** to a re-seller; or
  - j) if the Franchisee sells or supplies unapproved products; or
  - k) if the Franchisee fails to complete all of the following within ten (10) days after the **Agreement Date** of this Agreement:
    - i) pay Snap-on the **Initial Licence Fee**;
    - ii) open a business bank account with the minimum initial deposit required by the **Snap-on Program**;
    - iii) commit to purchase or lease a **Mobile Store** that complies with at least the minimum specifications contained in the **Snap-on Program**;
    - iv) licence computer software from Snap-on; and
    - v) pay Snap-on the **RA Deposit**; and purchase from Snap-on an initial inventory of **Products** that is of at least the minimum value required by the **Snap-on Program**; or
  - l) if the Franchisee receives a written notice of immediate termination under any other written agreement with Snap-on (or any subsidiary or **Related Entity** of Snap-on) or remains in default beyond the applicable cure period under any other written agreement with Snap-on (or any subsidiary or **Related Entity** of Snap-on) or any Ancillary Agreement; or
  - m) if, the Franchisee fails to achieve the Key Performance Indicators; or
  - n) if the Franchisee discloses or uses the contents of the **Snap-on Program** or other trade secrets or confidential or proprietary information provided to the Franchisee by Snap-on, contrary to the provisions of Section 17; or

- o) if any purported assignment or transfer of any interest in this Agreement, or the Franchise (other than an interest in the **Mobile Store**, inventory, or accounts receivable as security for borrowing to finance the operation of the Franchise) occurs, by operation of law or otherwise, without the prior written consent of Snap-on, as required in Section 21.B and Section 21.A(2); or
- p) if the Franchisee fails to comply with any of the requirements imposed by this Agreement, as supplemented by the **Snap-on Program** from time to time, including the **Operations Manual**, or to carry out the terms of this Agreement in good faith; or
- q) if the Franchisee fails to submit when required any reports pertaining to the Franchise; or
- r) if the Franchisee fails, at all times, to act in a competent, fair, honest, ethical and courteous manner in accordance with the image and reputation of Snap-on and the **Snap-on Program**; or
- s) if the Franchisee fails to maintain both the internal and external presentation of the Mobile Store in full compliance with the standards, specifications, requirements and image of Snap-on and the **Snap-on Program**; or
- t) if the Franchisee disposes of or ceases using a Mobile Store and has not met the decommissioning and de-branding requirements for that Mobile Store; or
- u) if the Franchisee fails to use the Franchisee's best efforts to promote aggressively and develop fully the sales of **Products** to customers or **Potential Customers** at **Approved Stops** on the **List of Calls**; or
- v) if the Franchisee fails to give at least the minimum level of weekly service to the **Approved Stops** on the **List of Calls** as required in the **Snap-on Program**, unless certain exemptions are granted by Snap-on in writing; or
- w) if the Franchisee defaults in the payment of any monies owed to Snap-on (or any subsidiary, approved vendor or **Related Entity** of Snap-on) when such monies become due and payable, whether pursuant to this Agreement or otherwise; or
- x) without limitation to Snap-on's rights under Section 23.A, any of the following occurs in respect of a body corporate which is a Franchisee or a Guarantor:
  - i) an application is made, proceedings are initiated or a meeting (whether of shareholders, creditors or directors) is called with a view to winding it or any part of its undertaking up or placing it or any part of its undertaking under administration;
  - ii) an application is made or an action is initiated with a view to cancelling its registration or appointing an inspector or other officer to investigate any of its affairs, pursuant to any law;
  - iii) it is unable to pay its debts from its own money as and when they fall due;
  - iv) circumstances exist which would enable the court upon application to order its winding up pursuant to Section 461 of the *Corporations Act*;
  - v) in the case of a Guarantor which is a body corporate, it becomes an externally-administered body corporate; or
- y) if the Franchisee is a partnership, it is dissolved otherwise than in accordance with this Agreement or an application to a court for its dissolution is made; or
- z) a Guarantor becomes a bankrupt or an insolvent under administration; or
- aa) a Guarantor is convicted of a serious offence (as defined in the Franchising Code of Conduct);
- bb) distress is levied or an order, judgment or other process is issued against the Franchisee or a Guarantor or any of their assets for an amount exceeding \$5,000 which is not satisfied within twenty-eight (28) days; or
- cc) an event occurs entitling Snap-on to terminate this Agreement under any other provision of this Agreement.

- (3) The Franchisee must immediately notify Snap-on of the occurrence or likely occurrence of any event of default.
- (4) The Franchisee must prevent the occurrence of any event of default.

## C. Termination Before Business Commences

If Snap-on considers that the Franchisee will not be able to complete or has not completed Snap-on's **New Franchisee Training Program** (as defined in Section 8.D) to Snap-on's satisfaction in accordance with Section 8.D, Snap-on may terminate this Agreement by giving sixty (60) days written notice to the Franchisee and the Franchisee agrees to the termination in accordance with Section 23.D.

- (1) If this Agreement is terminated pursuant to Section 23.C:
  - a) Snap-on (or the relevant **Related Entity** of Snap-on) may immediately terminate any **Ancillary Agreement** by giving written notice to the other parties to the agreement effective immediately; and
  - b) Snap-on must repay all payments (whether of money or of other valuable consideration) made to it by the Franchisee under this Agreement less Snap-on's reasonable expenses in accordance with Sections 3.B(3) and 3.B(4).

## D. Termination by Reasonable Notice

In the circumstances described in Sections 23.C(1), 23.E(3)a), 25 or any other provision of this Agreement that refers to a right of termination in accordance with this clause 23.D, the Franchisee agrees and acknowledges that:

- (1) Snap-on may terminate this Agreement and the Franchise on reasonable written notice to the Franchisee which notice must include the reasons for the termination;
- (2) the Franchisee agrees that the period of notice stipulated in each clause permitting termination constitutes reasonable notice in the relevant circumstances; and
- (3) Snap-on is not required to pay any compensation to the Franchisee or any other person in respect of the termination of this Agreement and has no obligation to purchase any of the assets of the Franchise, including the Mobile Store and inventory.

## E. Separations

- (1) In this Section **Domestic Partners** and **Separation** are taken as defined in Section 1A.
- (2) If the Franchisee is:
  - a) made up of two (2) individuals that are **Domestic Partners**;
  - b) a body corporate comprising two (2) shareholders that are **Domestic Partners**; or
  - c) a trustee of a trust comprising two (2) unitholders that are **Domestic Partners**;and a **Separation** occurs, the provisions of this Section 23.E apply.
- (3) Following a **Separation**, if reasonably required by Snap-on, the **Domestic Partners** must attempt to come to an agreement whereby one (1) party sells their interest in the business (or otherwise **Disposes** of their shares in the Franchisee or units in the trust), to the other party, and:
  - a) if the sale contemplated by Section 23.E(3) does not occur within twelve (12) months of the Separation:
  - b) Snap-on may terminate this Agreement and any **Ancillary Agreement** and the Franchise by giving the Franchisee at least sixty (60) days written notice.

## F. Non-waiver

Termination of this Agreement shall not prejudice any and all other rights and remedies Snap-on may have under this Agreement, any other written agreement between the Franchisee and Snap-on or any subsidiary or **Related Entity** of Snap-on under applicable law.

## G. Statutory Limitations

Notwithstanding the provisions of preceding Sections 23.A and 23.B, in the event any valid, applicable law or regulation of a competent governmental authority having jurisdiction over the Franchise granted by this Agreement requires a notice or cure period prior to termination longer than set out in preceding Sections 23.A and 23.B, this Agreement shall be deemed amended to conform to the minimum notice or cure period required by such applicable law or regulation.

