

# STANDARD TERMS & CONDITIONS

E.W.S (Australia) Pty Ltd Pty Ltd (ABN 93 603 150 456)

Please read these Terms and Conditions carefully as they specify the basis of the Agreement under which the Goods and Services are provided to you (the Client) by EWS Australia. If you accept the Quotation these Standard Terms and Conditions with the Quotation and any Special Conditions will be and will constitute the whole of the Agreement with you.

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Additional Charge means:

- (a) Fees or charges for Additional Services performed at your request or reasonably required as a result of your conduct, calculated in accordance with our then current prices; and
- (b) Expenses incurred by us, at your request or reasonably required as a result of your conduct.

Additional Services means any Services that are not specified in a Purchase Order.

Business Day means a day that is not a Saturday, Sunday or public holiday in Western Australia.

Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).

Company means E.W.S (Australia) Pty Ltd Pty Ltd (ACN 603 150 456).

Confidential Information has the meaning given to it in clause 10.1 and 10.2 and includes any information marked as confidential and any information received or developed by us during the term of this agreement, which is not publicly available and relates to processes, equipment and techniques used by us in the course of our business. This includes all information, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and

proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans.

Customer or you means the person identified in a Purchase Order as the customer and includes your agents and permitted assigns;

Delivery occurs on the earlier of:

- (a) When you collect the Products from our premises.
- (b) 10 Business Days after we advise you the Products are available for collection; and
- (c) If in the Quote, we agree to transport the Products to your premises (or any other premises nominated by you) when we deliver the Products those premises.

Event of Insolvency means:

- (a) A receiver, manager, receiver and manager, trustee, administrator, Controller or similar officer is appointed in respect of a person or any asset of a person.
- (b) A liquidator or provisional liquidator is appointed in respect of a corporation.
- (c) Any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraphs (a) or (b);
  - (ii) winding up a corporation; or
  - (iii) proposing or implementing a scheme of arrangement.
- (d) Any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate under any Insolvency Provision.
- (e) A moratorium of any debts of a person, or an official assignment, or a composition, or an arrangement (formal or informal) with a person's creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control

of that person's creditors or a trustee, is ordered, declared, or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days.

- (f) A person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts; or
- (g) Any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person.

Fee means the Purchase Price specified in the Purchase Order.

Good Industry Practice means the practices, methods and acts engaged in or approved by a person which, in the conduct of its undertaking, exercises that degree of due diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced persons.

GST Act means A New Tax System (Products and Services Tax) Act 1999 (Cth) as amended from time to time.

Intellectual Property Rights means rights at any time protected by statute or common law, including copyright, trademarks, patents and registered designs and includes our Software and the systems, procedures, processes, information and other intellectual property we create in connection with the provision of the Products and Services and includes the know-how and other intellectual property in statistical and derivative data as processed by our systems, procedures and processes.

Loss includes, but is not limited to, costs (including party to party legal costs and our legal costs), expenses, lost profits, award of damages, personal injury and property damage.

PPSA means the Personal Property Securities Act 2009 (Cth).

PPS Security Interest has same meaning as in the PPSA.

PPSR means the Personal Property Securities Register established under the PPSA.

Products means any Products (including parts and accessories) supplied by us to you and referred to in the Purchase Order.

Purchase Order means an order for Products and or Services by you and as varied in writing from time to time by the parties.

Quote means a quote for the price of Products and or Services.

Security Interest means:

- (a) A PPS Security Interest.
- (b) Any other mortgage, pledge, lien or charge; or
- (c) Any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Services means the Services specified in a Purchase Order.

Specifications means your specifications advised to us in writing.

State means the state or territory where the Services are provided.

## **1.2 Interpretation**

Unless the context otherwise requires:

- (a) A person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental department or agency.
- (b) If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (c) A reference to an annexure, attachment or schedule is a reference to an annexure, attachment or schedule to this Agreement, and a reference to this Agreement includes an annexure, attachment or schedule.
- (d) No provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision; and
- (e) Time will be of the essence of this Agreement in all respects.

