

ENZED TERMS AND CONDITIONS TEMPLATE

Revision Date	Description of change
1 st July 2012	New Procedure implemented to make available to the ENZED Network a standard set of Terms and Conditions and also details the process to upload these to the Service Centre Website

OVERVIEW

The new Australian Consumer Laws came into effect from the 1st January 2012. The new legislation enforced a number of changes onto business impacting their current Terms and Conditions.



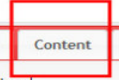
In conjunction with the EAC, Parker agreed to have prepared a standard set of Terms and Conditions and to make these available for the network.

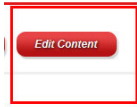
Parker strongly recommend that the ENZED Franchisees adopt these Terms and Conditions as their own sets of Terms and Conditions.

These are placed at the end of this procedure (Pages 11 – 18) and may be copied onto your own template.

PROCEDURE

How to upload your new ENZED Terms and Conditions onto your own ENZED Website;

1. Ensure that your T's and C's are in PDF format before proceeding
2. Log on to www.ened.com.au
3. Select **Login** at the top of the home page

4. Enter your username and password and click on Login (for Service Centre login only)
5. Click on "My ENZED" at the top Right hand side of the page

6. Click on Content

7. Scroll to the bottom to "Terms and Conditions", select Edit Content



8. To edit existing Terms & Conditions, you will see a comment “Click here to view our **Terms and Conditions**”. Click on “Terms & Conditions”



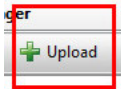
9. To enter new Terms & Conditions, select the first of the round green balls with a chain link located on the top tool bar and click



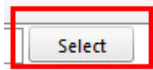
10. A new folder will appear titled Hyper Link Manager. Click on “Document Manager”



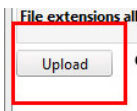
11. Another folder will appear titled “Document Manager”. Select Upload



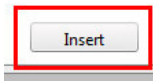
12. Another folder titled “Upload”. Click on “Select” and locate your latest Terms and Conditions.



13. Select Upload



14. On Document Manager, select “Insert”



15. Select “Save Changes” on the bottom left red button.



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16. Your new Terms and Conditions should be uploaded and available in pdf for your customers to download



Terms and Conditions of Sale

1 Interpretation

In these Conditions:

“Accession” has the meaning given in the PPSA.

“Collateral” has the meaning given in the PPSA.

“Australian Consumer Law” means the law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);

“Buyer” means the purchaser of Goods or Services from the Company and includes any servants, agents, or contractors acting on behalf of the Buyer where the context permits;

“Company” means **[insert company name]** Pty Limited ACN **[insert ACN]** and its agents, officers and employees and any Related Bodies Corporate (if such Related Body Corporate is named as the party making or accepting the order) trading as Enzed **[insert name of Enzed franchisee]**;

“Conditions” means these terms and conditions of sale;

“Consumer” has the same meaning given to it by section 3 of the Australian Consumer Law;

“Consumer Contract” means a contract for the supply of Goods or Services by the Company to the Buyer where the Buyer is a Consumer;

“Consumer Goods” means Goods ordinarily acquired for personal, domestic or household use or consumption;

“Consumer Guarantee” means a consumer guarantee under the Australian Consumer Law;

“Consumer Services” means Services ordinarily acquired for personal, domestic or household use or consumption.

“Consequential Loss” means:

- (a) any special, indirect or consequential loss or damage; and
- (b) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of goodwill or wasted overheads whatsoever, whether direct or indirect;

“Contract” means a contract for the sale and purchase of the Goods or Services in accordance with these Conditions, as evidenced by the acceptance of any Order from the Buyer to the Company;

“Goods” means the products purchased from the Company by the Buyer which are the subject of an Order;

“Inventory” has the meaning given in the PPSA.

“Order” means any order for Goods or Services from the Buyer to the Company from time to time in a form acceptable to the Company;

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

“PPS Register” means the Personal Property Securities Register established under the PPSA.