## 24. Effect of Expiration or Termination

Upon the expiration or termination of this Agreement for any reason, the Franchisee shall cease to be a Franchisee and the following provisions apply:

(1) The Franchisee must:

- a) continue to abide by the restrictions contained in Sections 17 and 26 and not, directly or indirectly, take any action which violates those restrictions;
- b) immediately pay Snap-on all sums due and owing to Snap-on or any subsidiary or **Related Entity** of Snap-on;
- c) cease using the Confidential Information;
- d) promptly return to Snap-on all **Operations Manuals** and any other manuals or information furnished to the Franchisee and any copies of those manuals, electronic or otherwise, together with all other materials containing trade secrets or other Confidential Information, the **Trademarks**, operating instructions or business practices of the **Snap-on Program** and all sales aids and sales materials provided free of charge to the Franchisee by Snap-on (in the case of electronic copies of manuals, the Franchisee must if required by Snap-on erase and delete them from computer hard discs and either destroy any electronic copies, or return them to Snap-on);
- e) if required by Snap-on delete any electronic or digital material containing Snap-on's Confidential Information or Intellectual Property;
- f) immediately:
  - i) discontinue using the **Snap-on Program**, including **Intellectual Property** and **Trademarks** and any and all signs, paper, goods or any other objects bearing the **Intellectual Property**, including the **Business Name and Trade Marks** or anything which imitates or is deceptively similar to these things; or contains any reference to such Intellectual Property;
  - ii) remove the **Trademarks** from clothing, materials, motor vehicles and other equipment owned or used by the Franchisee in the conduct of the Franchise (except **Products**);
  - iii) cancel all advertising that may have been specifically approved by Snap-on and contains the **Trademarks** and take such action as may be necessary to cancel any filings or registrations that contain any **Trademarks**;
  - iv) cease using any social or digital media accounts used by the Franchisee in connection with the Franchise or containing the Business Name or Trademarks or anything which imitates or is deceptively similar to these things and provide to Snap-on administration rights and passwords or security codes required for accessing such accounts;
  - v) cancel or if required by Snap-on, transfer to Snap-on or its nominee all registrations (including social or digital media registrations) relating to Franchisee's use of the intellectual property owned or controlled under licence



by Snap-on including the **Business Name**, the **Trademarks** and any business or corporate name of the Franchisee including signing and lodging with the appropriate authority any deed or document;

g) at the Franchisee's cost:

i) modify and de-brand the Mobile Store by:

(A) removing, replacing or changing (as required by Snap-on) any signs, logos, stripes, graphics, fixtures, fittings, light covers, fit-out, colours, shelving, storage containers, built in tool boxes, speciality tool racks and Intellectual Property on the exterior and interior of the Mobile Store (as applicable); and

(B) changing the layout of the Mobile Store,

in the manner required by Snap-on and to ensure Snap-on is satisfied that the internal and external appearance of the Mobile Store cannot be confused with, or is not similar in any way to: a Snap-on business or franchise; or the then prevailing design, layout, style, logos, fit out and colours of Snap-on mobile trucks, vans or stores; and

ii) if required by Snap-on, provide photographic evidence to Snap-on or allow a Snap-on representative to inspect all sides of the exterior and interior of the Mobile Store in order to confirm that the de-branding of and removal of the fit-out from the Mobile Store and the other decommissioning and de-branding works referred to Section 24(1)g(i) have been completed to Snap-on's satisfaction. This Section 24(1)g does not apply where Snap-on has consented to the Franchisee selling the Mobile Store to a prospective Snap-on franchisee, an existing Snap-on franchisee or to Snap-on.

h) promptly execute any and all documents reasonably requested by Snap-on that are necessary to effect termination of the Franchisee's licence and interest in and to the use of the **Trademarks** and the **Snap-on Program**; and

i) cease to:

i) operate or do business under any name or in any manner that might tend to give the impression that this Agreement is still in force or that the Franchisee is connected in any way with Snap-on, or has any right to use the **Snap-on Program** or the **Trademarks**; and

ii) make use of, or avail itself of, any of the trade secrets of, or information received from, Snap-on or disclose or reveal any such information or any portion of the above to anyone not employed by Snap-on or its Franchisees.

(2) If the Franchisee and Snap-on agree in writing to settle all accounts and resolve any outstanding issues between them, Snap-on may at its option, elect to accept for return from the Franchisee any unsold **Products** that are new, unused, unopened and identified as returnable in Snap-on's point of sale system or in writing by Snap-on (excluding Products: no longer manufactured or distributed by Snap-on; specially made or ordered for the Franchisee or the Franchisee's customers; and which are discontinued), and such **Products** will be accepted for return in accordance with the new tools return procedures in the **Operations Manual**.

If Snap-on elects to accept for return such **Products**, the Franchisee must arrange for such Products to be freighted to Snap-on at the Franchisee's cost and in accordance with the new tools return procedures set out in the **Operations Manuals**.

Subject to the Franchisee complying with its obligations under the termination provisions of this Agreement Snap-on shall (subject to the provisions of Section 24) use reasonable endeavours to finalise the Franchisee's account within sixty (60) days after the termination date.

(3) The Franchisee may offer to sell some or all of the Franchisee's **RAs** to Snap-on or its designee. Snap-on or its designee shall have the option, but not the obligation, to purchase some or all of the **RAs** offered by the Franchisee.

The purchase price for the **RAs** shall be equal to the **RA Percentage** of the balance due of each **RA** being sold unless otherwise agreed to by the relevant parties.

Snap-on may set-off against payments for **RA** purchases all monies owed to Snap-on (or any subsidiary or **Related Entity** of Snap-on) by the Franchisee, including for up to forty-five (45) days credits applied under the **Open Account Program**.

- (4) Unless a termination agreement (agreed to between the parties in accordance with Section 24(2)) provides otherwise, the Franchisee and Snap-on agree that termination of this Agreement under any circumstances shall not impair, release, or extinguish any debt, obligation, or liability of the Franchisee to Snap-on that may have accrued during the term of this Agreement, including any debt, obligation, or liability that was the cause of termination or arose out of such cause. All promises and agreements of that Franchisee that are to be performed after the termination of this Agreement shall survive termination.
- (5) The Franchisee acknowledges and agrees that all the goodwill and other rights and interests arising from the Franchisee's use of the **Intellectual Property** (as defined in Section 13(15)) during the term of this Agreement belongs to Snap-on or a **Related Entity** of Snap-on, and the Franchisee is not entitled to any compensation on the termination, expiration of this Agreement or non-exercise of any option to enter into a new franchise agreement for a **Renewal Term**.
- (6) The Franchisee acknowledges and agrees that Snap-on has no obligation to purchase any of the assets or Products owned or used by the Franchisee in connection with the Franchise (including the **Mobile Store**) on the termination of the Agreement.

## 25. Death or Incapacity

Upon the death or Incapacity of the Franchisee or Guarantor involved in operating the Franchise, including the Mobile Store, the Franchisee (or where the Franchisee is made up of only 1 natural person, the Franchisee's executor or personal representative) must if required by Snap-on, do one or more of the following:

- (1) immediately take steps to appoint or engage a person to manage and operate the Franchise, including the Mobile Store (such person must be approved by Snap-on) and ensure that the Franchise commences trading and operating in accordance with the provisions of this Agreement, no later than 30 days after the date on which Snap-on notifies the Franchisee that it requires the Franchisee to appoint or engage a person to operate the Franchise in accordance with this Section 25(1); and/or
- (2) within 90 days after the death of the Franchisee or Guarantor (as applicable) or the date on which the Franchisee or Guarantor suffers a Incapacity transfer its interest in this Agreement and the Franchise to an approved Transferee in accordance with the transfer provisions set out in section 21.B.

If for any reason a transfer of the Franchisee's interest in this Agreement and the Franchise is not completed within the 90 day period specified above, then without limiting Snap-on's other rights and remedies under any other provision of this Agreement (including the termination provisions) Snap-on may elect to terminate this Agreement by giving written notice to the Franchisee in accordance with Section 23.D. Reasonable written notice, for the purposes of Section 23.D, will be thirty (30) days unless otherwise determined by Snap-on. The Franchisee and Guarantor acknowledge and agree that such period of notice is reasonable in the circumstances.

For the purpose of this Section, a Franchisee or Guarantor shall be consider to suffer **Incapacity** or be **Incapacited** if:

- (1) a qualified medical practitioner certifies that the Franchisee or Guarantor is disabled or incapacitated to such an extent that the Franchisee or Guarantor is no longer capable of effectively operating the Franchise and that such disability is reasonably expected to be permanent; or

- (2) the Franchisee or Guarantor is unable to actively participate in the Franchise for a total of 60 days during any consecutive 12 month period because of mental or physical infirmity.