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## 2. GENERAL

- (a) This Agreement applies to all transactions between us for the supply of Products and Services. These terms take precedence over any terms of trade contained in any of your documents.
- (b) The Agreement comprises:
  - (i) the Quote.
  - (ii) the Purchase Order; and
  - (iii) these Terms and Conditions.
- (c) To the extent there is any inconsistency in the documents, the documents will be read in the order set in clause 2(b).

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## 3. QUOTES AND ORDERS

### 3.1 Quotes

- (a) We may provide you with a quote for the supply of Products and Services. Any quote is valid for 30 days.
- (b) We reserve the right to amend any Quote before you accept it. Any amended Quote supersedes any relevant prior quote or dealings between us.
- (c) Unless expressly agreed in writing, a Quote does not include delivery or installation of the Products.
- (d) We are not obliged to do anything until the Quote has been accepted in writing by you.
- (e) We may amend any Quote before the Order has been completed to consider any rise or fall in the cost of completing the Order. We will notify you of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these terms and conditions.
- (f) Any indication in a Quote of the time frame for the provision of the Products or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon us.

## 3.2 Purchase Orders

- (a) Every Purchase Order must be in writing and identify any Quote to which the Purchase Order relates.
- (b) A Purchase Order is not a separate contract but forms part of these Terms and Conditions, with the most recent Quote provided by us relating to the Purchase Order.
- (c) You warrant that all information you provide to us is current and accurate and that we may rely on it.

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## 4. PRODUCTS AND SERVICES

### 4.1 Supply of Products and Services

- (a) In consideration of you paying to us the Purchase Price, we will supply the Products and Services to you, subject to the terms of this Agreement.
- (b) We are not required to provide any Products or Services not set out in the Purchase Order unless you request in writing that we provide those Products or Services, and we agree to that request.

### 4.2 Standard

We warrant that:

- (a) All Products and Services will be supplied in accordance with your Specifications.
- (b) We will use reasonable care and skill in providing the Products and performing the Services in accordance with Good Industry Practice, the Purchase Order and in accordance with all applicable legislation, laws or regulations; and
- (c) All Products shall be new and unused unless you agree otherwise.

### 4.3 Time for delivery

We will use our best endeavours to meet any desired delivery dates specified in a Purchase Order, but our ability to do so is dependent upon our current workflow, the availability of Products and the prompt receipt of information from you. If we become aware of any matter that may change the timing of the delivery of any Products or Services, we will provide you notice of this.

#### 4.4 Cancellation

If you cancel all or any part of a Purchase Order for any reason (other than a breach by us) you must pay to us:

- (a) Where you provide us notice of the cancellation in writing before we start to manufacture any Products or order any Products or parts from a supplier, or provide any Services, a fee equal to 10% of the Purchase Order.
- (b) Where you provide us notice of the cancellation in writing after we start to manufacture any Products or order any Products or parts from a supplier, or provide any Services:
  - (i) 10% of the Purchase Order; and  

All costs reasonably incurred for work completed prior to the cancellation including the cost of any Products or parts from a supplier.
- (c) Where you provide us notice of the cancellation after Products have been manufactured or Delivered, the full amount of the Purchase Order; and
- (d) In all other circumstances all costs reasonably incurred and for work completed prior to the cancellation.

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#### 5. DATA TRANSMISSION AND ACCESS TO DATA

Where a Purchase Order includes Data Transmission and access to Data:

- (a) You must pay for ongoing data transmission and access to data:
- (b) We reserve the right to deactivate devices and withhold access to data if payment for invoices relating to data fees is not received by the due date.
- (c) If you do not request us in writing to deactivate a device data plan, you must continue to pay the data fees, regardless of the functioning status of the device.
- (d) We may invoice you for the deactivation and reactivation of a device; and
- (e) Increased logging frequency and transmission rates for data transmitted from a device outside of the quoted rate, will incur additional overage fees.

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**6. VARIATIONS**

- (a) You may request a variation to a Purchase Order at any time.
- (b) If we accept a variation, we may vary the Purchase Order to include any Additional Charges that arise due to the variation.
- (c) We have an automatic extension of time for any delays caused by or contributed by a variation.