“Proceeds” has the meaning given in the PPSA.

“Purchase Money Security Interest” has the meaning given in the PPSA.

“Quotation” means a quotation supplied by the Company to the Buyer in respect of the Goods or Services;

“Related Body Corporate” has the meaning given in the Corporations Act 2001 (Cth);

“Relevant Collateral” means Collateral which is the subject of a Security Interest granted under this document.

“Secured Party” has the meaning given in the PPSA.

“Security Interest” has the meaning given in the PPSA.

“Services” means the services purchased from the Company by the Buyer which are the subject of an Order;



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2 General

- (a) These Conditions apply to all Goods and Services supplied by the Company.
- (b) The Buyer's rights under these Conditions are in addition to the Buyer's other rights and remedies available to the Buyer under the Australian Consumer Law.
- (c) The Buyer is deemed to have read and agreed to these Conditions prior to the placing of any Order.
- (d) These Conditions shall prevail over all inconsistencies in an Order and Quotation, unless the Company expressly agrees otherwise and that agreement is acknowledged in writing.
- (e) These Conditions are the only conditions to which the Company will be bound and the Buyer agrees that these terms will in all circumstances prevail over the Buyer's terms and conditions of purchase (if any).
- (f) Where the Contract is not a Consumer Contract, no promise, representation, warranty or undertaking (including any technical advice or assistance provided by the Company to the Buyer in connection with the Buyer's Order for the Goods or Services) other than that which is expressed in these Conditions will bind the Company, unless the Company expressly agrees otherwise in writing.
- (g) Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under these Conditions.
- (h) Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of the Contract, remains in force after the expiration or termination of the Contract.
- (i) Subject to any express provision in the Contract to the contrary, the rights of a party under the contract are cumulative and are in addition to any other rights of that party.
- (j) Parker and Enzed Goods (which are covered by design registration) are specifically manufactured for attachment only to the make and type of hoses specified in its catalogue. Parker and Enzed Goods are supplied to be used only in accordance with these instructions. Any other use of the Goods contrary to the instructions contained in the catalogue may result in an unsatisfactory or even dangerous product.

3 Delivery

- (a) Any delivery times or dates expressed by the Company to the Buyer are estimates only.
- (b) The Buyer may cancel an order for Goods or Services purchased under a Consumer Contract if the Company is unable to deliver the Goods or Services within **[insert number of days]** of any specified delivery date.
- (c) In respect of Goods, the Company shall not be liable for:
 - (i) any damage or loss associated with delayed delivery;
 - (ii) any damage or loss due to unloading or packaging; or
 - (iii) any damage to property caused upon entering upon the Buyer's premises to deliver the Goods.
- (d) Late delivery of Goods does not vary these Conditions or relieve the Buyer from its obligations to accept the Goods and to pay for the Goods.
- (e) The Company may at its option deliver the Goods to the Buyer in any number of instalments unless otherwise agreed in writing by the Company.
- (f) Delivery of the Goods will be taken to have occurred when the Goods are either:
 - (i) collected by the Buyer or the Buyer's agent; or
 - (ii) offloaded at the Buyer's nominated point of delivery.
- (g) Any cost incurred by the Company due to any failure by the Buyer to accept the Goods at the time of delivery will be reimbursed by the Buyer to the Company.

4 Prices and GST

- (a) Unless otherwise stated all prices quoted by the Company in relation to Goods and Services sold are exclusive of Goods and Services Tax (GST).
- (b) Where GST is applied on any supply made, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply in addition to and at the same time the supplier is required to pay for the taxable supply.
- (c) Any terms used in this **clause 4** have the same meaning as those defined in A New Tax System (Goods and Services Tax) Act 1999.