## 26. Covenant Not to Compete

- (1) In this Section 26:

- a) **Control** or **controlling** means, in relation to the company, that the Franchisee:
- i) controls the composition of the company's board;
  - ii) is in a position to cast, or control the casting of more than one-half of the maximum number of votes that might be cast at a general meeting of the company; and
  - iii) holds more than one-half of the issued share capital of the company (excluding any part of the issued capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).
- b) **Capacity includes acting:**
- i) either alone or in conjunction with any other person or company;
  - ii) with any individuals who are Controlling shareholders of the Franchisee, if the Franchise is a body corporate;
  - iii) as principal, agent, representative, director, officer, employee or financier;
  - iv) as member, shareholder, debenture holder, or holder of any other security;
  - v) as trustee of or as a consultant or adviser to any person; or
  - vi) in any other capacity.
- c) **Post Termination Restraint Period means each of the following periods:**
- i) a period twelve (12) months after the transfer, surrender, termination or expiry of this Agreement; and
  - ii) a period of six (6) months after the transfer, surrender, termination or expiry of this Agreement.
- d) **Restraint Area means each of the following areas:**
- i) within a 10km radius of any Approved Stop; and
  - ii) within a 5km radius of any Approved Stop; and
  - iii) within a 2km radius of any Approved Stop.

- (2) During the term of this Agreement, the Franchisee and the Guarantors shall not individually, or in conjunction with any other person or in any manner or **Capacity** (as defined above), directly or indirectly, carry on or be engaged in, concerned with or interested in, financially or otherwise, or advise in the establishment or operation of, any business involved in the sale of:

- a) tools, equipment, merchandise or services to automobile Franchisee-ships, independent repair shops for cars, trucks, motorcycles, or body shops, marinas and small aircraft maintenance, or
- b) any other products or merchandise that would compete with the Products.

- (3) Nothing in this Section 26(2) prohibits:

- a) the Franchisee or Guarantors from owning shares of a class of securities listed on a stock exchange or traded on the stock market that represent less than three percent (3%) of the number of shares of that class of securities issued and outstanding; or
- b) the Franchisee from operating any additional Snap-on franchised business operated by the Franchisee on the terms set out in the applicable Snap-on franchise agreement entered into by the Franchisee.

- (4) During the **Post Termination Restraint Period** the Franchisee and the Guarantors shall not directly or indirectly in any **Capacity**:
- a) within the **Restraint Area** that was in effect at the time of the termination or expiration engage or be concerned or interested in any business that:
    - i) supplies products, tools or services the same as or similar to the those supplied by the Franchisee in connection with the Franchise during the twelve (12) months before the termination or expiry of this Franchise Agreement; or
    - ii) competes with Snap-on; or
    - iii) could be reasonably regarded as a market competitor of the network of Snap-on franchisees or Snap-on distributors;
  - b) employ or engage any person who is or has been in the twelve (12) months before the termination or expiry of this Franchise Agreement employed by or engaged by the Franchisee, without first obtaining Snap-on's written consent, or induce, encourage or solicit such persons to leave their employment or engagement with the Franchisee; or
  - c) approach, canvass or solicit any person:
    - i) who is or has been in the twelve (12) months before the termination or expiry of this Agreement a customer of the Franchisee; or
    - ii) any **Potential Customer** with whom the Franchisee has had dealings or had a business relationship at any time during the twelve (12) months before the termination or expiry of this Agreement,  
with a view to supplying to such persons any tools, products or equipment, the same as or similar to the **Products** (as defined in the Introduction to this Agreement); or
  - d) sell any tools, products or equipment the same as or similar to the **Products** (as defined in the Introduction to this Agreement) to any person who is a customer or has been in the twelve (12) months before the termination or expiry of this Agreement a customer of the Franchisee.
- (5) The Franchisee and the Guarantor acknowledge and agree:
- a) Snap-on has considerable and recognised goodwill in the conduct of its business of developing and promoting the **Snap-on Program** and the network of Snap-on franchisees;
  - b) Snap-on is entitled to protect that goodwill for its own benefit and the benefit of all Snap-on franchisees by restricting the Franchisee's ability to damage that goodwill by competing with Snap-on or any Snap-on franchisee; and
  - c) each of the restraints imposed on the Franchisee under this clause is fair and reasonable and is no greater than is necessary to protect it.
- (6) The Franchisee acknowledges and agrees that the restraints and covenants set out above will apply as they consisted of several separate, independent and cumulative covenants and restraints consisting of:
- a) each of Sections 26(4)b), 26(4)c) and 26(4)d) combined with each separate **Post Termination Restraint Period**; and
  - b) Section 26(4)a) combined with each separate **Post Termination Restraint Period** and of each such separate combination combined with each separate **Restraint Area**.
- (7) If any separate provision is unenforceable, illegal or void that provision is severed and the other separate provisions remain in force.
- (8) To the maximum extent permitted by law the Franchisee must ensure that its employees are bound to comply with restraint of trade obligations substantially similar to those set out in this Agreement

## 27. Goodwill

- (1) Subject to the provisions of the Code and despite any provision to the contrary contained in this Agreement, if:
  - a) this Agreement expires and is not renewed; and
  - b) Sections 23(1)(a) to (d) of the Franchising Code of Conduct are satisfied,the Franchisee may request in writing compensation for goodwill from Snap-on.
- (2) If:
  - a) Section 27(1) applies;
  - b) Snap-on receives a claim for compensation for goodwill from the Franchisee; and
  - c) Snap-on, in its absolute discretion, agrees to pay an amount of compensation for goodwill to the Franchisee in consideration for all the restraint of trade provisions in this Agreement being enforceable to their fullest extent, Snap-on will pay to the Franchisee an amount which Snap-on determines to be a genuine amount of compensation for the Franchisee's goodwill in the Franchise taking into account the following:
    - i) the Snap-on Group owns the **Intellectual Property** and the Customer Database;
    - ii) the goodwill and other rights and interests arising from the Franchisee's use of the **Intellectual Property** (as defined in Section 1.A(15)) and the **Snap-on Program** belong to the Snap-on or a **Related Entity** of Snap-on; and
    - iii) the Franchisee has no right to use the **Intellectual Property** after the termination or expiry of this Agreement.
- (3) To avoid doubt nothing in this clause:
  - a) imposes an obligation on Snap-on to pay any compensation for goodwill to the Franchisee; or
  - b) is intended to limit or affect the application of Section 23 of the Franchising Code of Conduct.

## 28. Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## 29. Indemnification

- (1) The Franchisee at all times, indemnifies, defends (with counsel selected by Snap-on), and holds harmless (to the fullest extent permitted by law) Snap-on, its Related Entities, successors and assigns and their respective past and present directors, officers, employees, agents and representatives (collectively **Indemnitees**) from and against all "**losses and expenses**" (as defined below) incurred in connection with any action, suit, proceeding, claim, demand, investigation or inquiry (formal or informal) by or against Indemnitees or any settlement thereof (whether or not a formal proceeding or action had been instituted), arising out of or resulting from or connected with operation of the Franchise, including:
  - a) any breach by the Franchisee of this agreement or any Ancillary Agreement;
  - b) subject to Section 29(2) below, any injury to, or loss of property of, any person in or on any premises;
  - c) the Franchisee's taxes, liabilities or costs of the Franchise;

- d) any negligent or wilful act or omission of the Franchisee, its employees, agents, servants, contractors; and
- e) subject to Section 29(1)g) below, any warranty, promise, representation made by the Franchisee or any employee, agent, or other person acting on the Franchisee's behalf, but excluding:
  - f) claims for bodily injury or property damage caused solely by a manufacturing or design defect in a Product that could not have been discovered by the Franchisee prior to sale; or
  - g) claims for breach of warranty relating to Products purchased from Snap-on that are not, in whole or in part, the result of the Franchisee sales, service or repair practices or conduct. The Franchisee must promptly give Snap-on notice of any such action, suit proceeding, claim, demand, inquiry or investigation filed or instituted against the Franchisee and, upon request must furnish Snap-on with copies of any documents from such matters as Snap-on reasonably may request; or
  - h) losses and expenses to the extent that such losses and expenses are directly caused by Snap-on's negligence.
- (2) Snap-on's rights at law and under this Agreement, including its right to be indemnified under this Section, are not affected by:
  - a) the termination or expiration of the Franchise;
  - b) Snap-on accepting the Franchisee's repudiation of this Agreement; or
  - c) anything else.
- (3) In this Section, the phrase **losses and expenses** includes, all losses; compensatory, exemplary and punitive damages; fines; charges; costs; expenses; legal fees; court costs; settlement amounts; judgments; compensation for damages to Snap-on's reputation and goodwill; costs of, or resulting from, delays; financing; costs of advertising material and media time/space and the costs of changing, substituting or replacing the same; and any and all expenses of recall, refunds, compensation, public notices and other such amounts incurred in connection with the matters described.