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**7. INVOICING AND PAYMENT****7.1 Invoicing and Payment**

- (a) Unless the Purchase Order states otherwise, you must pay all invoices within 30 days from the date of the invoice, without deduction or set off.
- (b) The Purchase Price is exclusive of GST.
- (c) Notwithstanding 1.1(a) we may, in our absolute discretion, issue an invoice to you in any one or more of the following ways:
  - (i) where we have agreed to supply you with Products or Services on credit:
    - (A) In relation to Products, when the Products are available for collection; and
    - (B) In relation to Services, upon completion of the Services; or
  - (ii) Where we have not agreed to supply you with Products or Services on credit, or where we decide in relation to any Purchase Order not to supply you with Products or Services on credit, for prepayment in advance prior to the provision of Products or Services.
  - (iii) In instalments; and
  - (iv) In any other manner we deem reasonable.



## 7.2 Suspension of credit

Where we have agreed to supply you with Products or Services on credit, we may, in our absolute discretion suspend or withdraw the provision of credit or change the credit limit upon providing you reasonable notice in writing.

## 7.3 Disputed invoices

- (a) If you dispute part of an invoice, you must:
  - (i) Notify us in writing within 14 days of receipt of the invoice of the reasons for disputing the invoice; and
  - (ii) Pay the undisputed amount on or before the due date for payment.
- (b) The parties must endeavour to resolve the dispute within 10 days of you giving us the notice of the dispute. If the dispute cannot be resolved, then clause 17 will apply.

## 7.4 Additional Services

Fees for Additional Services will be charged on a time basis at the rates set out in the Purchase Order, or if no rates are specified, at our standard hourly rate.

## 7.5 Extra costs

You agree to pay on demand any additional costs incurred by us in providing the Products and or Services so long as such additional costs were pre-approved by you.

## 7.6 Interest

You must pay interest on any outstanding invoices at the rate of 3% above the rate charged to us by our bank for any overdraft accommodation, calculated daily.

## 7.7 No set off

You are not entitled to retain any money owing to us notwithstanding any default or alleged default by us of this Agreement, including (but not limited to) the supply of allegedly faulty or defective Products or Services, or a delay in the provision of any Products or Services. Nothing in this paragraph affects your rights for any alleged failure of a guarantee under the Australian Consumer Law.

## **7.8 Allocation of payments**

We may, in our complete discretion, apply any payment received from you to any amount owing by you, including for interests and costs.

## **7.9 Suspension**

In addition to any remedy we have at law, we may suspend the provision of Products or Services until such time as all amounts owing by you have been paid.

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## **8. ADDITIONAL CHARGES**

### **8.1 Payment of Additional Charges**

We may require you pay the Additional Charges in respect of costs incurred by us as a result of:

- (a) Reliance on inadequate or incorrect information or material provided by you.
- (b) Information or material supplied later than required by us in order for us to perform the Services within any specified time frame.
- (c) Any delay in commencing the manufacture of any Products where that delay is caused by you failing to provide us with any information, we reasonably request; or
- (d) Any variation agreed to by us.

### **8.2 Reasons for Additional Charges**

We may also impose Additional Charges as a result of:

- (a) Any charges not included in the Purchase Order including couriers and government and council taxes and charges; and
- (b) Any storage costs incurred by us.

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## **9. INSPECTION AND ACCEPTANCE OF GOODS**

### **9.1 Inspection and Acceptance**

- (a) You are deemed to have accepted the Products and that the Products are not faulty and accord with the Purchase Order, unless within 7 days of Delivery, you advise us to the contrary. Nothing in this paragraph

affects your rights for any alleged failure of a guarantee under the Australian Consumer Law.

- (b) You must allow us to inspect any Products that you say are faulty or not in accordance with the Purchase Price.

## **9.2 Returns**

- (a) We will not accept the return of any alleged faulty or defective Products unless we have given prior written authorisation for their return.
- (b) Any returns of any alleged faulty or defective Products is at your cost and must be by our approved carrier.
- (c) Where we accept a return and agree to provide a credit, we reserve the right to charge a 10% handling charge.

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## **10. TITLE AND RISK**

### **10.1 Risk**

Risk in the Products passes to you immediately on Delivery.