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[Note: If goods and services are of a kind ordinarily acquired for Personal/Domestic/Household use or consumption, prices/price lists will need to include GST to comply with the ACL s 48 requirements]

- 5 **Credit payment [include only if credit payment relevant]**
- (a) The Company reserves the right to withdraw approval of an application for credit account for the Buyer at any time by notice to the Buyer.
 - (b) The Company reserves the right to request such security or additional security for any credit arrangements with the Buyer as the Company shall in its discretion think fit and shall be entitled to withhold supply of any Goods or Services or credit arrangements until such security or additional security is provided by the Buyer.

- 6 **Payment and default [to be simplified if franchisee does not have a credit payment system]**
- (a) Unless otherwise agreed by the Company, all:
 - (i) accounts where the Company has given its approval for an application of credit account shall be payable **[insert payment terms e.g. X days from the end of the month of the invoice]**; and
 - (ii) accounts where there is no approval for an application of credit account, or where such approval is withdrawn, shall be payable **[insert payment terms e.g. at placement of order or delivery]**, unless otherwise expressly agreed in writing by the Company.
 - (b) If any of the events set out in this **clause 6(b)** occur, all moneys outstanding to the Company under any Contract shall become immediately due and payable and the Company may withhold further deliveries or the provision of further Services or cancel the Contract without notice to the Buyer and without prejudice to any other action or remedy which the Company has or might otherwise have had:
 - (i) the Buyer defaults in any payment owing to the Company (or any of its Related Bodies Corporate) or is unable to pay its debts as and when they fall due;
 - (ii) the Buyer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect to the Buyer's estate, or any part of the property or assets;
 - (iii) the Buyer being a company passes a resolution for its winding up or the appointment of an administrator, enters into liquidation or administration, or has application for winding up filed against it;
 - (iv) a receiver, receiver and manager or controller is appointed over any part of the property or assets of the Buyer; or
 - (v) the Buyer experiences any analogous event having substantially similar effect to any of the events specified above.
 - (c) The Buyer indemnifies the Company against, and must pay to the Company on demand, all costs and expenses incurred by the Company in enforcing the Contract, including but not limited to costs associated with fees and commissions payable by the Company to any legal, financial or accounting advisor or debt collection agency.
 - (d) The Buyer shall, if so required by the Company, pay interest on any outstanding payments under this document calculated from the date on which the payment falls due at the rate of **[insert percentage which should reflect actual funding costs so as to not be a penalty]** per cent per annum on all overdue amounts owing to the Company. Interest will accrue daily and is payable on demand.
 - (e) Payment will not be taken to have occurred until all cheques or electronic payments tendered in discharge of amounts owing to the Company have been presented and cleared in full.
 - (f) The Buyer is not entitled to make any deduction from the price in respect of any set off or counteraction.

7 **Administration fee**

The Company reserves the right to charge the Buyer a reasonable administration fee for issuing duplicate invoices, statements or other documents requested by the Buyer.

8 **Quotations**

- (a) All prices quoted for Goods and Services are valid quotes for **[insert number of days]** from the date of Quotation.
- (b) The Company reserves the right to charge the Buyer for any costs incurred as a result of the Buyer varying its Order or the Contract, correcting any errors or omissions referred to in **clause 8(c)**, or requiring Goods or Services urgently.
- (c) The Company will supply Goods and Services on the basis of the Order (whether written or oral). The Company will not be responsible for any errors or omissions in relation to the Goods or Services where

1st July 2012

Auth: Franchise Manager

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those errors or omissions result wholly or partially from incomplete or unclear instructions in the Order by the Buyer.

9 Inspection, acceptance and returned Goods

- (a) The Buyer shall inspect the Goods immediately following delivery and shall notify the Company of any defects in writing within **[insert number of days]** of delivery. If the Buyer does not notify the Company within **[insert number of days]** of delivery, the Buyer will be deemed to have accepted the Goods.
- (b) The Company is not under any duty to accept Goods returned by the Buyer where the Buyer has not notified the Company within **[insert number of days]** and will do so only on terms to be agreed in writing in each individual case.
- (c) Nothing in this **clause 9** affects the Buyer's rights under a Consumer Contract.