## 30. Dispute Resolution

### A. Definitions

In this Section 30, **parties** means the **Complainant** and the **Respondent** (as defined in Section 1.A) in a dispute arising under this Agreement of the Franchise Code of Conduct.

### B. Agreement on Procedure to be Followed

If a dispute arises between the Franchisee and Snap-on, the parties will follow the complaint handling procedure set out in Sections 30.C and 30.D below.

### C. Dispute Resolution Procedure

- (1) The complainant must advise the respondent in writing of:
  - a) the nature of the dispute;
  - b) what outcome the complainant wants;
  - c) what action the complainant thinks will settle the dispute.
- (2) The parties should then try to agree about how to resolve the dispute.
- (3) If the dispute is not resolved in accordance with Section 30.C(2) within a period of three (3) weeks, either party may refer the dispute to a mediator.

- (4) If the parties cannot agree on who should be the mediator, either party may request the mediation adviser to appoint a mediator.
- (5) Subject to Section 30.C(6), the mediator may decide the time and place for the mediation.
- (6) The mediation must be conducted in Australia.
- (7) The parties must attend the mediation and try to resolve the dispute.

#### **D. Right to Take Legal Proceedings and Costs of Mediation**

- (1) This Section 30 does not affect the right of Snap-on and the Franchisee to take legal proceedings under this Agreement. In particular, this Section does not affect the right of any party to seek injunctive relief where this is necessary to prevent irreparable damage to the party making the application or to the network of Snap-on franchisees or the **Snap-on Program**. To the extent permitted by the Code or by any declaration, injunction or order for specific performance, the Franchisee must pay Snap-on's damages arising out of the relevant breach and Snap-on's legal costs.
- (2) Unless they otherwise agree, the parties will be equally liable for the costs of any mediation under this Section 30.
- (3) Subject to Section 30.D(2), the parties must pay for their own costs of attending any mediation under this Section 30.

### **31. Power of Attorney**

#### **A. Appointment**

In consideration of Snap-on entering into this Agreement and to secure performance by the Franchisee of its obligations under this Agreement, the Franchisee irrevocably appoints Snap-on and each of its officers severally to be the Franchisee's attorney (**Attorney**) to exercise the powers described in this Section.

#### **B. Powers**

When an event of default occurs (as described in Section 23.B(2) or at the end of the Franchise the Franchisee fails to do anything or has not done promptly or properly anything that the Franchisee is required to do under this Agreement the Attorney may, in the name and at the cost of the Franchisee, do anything required to be done by the Franchisee that the Franchisee has not done or has not done promptly or properly in accordance with the provisions of this Agreement. This includes the execution and delivery of documents, transfers, assignments, deeds, forms, notices or other instruments.

#### **C. Powers continue despite the Franchise ending**

The powers granted under this Section 31 commence when this Agreement is executed and continue despite the end of the Franchise.

#### **D. Ratification**

The Franchisee:

- (1) ratifies and confirms anything an **Attorney** lawfully does under this Section 31; and
- (2) must pay within seven (7) days of the date of Snap-on's written demand for payment all the costs or other liabilities incurred by or on behalf of Snap-on or the **Attorney** under this Section 31.

## 32. Entire Agreement

This Agreement and the Appendices contain the entire agreement between the parties and supersede all prior or contemporaneous negotiations, discussions, or understandings of parties.

Except as otherwise permitted in this Agreement or the **Operations Manual**, no agreement of any kind relating to the matters covered by this Agreement shall be binding upon either party unless and until the same has been agreed to in writing and signed by Snap-on and the Franchisee.

## 33. Governing Law & Taxes

### A. Governing law

This Agreement shall be governed by, and construed in accordance with, the laws of New South Wales and parties submit to the exclusive jurisdiction of the courts of New South Wales.

### B. Stamp duty

The Franchisee must pay all stamp duty and other government imposts payable in connection with this Agreement, any **Ancillary Agreement** and all other documents and matters referred to in this Agreement when due or earlier if requested in writing by Snap-on.

## 34. GST

### A. GST on *Supply* made to the Franchisee

Regardless of any other provision of this Agreement, if a GST is imposed on any *Supply* made to the Franchisee by Snap-on under or in accordance with this Agreement, the amount that the Franchisee must pay for the *Supply* increases by the amount of the GST.

### B. GST on *Supply* made to Snap-on

Regardless of any other provision of this Agreement, if a GST is imposed on any *Supply* made to Snap-on by the Franchisee under or in accordance with this Agreement, the amount which Snap-on must pay for the *Supply* increases by the amount of the GST.

### C. *Tax Invoices*

A party's right to payment under this Agreement for any *Taxable Supply* is subject to a valid *Tax Invoice* being delivered to the party liable to pay for the *Taxable Supply*.

### D. GST Definitions

Expressions in italics in this Section 34 bear the same meaning as those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 35. Severability

- (1) Subject to Section 35(2), if any provision in this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Agreement remains in force.
- (2) If any provision in this Agreement is unenforceable, illegal or void in one jurisdiction but not in another jurisdiction or makes this Agreement or any part of it unenforceable, illegal or void in one jurisdiction but not in another jurisdiction, then that provision is severed only in respect of the operation of this Agreement in the jurisdiction where it is unenforceable, illegal or void.



## 36. Changes in Laws

### A. Taxes and Charges

If any laws are changed, or new laws are introduced, or courts or any relevant authority interpret laws differently which results in Snap-on having to pay a tax, duty, excise or levy (**impost**) on amounts received from the Franchisee under this Agreement (other than income tax) or on goods or services supplied by Snap-on under this Agreement, the Franchisee must pay to Snap-on an additional amount, so that after Snap-on has paid the impost, its yield under this Agreement is unchanged.

### B. Amend Agreement to Comply with Future Laws

The parties agree that if any laws are changed or introduced or any relevant authority publishes or issues any statement, rules, code or requirement which in the reasonable opinion of Snap-on or its solicitors renders or is likely to render all or part of this Agreement unenforceable, illegal or void, the parties will immediately amend this Agreement and do all things (including executing documents) necessary or desirable to ensure that this Agreement is not unenforceable, illegal or void.

## 37. Solvency and Security Interests

### Solvency Statement

- (1) The Franchisee must:
  - a) within 72 hours of a written demand from Snap-on, provide Snap-on with a statement that declares that there are reasonable grounds to believe that Franchisee will be able to pay its debts as and when they fall due (**Solvency Statement**), signed by:
    - i) if the Franchisee is a company, at least one (1) director of the Franchisee;
    - ii) if the Franchisee is an individual, the individual;
    - iii) if the Franchisee is a trust, the trustee or a director of the trustee; or
    - iv) if the Franchisee is a partnership, at least one (1) of the partners; and
  - b) within seven (7) days of a demand from Snap-on, provide Snap-on with a financial statement (**Supporting Financial Statement**) in the form specified by Snap-on to support the **Solvency Statement**.
- (2) For the avoidance of doubt, if:
  - a) The Franchisee fails to provide the Solvency Statement or the **Supporting Financial Statement** within the time specified in, and in accordance with this clause ; or
  - b) the **Supporting Financial Statement** fails to establish that the Franchisee is solvent;then the failure constitutes a breach of this Agreement.
- (3) If the Franchisee fails to provide the **Supporting Financial Statement** within the time specified in, and in accordance with, this clause Snap-on may:
  - a) conduct an audit of the reports, financial statements and books of Franchisee's business to prepare the **Supporting Financial Statement** on behalf of Franchisee (**Solvency Audit**); and
  - b) appoint an independent auditor to conduct the **Solvency Audit** on behalf of Snap-on.
- (4) The Franchisee must fully cooperate with the reasonable requirements of Snap-on and the auditor, including by providing access to the Premises and the reports, financial statements and books of the Franchisee's business to enable Snap-on or the auditor to conduct the **Solvency Audit**.
- (5) The Franchisee must reimburse Snap-on for any costs incurred by Snap-on in conducting the **Solvency Audit** or engaging an auditor to conduct the **Solvency Audit** on its behalf.

### 38. Non-merger

Each obligation, which expressly survives or is capable of surviving the end of the Franchise, continues in force despite the termination of this Agreement and the end of the Franchise.

### 39. Execution of Counterparts

This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

### 40. Further assurance

Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

### 41. Time of the essence

- (1) Time is of the essence of this Agreement.
- (2) If the parties agree to vary a time requirement the time requirement so varied is of the essence of this Agreement.
- (3) An agreement to vary a time requirement must be in writing.