### **10.2 Title**

- (a) Title to the Products does not pass to you until all money (including money owing in respect of other transactions between us and you) due and payable to us by you has been fully paid.
- (b) Where Products are supplied by us without payment in full, you:
  - (i) Are bailee of the Products until title passes to you.
  - (ii) Irrevocably appoint us to be your attorney to do all acts and things necessary to ensure the retention of title to the Products including the registration of any security interest in favour of us with respect to the Products under the PPS Law.
  - (iii) Must be able upon demand by us to separate and identify as belonging to the us Products supplied by us from other Products which are held by you.
  - (iv) Must not allow any person to have or acquire any security interest in the Products.

- (v) Agree that we may repossess the Products if payment is not made within 30 days (or such longer time as we may, in our complete discretion, approve in writing) of the supply of the Products; and
  - (vi) Grant us and our agents an irrevocable licence to enter your premises in order to recover possession of the Products pursuant to this paragraph. You indemnify us for any damage to property or personal injury which occurs as a result of us entering your premises.
- (c) Where Products are supplied by us to you without payment in full of all monies payable in respect of the Products and:
- (i) You make a new object from the Products, whether finished or not.
  - (ii) You mix the Products with other Products; or
  - (iii) The Products becomes part of the other Products,
- (New Products)
- you agree with us that the ownership of the New Products immediately passes to us. You will hold the New Products on trust for us until payment of all sums owing to us whether under this Agreement or any other contract have been made. We may require you to store the New Products in a manner that clearly shows our ownership.
- (d) Notwithstanding clause 10.2(c), you may transfer, sell or dispose of the Products, including New Products, to a third party in the ordinary course of business. This is provided that,
- (i) Where you are paid by a third party in respect of Products including New Products, you hold the whole of the proceeds of sale, less any GST, on trust for us in a separate account, until all amounts owed by you to us have been paid; or
  - (ii) Where you are not paid by a third party, you agree to assign all of its rights against the third party to us upon us giving you notice in writing to that effect and for the purpose of giving effect to that assignment you irrevocably appoint us as your attorney.

### 10.3 Your obligations

Until title to any Products passes to you, you must:

- (a) Keep and maintain the Products in the state at which they were delivered to your premises.
- (b) Not do, or omit to do, anything which may result in damage to or destruction of the Products.
- (c) Not tamper or interfere with the Products in any way or for any reason whatsoever.
- (d) Not remove or move any Products from the premises in or on which the Products were delivered, or have the Products installed on any premises other than those at which the Products were delivered, without obtaining our prior, written consent, which consent may be withheld; and
- (e) Insure the Products for their full insurable value.

### 10.4 Notice to Landlord

To the extent that you are not the owner of the premises in or on which the Products are installed/kept, you shall, immediately after the Commencement Date, inform the owner of the premises, in writing, that the Products are owned by us and are not capable of attachment in satisfaction of any debt owing by the you to any third party.

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## 11. CONFIDENTIAL INFORMATION

### 11.1 Our Confidential Information

- (a) You acknowledge that any information we give you about our method of doing business, the terms of the Purchase Order and the Purchase Price are part of our confidential information, together with any other ideas, concepts and information, whether or not in material form, that are designated by us as confidential (Our Confidential Information). You acknowledge that disclosure of our Confidential Information may prejudice our business.
- (b) You must:

- (i) Keep the Confidential Information confidential and not disclose or communicate it to any person without our prior consent or as required by law; and
  - (ii) Not make or assist any unauthorised use or disclosure of our Confidential Information.
- (c) The obligations of confidentiality survive the termination of this Agreement, except where the Confidential Information is in the public domain other than as a result of a breach by you of your obligations.

## 11.2 Your Confidential Information

- (a) We acknowledge that any information you provide us about you, or your business is your Confidential Information.
- (b) Despite the provisions of (a), you acknowledge that we own the copyright in any report prepared by us in connection with the provision of the Services, and that you may not reproduce any part of it without our prior consent (which we shall not unreasonably withhold).
- (c) We shall:
  - (i) Only use Confidential Information for the purpose of providing the Services to you.
  - (ii) Keep the Confidential Information strictly confidential and not disclose or communicate it to any person, without your prior consent or as required by law; and
  - (iii) Not make or assist any unauthorised use or disclosure of our Confidential Information.
- (d) The obligations of confidentiality survive the termination of this Agreement, except where the Confidential Information is in the public domain other than as a result of a breach by us of our obligations.