10 Cancellation

- (a) The Company may cancel any Contract any time before Goods are delivered or the Services are provided by giving written notice to the Buyer.
- (b) On giving notice under **clause 10(a)**, the Company will repay to the Buyer any sums paid in respect of the Goods or Services but the Company will not bear any other liability in respect of a cancellation.
- (c) Subject to **clause 3(b)**, the Buyer may not cancel a Contract at any time except with the Company's prior written consent.
- (d) In the event that the Buyer cancels a Contract other than under **clause 3(b)**:
 - (i) the Company may retain any deposit or other sums paid on account of the Goods or Services; and
 - (ii) if payment for the Goods or Services is not already made in full, the Buyer will be responsible for any losses incurred by the Company in respect of such cancellation (including Consequential Loss).
- (e) In the event the Buyer cancels a Contract under **clause 3(b)**:
 - (i) the Company will repay to the Buyer any sums paid in respect of the Goods or Services; and
 - (ii) the Company may not make any claim against the Buyer in respect of the cancellation.

11 Risks

Unless otherwise agreed in writing, all risks associated with Goods purchased shall pass to the Buyer at the earlier of either:

- (a) delivery to the Buyer; or
- (b) title in the Goods passing to the Buyer in accordance with **clause 12**. **[Note: To minimise Franchisee risk, should never let delivery occur until payment is made]**

12 Title to Goods

- (a) Title to and property in the Goods will not pass to the Buyer until payment in full for all Goods is made.
- (b) The Buyer acknowledges that until the Buyer has paid all moneys owed to the Company, the relationship of the Buyer to the Company is as a fiduciary in respect of the Goods and accordingly:
 - (i) the Buyer must store the Goods in such a way that they can be recognised as the property of the Company;
 - (ii) upon resale of the Goods by the Buyer, the Company will have the right to trace the full proceeds of sale;
 - (iii) the Buyer must account to the Company for any proceeds of sale under **clause 12(b)(ii)** and the Company may recover from such proceeds of sale any moneys then owing to the Company on any account whatsoever;
 - (iv) the Company shall be entitled at any time to demand the return of the Goods and shall be entitled to search for and remove the Goods without giving notice to the Buyer; and
 - (v) the Buyer must not encumber or otherwise charge the Goods; and

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- (vi) the Company reserves the right to enter upon any premises for the purpose of repossessing the Goods without prejudice to any other rights of recovery available and the Buyer grants the Company a licence to enter such premises for the purpose of exercising such right.
- (c) The Buyer indemnifies the Company against any claim, damages, liability, cost, expenses or payment which it suffers, incurs or becomes liable for in respect of the Company exercising its rights under this **clause 12**.