### 42. Force Majeure

- (1) If a party (**Affected Party**):
  - a) is prevented from or delayed in performing an obligation (other than to pay money) by a **Prescribed Event**; and
  - b) promptly and diligently acts to mitigate or remove the **Prescribed Event** and its effect;then the obligation is suspended during, but for no longer than, the period the **Prescribed Event** continues and such further period as is reasonable in the circumstances.
- (2) Nothing in Section 42(1) obliges the **Affected Party** to settle any strike, lockout, ban, limitation of work or other industrial dispute.
- (3) In this Section 42 **Prescribed Event** means any of the following events:
  - a) act of God;
  - b) war, terrorism, riot, insurrection, vandalism or sabotage;
  - c) strike, lockout, ban, limitation of work or other industrial disturbance;
  - d) law, rule or regulation of any government or governmental agency or executive or administrative order or act of general or particular application;
  - e) explosion;
  - f) power shortage; or
  - g) breakdown of plant, machinery or equipment;which:
  - h) is unforeseen by the **Affected Party**;
  - i) is beyond the control of the **Affected Party**; and
  - j) occurs without the fault or negligence of the **Affected Party**.

## 43. Notices

All notices, requests, consents, or approvals required or permitted to be given hereunder must be in writing and shall be deemed to be properly delivered immediately, if personally delivered or sent by email to either email listed in **Item 7** of the **Schedule**, or five (5) business days after having been sent by Australia Post registered, certified, or express mail, postage prepaid, return receipt requested:

- (1) if to the Franchisee, addressed to the Franchisee at the address outlined in **Item 3** of the **Schedule**, or at such other address as the Franchisee may have designated from time to time by written notice to Snap-on; and
- (2) if to Snap-on, addressed to the Snap-on Distribution Centre in Sydney (marked Attention: National Franchise Manager) or to such other person or at such other address as Snap-on may have designated from time to time by written notice to the Franchisee; or
- (3) if emailed to the registered Snap-on email address which is provided to each Franchisee, with a "Read Receipt" attached to the said email.

## 44. Representations by the Franchisee

The Franchisee represents, acknowledges and warrants to Snap-on that:

- (1) this Agreement and the Franchise involves significant legal and business rights and risks;
- (2) the Franchisee has read this Agreement in its entirety, has been thoroughly advised on the terms and conditions of this Agreement by either a legal adviser, an independent business adviser, or an accountant of his/her own choosing and relied on that advice;
- (3) the Franchisee has made all necessary enquiries and has conducted and relied on its own due diligence and independent advice relating to the Franchise and this Agreement in deciding to execute this Agreement;
- (4) in deciding to execute this Agreement the Franchisee did not rely upon any statement, warranty, or representation made or alleged to have been made to the Franchisee by Snap-on or by any person on behalf of Snap-on other than as set out in this Agreement;
- (5) the Franchisee has not received from Snap-on any representations of the Franchisee's potential sales, expenses, income, profit or loss, and has not received from either Snap-on, or anyone acting on its behalf, any representations other than those contained in the Franchise Disclosure Document as inducements to enter this Agreement;
- (6) the Franchisee understands that Snap-on makes no express or implied warranties or representations that the Franchisee will achieve any degree of success in the operation of the Franchise and does not guarantee any return on investment, level of income or profit to Franchisee, and while Snap-on will provide the Franchisee with training, advice, and consultation as provided in this Agreement and the **Operations Manual**, success in the operation of the Franchise depends ultimately on the Franchisee's efforts and abilities and on other factors, including, but not limited to, market and other economic conditions, and competition;
- (7) all information provided to Snap-on by the Franchisee in connection with the approval of Franchisee as a Franchisee is truthful, accurate and not misleading;
- (8) the Franchisee has been given access to the Snap-on Operations Manual;
- (9) the Franchisee has disclosed to Snap-on all facts and things about the Franchisee's directors and shareholders including their respective financial positions and past business history which may be relevant to Snap-on's decision to grant the rights under this Agreement;

- (10) neither the Franchisee nor any of the Franchisee's directors have been convicted or found guilty of a criminal offence that has not been disclosed in writing to Snap-on, or otherwise involved in any event that may prejudicially affect the reputation of Snap-on or Snap-on's image;
- (11) the Franchisee acknowledges that the Franchisee has received and read at least fourteen (14) days before the execution of this Agreement a Snap-on Disclosure Document, and a copy of the Franchising Code of Conduct and has had a reasonable opportunity to understand both;
- (12) the Franchisee understands that, from time to time, Snap-on may amend the **List of Calls** or change or modify the **Snap-on Program**, including the **Operations Manual** as provided in Section 7, and that the Franchisee will be required to make such expenditures as such changes or modifications in the **Snap-on Program** may require;
- (13) the Franchisee understands that the Franchisee does not have an exclusive or protective geographic territory and that other Snap-on franchisees may have a Territory;
- (14) the Franchisee understands that the Franchisee may only sell **Products** or **Approved Tools** to **Potential Customers** at **Approved Stops** on the **List of Calls**, subject to the conditions provided in Section 2.B, and must maintain high quality service as provided in Section 2.B(4);
- (15) the Franchisee understands that Snap-on may amend the **List of Calls** from time to time in accordance with the provisions of this Agreement;
- (16) the Franchisee understands that Snap-on may amend the **List of Calls** from time to time in accordance with the provisions of this Agreement;
- (17) the Franchisee understands that the Franchisee may sell only **Products** and **Approved Tools**;
- (18) the Franchisee understands that, in the event of a dispute between Snap-on and Franchisee, the **Dispute Resolution Procedure** as provided in Section 30 of this Agreement will be adopted;
- (19) the Franchisee acknowledges that the onus is on the Franchisee to ensure compliance with any and all laws, licences, ordinances or requirements that may apply to any and all aspects of the operation of the Franchise in the state or territory in which the Franchise is operated, and the Franchisee further acknowledges that advice on such matters should be independently sought from the appropriate authorities by the Franchisee; and
- (20) the Franchisee also expressly acknowledges and agrees that Snap-on and its **Related Entities** sell, or may in the future sell, products and merchandise bearing the **Trademarks**, other trademarks owned by Snap-on or its **Related Entities**, and other marks through means of distribution (other than Snap-on Franchisees) located at **Stops** near to **Approved Stops** on the **List of Calls** and elsewhere, and that nothing in this Agreement shall restrict Snap-on or its **Related Entities** from so doing.

## 45. Acknowledgments

The Franchisee acknowledges that:

- (1) all advice and information given by Snap-on to the Franchisee in connection with the Franchise and the Snap-on Program is given in good faith based on Snap-on's best judgment; and
- (2) any advice and information given by Snap-on is not a warranty or guarantee with respect to any of the matters referred to in the advice or information.

## 46. Owning Additional Snap-on Franchises

Franchisee acknowledges and agrees that under this Agreement it is granted the right to operate only one Snap-on franchisee and nothing in this Agreement give the Franchisee an automatic right to

purchase or be granted additional Snap-on franchises. Further information relating to owning or acquiring additional Snap-on franchises will be set out in the **Operations Manual** from time to time.

## 47. Additional Sections

### A. Franchisee a Company

- (1) If the Franchisee is a company or if this Agreement is transferred under Section 21.A(2) from an individual to a company, the provisions of Sections 47.A(2) to 47.A(6) apply.
- (2) In this Section 47.A:  
**control** has the meaning given it in Section 26 except that references to the "Franchisee" will be read as if they were references to the "Guarantor".  
**Guarantor** means the guarantor of the Franchisee's obligations under this Agreement.
- (3) On or before the **Commencement Date**, the Franchisee must give to Snap-on a certified copy of the Franchisee's constitution and certified copies of any other documents requested by Snap-on from the Franchisee's company register.
- (4) The Franchisee must provide to Snap-on immediately upon request details of the shareholders of the Franchisee, including the number and class of shares held by each shareholder as at:
  - a) the date of execution of this Agreement; and
  - b) any other date specified by Snap-on.
- (5) The Franchisee warrants and represents to Snap-on that:
  - a) it is duly incorporated and validly existing;
  - b) no receiver, liquidator or official manager of it has been appointed and it is not insolvent;
  - c) it has the legal right, capacity and authority to enter into this Agreement and has taken all corporate action necessary to obtain that authorisation; and
  - d) the constitution does not preclude the Franchisee from being granted the Franchise or otherwise from exercising its rights and performing its obligations under this Agreement.
  - e) all its shareholders hold their shares beneficially.
- (6) Snap-on will have the right to terminate this Agreement under Section 23.B where any of the following events, being events of default, occurs without Snap-on's prior written approval:
  - a) the Guarantor ceases at any time to have control of the Franchisee;
  - b) the Guarantor ceases at any time to be a director of the Franchisee or there is any change in the composition of the Franchisee's directors;
  - c) any alteration to the Franchisee's constitution;
  - d) the Guarantor ceases to be employed on a full time basis by the Franchisee in the conduct of the business under this Agreement;
  - e) any reduction or alteration of the Franchisee's capital;
  - f) if any shares in the Franchisee are transferred or **Disposed** of other than in accordance with Section 21; or
  - g) if any shareholder in the Franchise ceases to own its shares beneficially.
- (7) Snap-on must not withhold consent unreasonably if:
  - a) in the case of a Disposal of shares, the requirements of Section 47.A(8) are met; or
  - b) in any other case, the change does not adversely affect Franchisee's ability to perform its obligations under this Agreement.

- (8) Any **Disposal** or transfer of shares in the Franchisee, other than upon a restructure pursuant to Section 21.C, must be treated as an assignment by the Franchisee of the Franchise and Section 21.B applies to that **Disposal**. This means that the Franchisee must not allow a **Disposal** to occur without first:
- a) offering to sell the Franchise to Snap-on in accordance with Section 21.E; and
  - b) if that offer is not accepted, satisfying all requirements of Section 21.B.

## B. Franchisee a Trustee

- (1)
  - a) If the Franchisee is a trustee and enters into this Agreement in that capacity and details are provided in Item 4 of the Schedule, or if this Agreement is transferred under Section 21.C from an individual to a company, and that company is a trustee and accepts the transfer in that capacity the provisions of Sections 47.B(2) to 47.B(3) apply.
  - b) If the Franchisee is not described in this Agreement as trustee of a trust, the Franchisee warrants that the Franchisee enters into this Agreement in its own right and not as a trustee for any person.
- (2) In this Section 47.B where sub-Section 47.B(1)b) applies, "Trust", "Trust Deed" and "Trustee" will have the meanings set out in the document effecting the transfer.
- (3) The Trustee warrants and represents to Snap-on that:
  - a) it enters into this Agreement inter alia in its capacity as trustee of the Trust;
  - b) the Trust has been validly created and is in existence at the date of this Agreement;
  - c) it has been validly appointed as trustee of the Trust and is the only trustee of the Trust;
  - d) the Trust is solely constituted by the Trust Deed, a true copy of which was provided to Snap-on or its agent prior to the date of this Agreement;
  - e) it has full and free power to enter into this Agreement inter alia in its capacity as trustee of the Trust and has obtained the consent or approval of any person which is needed to ensure that the property of the Trust is bound upon the execution of this Agreement;
  - f) a date has not been declared under the Trust Deed as the date on which the Trust will be vested or come to an end;
  - g) no proceedings of any description have been or are likely to be commence or threatened which could have a material adverse effect on the assets or financial position of the Trust or on its trusteeship of the Trust including steps taken or threatened by any person to:
    - i) revoke or vary the Trust Deed;
    - ii) remove the Franchisee as trustee of the Trust;
    - iii) appoint additional trustees to the Trust;
    - iv) have the Trust assets administered pursuant to any order of a court;
    - v) have any receiver or administrator of the Trust assets appointed or have the Trust wound up; or
    - vi) charge the Franchisee or anyone acting on its behalf with any breach of trust or misappropriation of Trust assets in connection with the Trust.
  - h) all information or documents supplied to Snap-on or to any person on Snap-on's behalf for the purposes of the Franchise are true and accurate and leave no material facts undisclosed.
- (4) **Snap-on's reliance on Trust warranties**

The Franchisee acknowledges and agrees that this Agreement is entered into and the Franchise is granted on the basis that each of the warranties contained in Section 47.B(3) is true and correct and will remain so throughout the Term.

(5) **Beneficial ownership of Trust assets**

- a) This Section 47.B(5) applies if the Trust is a unit trust.
- b) The Franchisee warrants that the unit holders of the Trust are as notified to Snap-on or prior to the Effective Date and that all of the issued units in the Trust are beneficially held by these unit holders.

- (6) The parties acknowledge that the rights of Snap-on under this Agreement lie against the Franchisee, both in its capacity as trustee of the Trust and personally.

Snap-on will have the right to terminate this Agreement under Section 23.B where any of the following events, being events of default, occurs without Snap-on's prior written approval:

- a) the removal or resignation of the Trustee as trustee of the Trust;
- b) the appointment of a new or additional trustee of the Trust;
- c) a re-settlement of the Trust;
- d) a variation of the Trust Deed;
- e) a vesting or distribution of the Trust or any assets of the Trust (other than income);
- f) a breach of trust by the Trustee;
- g) the Trustee for any reason loses or ceases to be entitled to its right of indemnity against the assets of the Trust; or
- h) if, as a result of the act or omission of the trustee of the Trust, the assets of any of the Trust are diminished or made less accessible to Snap-on.

- (7) Snap-on must not withhold consent unreasonably to a Disposal of units if the requirements of Section 47.C are met.

If the Franchisee contravenes Section 47.B(6)b) and appoints any new or substitute trustee of the Trust, Franchisee:

- a) acknowledges that this Agreement will bind the new trustee; and
- b) must arrange for the new trustee to enter into a deed prepared by Snap-on's solicitors at the Franchisee's cost by which the new trustee agrees to be bound by the terms of this Agreement.

## C. Assignment of Units

Any **Disposal** of units in the Trust, other than upon a restructure pursuant to Section 21.C, must be treated as an assignment by the Franchisee of the Franchise and Sections 21.B and 21.E apply to that **Disposal**. This means that the Franchisee must not allow a **Disposal** to occur without first:

- (1) offering to sell the Franchise to Snap-on in accordance with Section 21.E; and
- (2) if that offer is not accepted, satisfying all the requirements of Section 21.B.

## D. Recourse Against Trust and Other Assets

The Franchisee:

- (1) agrees that the assets of the Trust and also those beneficially held by the Franchisee on its own behalf will be available to satisfy the Franchisee's obligations under this Agreement; and
- (2) must, if Snap-on requires, exercise its rights of indemnity against the assets of the Trust to satisfy any of its obligations under this Agreement.

---

## E. Special Conditions

Any special condition set out in **Item 19** of the **Schedule** forms part of this Agreement. If there is any inconsistency between a provision of the Special Conditions and a provision of this Agreement, the provision of the Special Conditions prevails to the extent of the inconsistency.

DRAFT



Executed as a Deed

[Use if Franchisee has two directors] – Delete this line after completion

Executed by  
**[insert Franchisee inc A.B.N]**  
in accordance with Section 127 of the  
*Corporations Act 2001:*

Signed for and on behalf of  
**Snap-on Tools (Australia) Pty Ltd**  
**A.B.N 55 010 793 683**  
by its Authorised Representative in the  
presence of

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Stacey Gilbert – National Franchise Manager

\_\_\_\_\_  
Name of Director/Co. Secretary (BLOCK LETTERS)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (BLOCK LETTERS)

**LORETTA JONES**  
\_\_\_\_\_  
Name of Witness (BLOCK LETTERS)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director (BLOCK LETTERS)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (BLOCK LETTERS)

\_\_\_\_\_  
Address of Witness

[Use if Franchisee has sole director who is also company secretary] – Delete this line after completion

Executed by  
**[insert Franchisee inc A.B.N]**  
in accordance with Section 127 of the  
*Corporations Act 2001*:

Signed for and on behalf of  
**Snap-on Tools (Australia) Pty Ltd**  
**A.B.N 55 010 793 683**  
by its Authorised Representative in the  
presence of

\_\_\_\_\_  
Name of Sole Director and Sole Company  
Secretary (BLOCK LETTERS)

\_\_\_\_\_  
**Stacey Gilbert – National Franchise Manager**

\_\_\_\_\_  
Signature of Sole Director and Sole  
Company Secretary

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (BLOCK LETTERS)

\_\_\_\_\_  
**LORETTA JONES**  
Name of witness (BLOCK LETTERS)

\_\_\_\_\_  
Address of Witness

## ADVICE BEFORE ENTERING INTO A FRANCHISE AGREEMENT

### The Franchising Code of Conduct

Clause 10(2) of the Franchising Code of Conduct states:

- (2) Before a franchise agreement is entered into, the franchisor must have received from the prospective franchisee:
  - (a) signed statements, that the prospective franchisee has been given advice about the proposed franchise agreement or franchised business, by:
    - (i) an independent legal adviser; or
    - (ii) an independent business adviser; or
    - (iii) an independent accountant; or
  - (b) for each kind of statement not received under paragraph (a), a signed statement by the prospective franchisee that the prospective franchisee:
    - (i) has been given that kind of advice about the proposed franchise agreement or franchised business; or
    - (ii) has been told that that kind of advice should be sought but has decided not to seek it.

**Snap-on requires that all Franchisees entering into their Franchise Agreement seek Legal Advice.**

Before entering into the Franchise Agreement with Snap-on Tools (Australia) Pty Ltd please ensure the following Franchisee Statement of Advice is completed fully.

## FRANCHISEE STATEMENT OF ADVICE

### STATEMENT BY PROSPECTIVE FRANCHISEE:

- I, \_\_\_\_\_ of \_\_\_\_\_ as the Prospective Franchisee or a director of the Prospective Franchisee or a director of a partner of the Prospective Franchisee, acknowledge that:
- (a) I have received from Snap-on Tools (Australia) Pty Ltd (ABN 55 010 793 683) the Snap-on Disclosure Document, current as at 30<sup>th</sup> April 2020 attaching copies of:
    - (i) the franchise agreement; and
    - (ii) the Franchising Code of Conduct;
  - (b) I have been told by a representative of Snap-on to seek independent legal, business and/or accounting advice in relation to the proposed franchise agreement and the franchised business;
  - (c) I have obtained that advice as indicated in Sections 1 to 3 below\* (or, where any of Sections 1 to 3 have not been completed, have decided not to seek that advice). Note: All Snap-on franchisees must seek independent legal advice;
  - (d) I have read and had a reasonable opportunity to understand Snap-on Disclosure Document and the Franchising Code of Conduct and received such documents at least 14 days prior to making this statement; and
  - (e) at the time of making this statement, I have not entered into a franchise agreement with, or made any non-refundable payments (whether of money or other valuable consideration) to Snap-on.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

*\*INSTRUCTIONS: If you have obtained advice of any of the types specified in Sections 1, 2 or 3 below you have the option of either: 1. having the statement to that effect signed by the adviser (Part B); or 2. merely ticking the relevant box yourself (Part A)*

### 1. INDEPENDENT LEGAL ADVICE

#### A. Statement by Prospective Franchisee:

The person referred to above as the Prospective Franchisee or a director of the Prospective Franchisee has been given legal advice in relation to the proposed franchise agreement and the franchised business.

*[please tick]*

#### B. Statement by independent legal adviser:

I, \_\_\_\_\_ of \_\_\_\_\_ am a qualified legal adviser and have given the Prospective Franchisee advice about the proposed franchise agreement and franchised business.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

### 2. INDEPENDENT BUSINESS ADVICE

#### A. Statement by Prospective Franchisee:

The person referred to above as the Prospective Franchisee or a director of the Prospective Franchisee has been given business advice in relation to the proposed franchise agreement and the franchised business.

*[please tick]*

#### B. Statement by independent business adviser:

I, \_\_\_\_\_ of \_\_\_\_\_ am a qualified business adviser and have given the Prospective Franchisee advice about the proposed franchise agreement or franchised business.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

### 3. INDEPENDENT ACCOUNTING ADVICE

#### A. Statement by Prospective Franchisee:

The person referred to above as the Prospective Franchisee or a director of the Prospective Franchisee has been given accounting advice in relation to the proposed franchise agreement and the franchised business.

*[please tick]*

#### B. Statement by independent accountant:

I, \_\_\_\_\_ of \_\_\_\_\_ am a qualified accountant and have given the Prospective Franchisee advice about the proposed franchise agreement or franchised business.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix 1 – List of Calls

**Please Note:** The franchisee acknowledges that the Stop is the physical address, not the business operating at that address.

Executed by  
**[Company Name]**  
**A.B.N XX XXX XXX**  
in accordance with Section 127 of the  
*Corporations Act 2001:*

Signed for and on behalf of  
**Snap-on Tools (Australia) Pty Ltd**  
**A.B.N 55 010 793 683**  
by its Authorised Representative in the  
presence of

.....  
Name of Sole Director and Sole Company Secretary  
(BLOCK LETTERS)

.....  
**Stacey Gilbert – National Franchise Manager**

.....  
Signature of Sole Director and Sole Company  
Secretary

.....  
Signature of Witness

.....  
Signature of Witness

.....  
Name of Witness (BLOCK LETTERS)

.....  
**LORETTA JONES**  
Name of Witness (BLOCK LETTERS)

.....  
Address of Witness

## Appendix 2 – Deed of Guarantee

DRAFT

## Appendix 3 – Chrome Agreement

DRAFT

## Appendix 4 – R.A. Financing Agreement

DRAFT



## Appendix 5 – Merchant Agreement

DRAFT

---

## Appendix 6 – Mobile Store Rental Agreement

There is no Mobile Store Rental Agreement for this Franchise Agreement.

DRAFT



## Franchise Operations Manual

### TERMS AND CONDITIONS OF SALE

Document written / modified: 6th December 2018

Version: 3

Location: Sydney

Approved by: B Bhai

#### Purpose

Franchisees are reminded that they are subject to the Snap-on Terms and Conditions of Sale as outlined in this document.

Snap-on Tools (Australia) Pty Ltd (ABN 55 010 793 683) and Snap-on Tools (New Zealand) Ltd (Co No 4387902) (collectively known as "Snap-on") agree to supply goods to Franchisees upon and subject to these Terms and Conditions of Trade.

Where Snap-on Australia is the seller of the goods, references to **Snap-on** in these Terms and Conditions of Sale refer to Snap-on Australia (as described above) and where Snap-on New Zealand is the seller of the goods, references to **Snap-on** in these Terms and Conditions of Sale refer to Snap-on New Zealand (as described above).

#### General

Any order placed by the Franchisee is deemed to be an order incorporating these Terms and Conditions of Sale. Any inconsistencies which may be introduced by the Franchisee in the Franchisee's order will not apply unless expressly acknowledged and agreed to by Snap-on in writing.

Accordingly, each order for goods accepted by Snap-on constitutes a contract for the supply and purchase of the goods specified in the order on these Terms and Conditions of Sale and if applicable, any other conditions expressly agreed to in writing by Snap-on and the Franchisee in relation to a specific order. Snap-on does not warrant or guarantee that it will have sufficient stock on hand to supply an order.

If Snap-on is unable to supply the Franchisee's total order these Terms and Conditions of Sale continue to apply to the goods supplied to the Franchisee.

#### Terms

Payment is due **seven (7)** days from statement date unless Snap-on agrees to delayed payment which will be adjusted on the Franchisee's weekly statement.

The balance of the Franchisee's weekly statement is payable each week.

#### Prices and Freight

All prices shall be as quoted, or in accordance with Snap-on's price list and/or pricing arrangements current at the time when the order is accepted by Snap-on. Prices quoted do not include GST. Snap-on may from time to time change the prices on its price list by providing the Franchisee with thirty (30) days' notice in writing. This writing can be via letter, fax, email, newsletter or other written communication.

Unless otherwise notified by Snap-on in writing at the time of accepting an order, prices include freight for one delivery per week to the Franchisee's nominated and approved location (on the Franchisee's nominated



## Franchise Operations Manual

### TERMS AND CONDITIONS OF SALE

Document written / modified: 6th December 2018

Version: 3

Location: Sydney

Approved by: B Bhai

shipment day). Freight on additional shipments during a week will be charged to the Franchisee. Snap-on may from time to time change its freight charges or the Franchisee's obligations relating to freight charges by providing the Franchisee with seven (7) days' notice in writing.

Notice of price or freight changes may be given:

- personally to the Franchisee,
- via any publication issued to the Franchisee, or
- via the Operations Manual or any website or other means of communication used by Snap-on to communicate with the Franchisee.

This policy is subject to change at Snap-on's discretion.

#### Goods and Services Tax (GST)

Unless GST is expressly included, the price payable for any supply made under or in connection with these Terms and Conditions of Sale does not include GST.

To the extent that any supply is a taxable supply under the applicable GST legislation, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.

Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary to enable the other party to claim any input tax credit, adjustment or refund relating to any amount of GST paid or payable.

#### Delivery

Any times quoted for delivery and installation are estimates only and Snap-on shall not be liable for failure to deliver, or for delay in delivery, arising from any cause whatsoever beyond the control of Snap-on.

Delivery occurs when the goods are dispatched from Snap-on's warehouse to the Franchisee's nominated delivery location which must have been approved by Snap-on. All costs (including freight) associated with delivery to places other than the nominated and approved delivery location will be at the Franchisee's expense. Products which do not attract freight costs are located on the [Freight Free List](#) and are also deemed to be delivered upon dispatch.

#### Returns

Approval for return of any goods must be obtained by the Franchisee from Snap-on prior to returning goods to Snap-on. Returns are to be completed as per the Returns Policy set out in the Operations Manual.

The Franchisee pays the freight for any returned goods.



## Franchise Operations Manual

### TERMS AND CONDITIONS OF SALE

Document written / modified: 6th December 2018

Version: 3

Location: Sydney

Approved by: B Bhai

#### Inspections and Claims

The Franchisee must inspect the goods immediately on receipt and if there is any cause for concern about the goods, the Franchisee must, within seven (7) days of receipt, give written notice to Snap-on containing full particulars of the goods received and the nature of the concern.

If the Franchisee fails to give such notice, then to the extent permitted by statute, the goods must be treated as having been accepted by the Franchisee and to be in accordance with the contract.

#### Warranty

The Franchisee warrants that it is purchasing the goods for the purposes of resupplying them to the Franchisee's customers and potential customers in accordance with the Franchisee's Franchise Agreement.

The only conditions, guarantees or warranties binding on Snap-on in connection with goods or services supplied by Snap-on to the Franchisee are those expressly set out in these Terms and Conditions of Sale or otherwise agreed to in writing by Snap-on and those (if any) which cannot be excluded and are imposed by law, including without limitation the *Competition and Consumer Act 2010* (Cth) and other applicable legislation (**Statutory Terms**).

Snap-on warrants to the Franchisee that goods manufactured or produced by Snap-on are free from defects at the time of delivery. Snap-on shall use its best endeavours to pass to the Franchisee the benefit of warranties given by the supplier, or manufacturer of goods not manufactured or produced by Snap-on.

To the extent permitted by applicable law, Snap-on's liability for breach of any applicable Statutory Terms or warranties set out in this Terms and Conditions of Sale is limited at Snap-on's option, to any one or more of the following:

- (a) in the case of goods;
  - i) the repair or replacement of the goods or supply of equivalent goods; or
  - ii) payment of the cost of repairing or replacing the goods or obtaining equivalent goods; or
- (b) in the case of services:
  - i) supplying the services again; or
  - ii) payment of the cost of having the services supplied again.

Except as expressly provided in these Terms and Conditions of Sale and the Statutory Terms (if applicable), Snap-on shall not be liable for consequential or indirect loss and damage of any kind whatsoever caused by any defect in materials, or manufacture on the part of Snap-on, or any servant, agent or contractor of Snap-on in connection with the supply of goods or services by Snap-on. Nothing in this clause excludes, restricts or modifies the application of any legislation in connection with the supply of goods by Snap-on to the Franchisee which cannot be lawfully excluded, restricted or modified.

Snap-on may at its discretion provide fully trained staff to ensure satisfaction with the goods.



## Franchise Operations Manual

### TERMS AND CONDITIONS OF SALE

Document written / modified: 6th December 2018

Version: 3

Location: Sydney

Approved by: B Bhai

The Franchisee must not make any representation or give any warranty to any person relating to the goods on behalf of Snap-on unless authorised in writing by Snap-on.

#### Risk and Title to Goods

Risk in the goods passes to the Franchisee immediately on dispatch of the goods to the Franchisee or other person nominated by the Franchisee.

Title to and ownership of the goods remains with Snap-on and does not pass to the Franchisee until payment in full for the goods has been received by Snap-on.

Any payment under this contract shall be deemed to be overdue upon the initiation of any act or proceeding relating to an Insolvency Event. Until the monies owing for the goods have been paid in full, the Franchisee has control of the goods and the Franchisee:

1. may sell the goods but only in the ordinary course of its franchised business operated pursuant to the Franchisee's franchise agreement;
2. must not transfer, charge or otherwise encumber or grant any interest over any debts and other obligations which any third party may owe to the Franchisee as a result of using or reselling goods (nothing in this clause limits or excludes Snap-on's interest as principal in those debts and other obligations); and
3. if the Franchisee has breached the contract or committed an Insolvency Event (as defined below) the Franchisee authorises Snap-on at any time to enter any premises or location upon which goods are stored and repossess the goods.

Nothing in this clause limits Snap-on's rights under the Franchisee's Franchise Agreement.

An **Insolvency Event** occurs if:

- the Franchisee commits an act of bankruptcy;
- a receiver is appointed to the Franchisee;
- the Franchisee goes into liquidation, administration, or some other form of insolvency administration whether formal or informal occurs in relation to the Franchisee;
- the Franchisee ceases to carry on business;
- the Franchisee enters into a scheme or compromises with its creditors; or
- the Franchisee is no longer able to pay its debts as and when they fall due.



## Franchise Operations Manual

### TERMS AND CONDITIONS OF SALE

Document written / modified: 6th December 2018

Version: 3

Location: Sydney

Approved by: B Bhai

#### Personal Property Security Interest Registration

Snap-on may register a security interest over the goods sold to the Franchisee under the provisions of the applicable personal property securities legislation. Snap-on may, by notice to the Franchisee, require the Franchisee to take all steps that Snap-on considers necessary or desirable to ensure its security interest in the goods is enforceable, and to perfect, or better secure the position of Snap-on under these Terms and Conditions of Sale. The Franchisee must comply with a notice under the above provision at the Franchisee's cost and expense. Snap-on is not obliged to give any notice, document or information under the applicable personal property securities legislation, unless the provision of the notice, document or information is required by that legislation and cannot be excluded. The parties may not disclose any information of a kind referred to in section 275(1) of Australia's Personal Property Securities Act 2009 (Cth) that is not in the public domain.

#### Interest

Snap-on may at its discretion charge the Franchisee interest on any unpaid balance owed to Snap-on by the Franchisee from the date a balance falls due until it is paid in full. Interest will be charged and calculated at the rate specified in the Franchise Agreement.

#### Waiver

Snap-on's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

#### Governing Law, Variation and Assignment

The law of New South Wales governs these Terms and Conditions of Sale.

Snap-on may amend or replace these Terms and Conditions of Sale from time to time by giving seven (7) days' notice to the Franchisee. Notice may be given:

- personally to the Franchisee
- via any publication issued to the Franchisee, or
- via the Operations Manual or any website or other means of communication used by Snap-on to communicate with the Franchisee.

Franchisee must not assign or transfer all or any of its rights or obligations under the contract without the Snap-on's prior written consent



## Franchise Operations Manual

### TERMS AND CONDITIONS OF SALE

Document written / modified: 6th December 2018

Version: 3

Location: Sydney

Approved by: B Bhai

#### Tool Hold

Franchisees who fail to pay the balance owing on their Weekly Statement by the due date will be put on Tool Hold. **Tool Hold** means that any Franchisee who has not paid their statement balance in full will not have orders, backorders, special orders or any other Product dispatched to them until their account is cleared.

Once a Franchisee has cleared their account, Snap-on will dispatch accepted orders for goods to the Franchisee in accordance with these Terms and Conditions of Sale.

If the Franchisee is concerned about being placed on Tool Hold, the Franchisee should proactively talk to their SDM or BM.

#### Consequences of Repeated Breaches this Policy

Time is of the essence in respect of Franchisee's obligation to pay for goods.

If the Franchisee fails to pay Snap-on in accordance with these Terms and Conditions of Sale and Snap-on has agreed in writing to supply goods to the Franchisee on credit, Snap-on may without prejudice to any of its other rights and remedies:

- immediately terminate the credit arrangements; and/or
- place the Franchisee on Tool Hold (see above).

If the Franchisee has a repeated and/or history of being on Tool Hold or with-holding payment, Snap-on may, subject to the provisions of the Franchisee's Franchise Agreement, at its discretion, terminate the Franchisee's Franchise Agreement.

#### Ongoing Support

If you require any additional advice or assistance about these Terms and Conditions of Sale, please contact the relevant SDM in the first instance, or the relevant state Business Manager or National Franchise Manager.