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## 12. INTELLECTUAL PROPERTY

### 12.1 Our Intellectual Property

- (a) You acknowledge that the systems, procedures, processes, information and other intellectual property we create in connection the Products and with the provision of the Services are and remain our property (Our IP).

For the avoidance of doubt, we own the know-how and other intellectual property in the data as processed by our systems, procedures and processes, provided it is de-identified from the raw source material from which it is generated.

- (b) Provided that you (nor any third party for whom you act) are not identifiable, you agree (for yourself and as the agent and representative for each third party for whom you act) that we may use or create statistical and derivative data from raw data that we obtain in providing the Services for commercial purposes including statistical, comparative, benchmarking, research and development and/or business development purposes. Neither you nor anyone else shall be entitled to any form of compensation whatsoever for our use of such data.
- (c) During the Term, we grant you a personal, revocable and royalty-free licence to use Our IP strictly in connection with your business. The licence granted by this clause is not capable of assignment or sub-licensing.
- (d) Despite anything to the contrary in this Agreement, you indemnify us and agree to keep us indemnified from and against all costs, claims, actions, proceedings, demands, expenses (including legal costs on a full indemnity basis), judgments, damages and loss suffered or incurred attributable to or arising out of any infringement or alleged infringement of Our IP. At our request, you shall (at your costs in all respects) defend any action against us for any infringement or

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## **13. EVENT OF DEFAULT**

### **13.1 Event of default**

Each of the following constitutes and Event of Default:

- (a) Either party breaches this Agreement (including, but not limited to, defaulting on any payment due) and where the breach is capable of being remedied fail to remedy that breach within 14 days of being given notice to do so: or
- (b) A party suffers an Event of Insolvency.

### **13.2 Our rights on Event of Default**

Where an Event of Default occurs in relation to you, except where payment in full has been received by us, we may:

- (a) Terminate this Agreement.
- (b) Refuse to supply the Products or perform the Services.
- (c) Pursuant to clause 10.2(b) repossess and re-sell any Products delivered to you, the payment for which has not been received; or
- (d) Retain (where applicable) all money paid by you on account or otherwise.

### **13.3 Invoices due and payable**

Upon an Event of Default all outstanding invoices will become immediately due and payable.

### **13.4 Your rights on Event of Default**

Where an Event of Default occurs to us, you may terminate the Agreement.

### **13.5 Effect of termination**

Termination of this Agreement is without prejudice to each party's either right and remedies at law or in equity.

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## **14. WARRANTIES**

### **14.1 Limited manufacturer's warranty**

- (a) During the period 1 year from the date of delivery of the Products to you, whichever is the earlier, we will replace or repair any defective Products that has been manufactured by us without charge. This applies so long as the damage does not arise from:
  - (i) Improper installation, adjustment, calibration, or operation by you.
  - (ii) The use of parts or accessories (including consumables, hardware, or software) which were not manufactured or supplied by us or approved in writing by us.
  - (iii) Any contamination or leakages caused or induced by you.
  - (iv) Any modifications of the Products which were not authorised in writing by us.



- (v) Any misuse of the Products by you or anyone for whom you have legal responsibility (including a minor).
  - (vi) Any use or operation of the Products outside of the physical, electrical, or environmental specifications of the Products.
  - (vii) Inadequate or incorrect site preparation.
  - (viii) Inadequate or improper maintenance of the Products, including failing to maintain the Products in accordance with any installation and maintenance manual.
  - (ix) Inadequate or incorrect handling of the Products, including failing to store the Products prior to installation in accordance with any installation and maintenance manual; or
  - (x) The transport of the Products except where we agree to deliver the Products to your premises.
- (b) The warranty will be voided if you attach to the Products we supplied any products, including spare parts not supplied by us.
  - (c) All costs incurred in returning defective Products, or any of their component parts, to our Premises for repair must be paid by you. This includes all transportation costs and site work costs including but not limited to supervision and labour costs.
  - (d) We are not liable for any Loss however arising as a result of a fault or defect in the Products.
  - (e) If any Products or parts of the Products are supplied to us by another manufacturer, those Products or parts of the Products will only be subject to warranty given by that manufacturer to us, and we provide no warranty in respect of such items.