13 Personal Property Securities Act

- (a) The Buyer acknowledges that:
 - (i) the retention of title in the Goods under this document gives rise to a Security Interest in the Goods in favour of the Company being a Purchase Money Security Interest; and
 - (ii) the Company's rights and interest in Proceeds derived from the Goods constitute a Security Interest.
- (b) The Company may, at the Buyer's expense, register any Security Interest granted under this document on the PPS Register in any manner it chooses. The Buyer must provide the Company with any information it requires for the purposes of effecting such registration.
- (c) For the purposes of section 157(3) of the PPSA, the Buyer irrevocably and unconditionally waives its right to receive any notice from the Company in connection with the registration of a Security Interest arising under this document.
- (d) The Buyer agrees to take such steps as the Company reasonably requires to perfect or otherwise ensure the enforceability and first ranking priority of any Security Interest granted to it under this document, including by:
 - (i) obtaining and giving consents;
 - (ii) producing and providing receipts;
 - (iii) attending to the signing of documents or procuring the signing of documents;
 - (iv) facilitating the registration of any Security Interest on the PPS Register;
 - (v) facilitating the giving of notice to any person, including any person who also has, or appears to have, a Security Interest over Relevant Collateral; and
 - (vi) facilitating the exercise of the Company's right in enforcing any Security Interest.
- (e) The Buyer warrants the Goods are not, and will not during the period the Buyer has possession of such Goods, be, Inventory of the Buyer.
- (f) To the extent that this document gives rise to a Security Interest which secures payment or performance of an obligation, the parties agree that for the purposes of section 115 of the PPSA, the following sections of the PPSA will not apply to any Relevant Collateral:
 - (i) section 95 (notice by Secured Party of removal of Accession);
 - (ii) section 121(4) (notice by Secured Party of enforcement of Security Interest in liquid assets);
 - (iii) section 125 (obligation of Secured Party to dispose of or retain Collateral after seizure);
 - (iv) section 130, to the extent that it requires the Company to give any notice to the Buyer (notice by Secured Party of disposal of Collateral);
 - (v) section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account);
 - (vi) section 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period);
 - (vii) section 135 (notice by Secured Party of retention of Collateral);
 - (viii) section 142 (redemption of collateral); and
 - (ix) section 143 (reinstatement of security agreement).
- (g) Without limitation to any other provision of this document, it is a default of the Buyer under this document for the purposes of section 123(1) of the PPSA if any person with a Security Interest in Relevant Collateral:
 - (i) obtains or becomes entitled to exercise a right to seize part or all of the Relevant Collateral; or
 - (ii) seizes or becomes entitled to seize part or all of the Relevant Collateral,

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without the consent of the Company.

14 Liability where the Australian Consumer Law applies

This **clause 14** applies where the Contract under which the Buyer purchases the Goods or Services is a Consumer Contract.

- (a) If the Goods or Services fail to meet any Consumer Guarantee, the Buyer will be entitled to such rights and remedies as are permitted or provided in the Australian Consumer Law for such failure, to the extent that such rights and remedies cannot be lawfully excluded.
- (b) Where the Goods purchased by the Buyer from the Company are not Consumer Goods, the Company's liability to the Buyer for a failure to comply with a Consumer Guarantee is limited to:
 - (i) replacing the Goods or supplying equivalent Goods;
 - (ii) repairing the Goods;
 - (iii) paying for the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (iv) paying for the cost of having the Goods repairedat the Company's election.
- (c) Where the Services purchased by the Buyer from the Company are not Consumer Services, the Company's liability to the Buyer for a failure to comply with a Consumer Guarantee is limited to:
 - (i) supplying the Services again; or
 - (ii) paying for the cost of having the Services supplied againat the Company's election.
- (d) The Buyer may only exercise any right or remedy for breach of a Consumer Guarantee strictly in accordance with the rights and responsibilities of the Buyer under the Australian Consumer Law.
- (e) The Company will not be liable to the Buyer or any third party for any loss that was not reasonably foreseeable.

15 Limitation of liability where the Australian Consumer Law does not apply

- (a) This **clause 15** applies to a Contract which is not a Consumer Contract and does not limit the liability of the Company under a Consumer Contract.
- (b) The Company shall not be liable for any guarantee, warranty or representation as to the quality, performance, and fitness for purpose or otherwise of any Goods or Services unless expressed in writing and signed on behalf of the Company and any such warranty or representation shall be limited to its express terms.
- (c) The Company is not liable in tort for any loss or damages suffered by the Buyer.
- (d) The Company will not be liable to the Buyer for any Consequential Loss arising out of the late delivery of Goods or the late supply of Services or any failure to perform or observe the Company's obligations under any Contract.
- (e) The Buyer will keep the Company fully indemnified against any claim made against the Company by a third party for any Consequential Loss.

16 Governing Law

- (a) This Contract is made in and shall be governed by the laws of the the State of **[insert state]**.
- (b) The parties agree that unless otherwise stipulated by the Company all disputes arising between them shall be submitted to the courts of the State of **[insert state]** and any court competent to hear appeals from those courts of first instance.