## 14.2 Process Guarantee

- (a) We warrant that the Products will perform in accordance with your Specifications.
- (b) If the Products do not perform in accordance with your Specifications, we will:

- (i) Modify the Products so that they perform in accordance with your Specifications.
- (ii) Replace the Products; or
- (iii) Take the Products back and provide you with a refund for the price paid for the Products.

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## **15. LIMITED AND EXCLUDED LIABILITY**

### **15.1 Limited liability**

- (a) Subject to clauses 15.3 and 15.4 our maximum liability for all Loss, including but not limited to liability for breach of contract, negligence or tort or any other common law or statutory claim is limited to the amounts paid by you to us in the immediately 12 month period preceding any claim.
- (b) Subject to clause 15.3, we will not be liable to you or any the person for:
  - (i) Any Loss or damage of any kind that is directly or indirectly caused or results from any wrongful, wilful or negligent act or omission of you or any of your employees, officers, agents or other contractors.
  - (ii) Any Loss or damage of any kind suffered or incurred by you or any third party to the extent that such Loss or damage is a direct or indirect result of errors in or omissions from any orders submitted by you or any other information provided by you, whether arising out of negligence or otherwise; or
  - (iii) Any indirect, incidental, special or consequential losses or damages irrespective of whether:
    - (A) The loss or damage is caused by or relates to a breach of contract, statute, tort (including negligence) or otherwise.
    - (B) You or any person previously notified us of the possibility of such loss or damage.
- (c) For the purposes of these terms, indirect, incidental, special or consequential losses or damage includes loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time.

## 15.2 Exclusion of implied warranties

For the purposes of these terms, indirect, incidental, special or consequential losses or damage includes loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time.

## 15.3 Non excludable rights implied by the Australian Consumer Law

Nothing in these terms and conditions excludes, restricts or modifies any condition, warranty, guarantee, right or remedy conferred on you by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified by agreement.

## 15.4 Liability for breach of non-excludable rights

To the fullest extent permitted by law, our liability for a breach of a non-excludable condition, warranty or guarantee referred to in clause 15.3 and as otherwise provided for in these terms is limited, at our option to:

- (a) in the case of Products, any one or more of the following:
  - (i) The repair of the Products.
  - (ii) The replacement of the Products or the supplying of equivalent Products.
  - (iii) Paying for the cost of repair of the Products; or
  - (iv) The payment of the cost of replacement of the Products or the supplying of equivalent Products; and
- (b) In the case of Services:
  - (i) The supplying of the Services again; or
  - (ii) The payment of the cost of supplying of the Services again.

## 15.5 No representation

- (a) You acknowledge and agree that any information we provide to you in connection with the Products or Services is based on information you have provided to us, and such information should not be relied upon as accurate and conclusive. Subject to clause 15.3, we assume no responsibility or liability in respect of the provision of such information.

- (a) Subject to clause 15.3 and 14 we make no warranty as to the overall performance of any Products.

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**16. FORCE MAJEURE**

- (a) If circumstances beyond our control prevent or hinder the delivery of the Products or performance of the Services, we are free from any obligation to deliver the Products or provide the Services while those circumstances continue. We may elect to terminate this Agreement or keep the Agreement on foot until such circumstances have ceased.
- (a) Circumstances beyond our control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

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**17. DISPUTE RESOLUTION****17.1 Notice of dispute**

If a dispute arises between you and us, the following procedure applies:

- (a) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
- (a) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this clause.
- (b) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this clause.

**17.2 Dispute to be referred.**

If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 10 Business Days (or other period as agreed).

### **17.3 Mediation**

Unless otherwise agreed, the parties agree to endeavour to resolve any dispute that cannot be settled by negotiation between the parties or their representatives by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these Terms of Trade. This clause survives termination of these Terms of Trade.

### **17.4 Performance**

Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these Terms and Conditions.

### **17.5 Confidentiality**

The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

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## **18. PPSR**

### **18.1 Security Interest**

You acknowledge that this Agreement may give rise to a Security Interest under the PPSA and that we may, at your cost register our interest on the PPSR. You hereby waive your rights under section 157 of the PPSA to receive notice of any verification statement relating to such registration.

## 18.2 Further Assurance

You must do anything we require including signing documents to ensure we have a perfected first ranking Security Interest.

## 18.3 No dealing

Until title in any Products has passed to you, you agree not to in any way assign, charge, lease or otherwise deal with the Products in such a manner as to create, a security interest over, the Products in your favour or any third party. This clause will not prohibit you from selling the Products in the ordinary course of business.

## 18.4 Indemnity

You indemnify us for any costs we incur in registering or maintaining any Security Interest and or exercising any rights under Chapter 4 of the PPSA.

## 18.5 Contracting out

- (a) If Chapter 4 of the PPSA would otherwise apply to the enforcement of any Security Interest provided by this Agreement, the following provisions of the PPSA do not apply:
- (i) To the extent that section 115(1) allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143; and
  - (ii) To the extent that section 115(7) allows them to be excluded: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137.
- (b) To the extent permitted by law:
- (i) Where we have the right in addition to or existing separately from those in Chapter 4 of the PPSA, those rights will continue and apply and in particular, will not be limited by section 123.
  - (ii) You waive any rights you may have now or in the future under sections 92, 95, 96 and 142.

## 18.6 Confidentiality

- (a) Neither party may disclose information of the kind referred to in section 275(1) of the PPSA, except where any one of paragraphs (h) to (e) of section 275(7) apply. You agree you will only authorise disclosure of information under section 275(7)(c) or request information under section

275(7)(d) if we consent. Nothing in this clause prevents disclosure by us if we believe it is necessary to comply with any obligations under the PPSA.

- (b) You agree that we may disclose information of a kind referred to in section 275(1) to the extent we are not doing so in response to a request by an interested person as defined in section 275(a) pursuant to section 275(1).

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## **19. GST**

### **19.1 Expressions used.**

Expressions used in this clause 19 and which are not otherwise defined have the same meaning as in the GST Act.

### **19.2 Payments exclusive of GST**

Except where otherwise stated, and subject to this clause 19, any amount payable under this Agreement is exclusive of any GST.

### **19.3 Payment of GST**

If a party makes a Taxable Supply in connection with this Agreement for a Consideration which represents its value, then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply.

### **19.4 Tax invoice**

A party's right to payment under this clause 19 is subject to a valid Tax Invoice being delivered to the Recipient of the Taxable Supply.

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## **20. MISCELLANEOUS**

### **20.1 Jurisdiction**

This Agreement is governed by the laws of Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia.

### **20.2 Whole agreement**

- (a) This Agreement represents the whole agreement between us relating to the subject matter of these terms.

- (b) This Agreement supersedes all oral and written negotiations and communications by and on behalf of either of the parties.

### **20.3 Further assurance**

Each party must do all things reasonably necessary to carry out the provisions of this Agreement.

### **20.4 No reliance**

In entering into This Agreement, you have not relied on any warranty, representation or statement, whether oral or written, made by us or any of our employees or agents relating to or in connection with the subject matter of this Agreement.

### **20.5 Severance**

If any provision of this Agreement at any time is or becomes void, voidable or unenforceable, that provision will, to the extent required by severed from this Agreement the remaining provisions will continue to have full force and effect.

### **20.6 Waiver**

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

### **20.7 Notices**

- (a) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on the Order (or as varied pursuant to this paragraph) and:
- (i) Delivered personally.
  - (ii) Sent by pre-paid mail to the address of the addressee specified in the Order.
  - (iii) Sent by fax to the fax number of the addressee specified in the Order, with acknowledgment of receipt from the facsimile machine of the addressee; or
  - (iv) Sent by email to the email address of the addressee specified in the Order with acknowledgement of delivery.



- (b) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
  
- (c) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.