17 Force majeure

- (a) Deliveries of Goods and the supply of Services may be totally or partially suspended by the Company during any period in which the Company may be prevented or hindered from delivering Goods or providing Services through any circumstances outside the Company's reasonable control, including but not limited to: strikes, raw material shortages, accidents or breakdowns of plant or machinery.



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- (b) The Company will not be liable to the Buyer for any loss or damage, including Consequential Loss, arising directly or indirectly from such suspension.

18 Assignment

- (a) The Buyer must not assign or deal with any right under these Conditions without the prior written consent of the Company.
- (b) The Company may sub-contact the performance of its obligations under these Conditions to any other person without the consent of the Buyer.

19 Stamp duty [subject to tax advice]

The Buyer is, as between the parties, liable for and must duly pay all stamp duty on or relating to a purchase of Goods or Services.

20 Patents [insert if franchisees put together products based on customer orders]

- (a) If the Buyer furnishes any design or instruction to the Company in relation to the Goods, the Buyer warrants that the execution of its Order shall not cause the Company to infringe of any patent, registered design or trade mark, and the Buyer indemnifies the Company against any infringement or unauthorised use of patent, trade mark, design or copyright arising out of the use of Goods.
- (b) The Buyer acknowledges that the sale and purchase of the Goods under the Contract does not confer on the Buyer any licence or rights under any patent, trade mark or copyright which is the property of the Company.

21 General lien

- (a) In addition to any lien to which the Company may be entitled under common law, the Company shall be entitled to exercise a general lien over all items in its possession belonging to the Buyer until the Buyer has paid in full for all Goods or Services supplied by the Company to the Buyer. The Company may at its sole discretion sell any item that is subject to such a lien, provided that the Company shall pay to the Buyer any surplus proceeds that are released by it from sale of the relevant items after discharging in full moneys outstanding to the Company in respect of Goods that have been delivered or Services supplied by it to the Buyer.
- (b) The Buyer will use its best endeavours to assist with the registration or recording of the Company's rights and interests set out in this **clause 21**.

22 Waiver and exercise of rights

- (a) A waiver of a provision of or right under these Conditions must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.
- (b) A single or partial exercise of a waiver of a right relating to the Contract will not prevent any other exercise of any right.
- (c) The failure, delay, relaxation or indulgence by a party in exercising a power or right under these Conditions is not a waiver of that power or right.
- (d) An exercise of a power or right under these Conditions does not preclude a further exercise of it or the exercise of another right or power.

23 Shortage and non-conforming goods

The Buyer waives any claim for shortage of any Goods delivered or failure to supply Goods conforming with the Order if a claim for short delivery or failure to supply Goods conforming with the Order has not been lodged with the Company within **[insert number of days e.g. 7]** days from the date of receipt of Goods by the Buyer. Any claim for shortage of any Goods delivered or failure to supply Goods conforming with the Order must be submitted in writing in a form approved by the Company.

24 Specifications

Except where the Goods are purchased under a Consumer Contract:

- (a) all specifications, drawings, and particulars of weights and dimensions submitted or published by the Company are approximate only and any deviation from any of these things does not vitiate any contract with the Company or form grounds for any claim against the Company; and
- (b) descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the Contract or of the description applied to the Goods.



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25 Performance

Except where the Goods are purchased under a Consumer Contract, any performance figures given by the Company are estimates only. The Company is under no liability for damages for failure of the Goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

26 Interpretation

In these Conditions, unless the context otherwise requires:

- (a) headings do not affect interpretation;
- (b) singular includes plural and plural includes singular;
- (c) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (d) a reference to a person includes a partnership, corporation, association, government body and any other entity;
- (e) an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (f) an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (g) a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- (h) a provision is not construed against a party only because that party drafted it;
- (i) an unenforceable provision or part of a provision may be severed, and the remainder of these Conditions continues in force, unless this would materially change the intended effect of these Conditions;
- (j) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions