

### 1. Definitions and interpretation

#### 1.1 Definitions

In these Terms of Trade:

**Additional Charge** means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices; and
- (b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

**Customer** means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.

**Goods** means any goods supplied by the Supplier including those supplied in the course of providing Services.

**Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Subject to payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods or Services under these Terms of Trade for the purposes contemplated by the Order.

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

**Work Order** means a purchase order for Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.

**PPS Law** means:

- (a) the Personal Property Security Act 2009 (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

**Quote** means a written description of the Goods or Services to be provided and an estimate of the Supplier's charges for the performance of the required work.

**Services** means the services to be provided by the Supplier to the Customer in accordance with a Quote and these Terms of Trade.

**Supplier** means the entity specified as the supplier of Goods or Services on the Quote and includes the Supplier's agents and permitted assigns.

#### 1.2 Interpretation

In these Terms of Trade, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms of Trade;
- (d) a reference to a party to these Terms of Trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms of Trade; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
  - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
  - (ii) in all other cases, must be done on the next Business Day.

### 2. Engagement

- (a) These Terms of Trade apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services, including all quotations, contracts and variations. These Terms of Trade take precedence over Terms of Trade contained in any document of the Customer or elsewhere.
- (b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- (c) The Supplier may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.

### 3. Quotes

- (a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for 60 days from the date of issue.
- (b) Unless otherwise expressly agreed in writing, a Quote does not include delivery and/or installation of the Goods.
- (c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to the Supplier.
- (d) Following provision of a Quote to the Customer, the Supplier is not obliged to commence work until the Customer has accepted the Quote by submitting a Work Order in the ways described at clause 4 (a).
- (e) An indication in a Quote of the time frame for the provision of the Goods 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 the Supplier.

#### 4. Work Orders

- (a) A Work Order for the provision of Goods or Services may be made by the Customer to the Supplier in writing or verbally.
- (b) Placement of a Work Order by the Customer signifies acceptance by the Customer of these Terms of Trade and the most recent Quote.
- (c) A Work Order placed by the Customer must clearly identify the Goods or Services ordered and the Supplier's Quote. Any costs incurred by the supplier in reliance on incorrect or inadequate information may result in the imposition of an Additional Charge.
- (d) The Supplier may in its absolute discretion refuse to provide Goods or Services where:
  - (i) Goods are unavailable for any reason whatsoever;
  - (ii) credit limits cannot be agreed upon or have been exceeded; or
  - (iii) payment for Goods or Services previously provided to the Customer has not been received by the Supplier.
- (e) An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation, including, but not limited to the Customer forfeiting any applicable Deposit referred to at subclause (6) to the Supplier and the Supplier retains all rights at law an equity in relation to any further Loss.

#### 5. Variations

- (a) The Customer may request that its Work Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared or after the placement of an Work Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote.
- (c) The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

#### 6. Invoicing and payment

- (a) The Supplier may in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
  - (i) prior to commencing the provision of the Goods or Services, for an amount equal to the Quote and Additional Charges where the Supplier has not previously carried out work

for the Customer or where the Supplier chooses to do so;

- (ii) at the end of each week before the Work Order is completed, the Supplier may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at the Supplier's discretion either for work done to that point, work in the future or both) and require that proportion of the Quote be paid in advance of any further Goods or Services being provided; or
- (iii) upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Work Order and for any Additional Charges.
- (b) The amount payable in an invoice is as per the Quote and any Additional Charges.
- (c) The Customer must pay an invoice issued by the Supplier to the Supplier within 14 days of a valid tax invoice being issued to the Customer.
- (d) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (e) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- (f) The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these Terms of Trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- (g) The Customer is to pay the Supplier on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to the Supplier, calculated daily.
- (h) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under the Terms of Trade.
- (i) The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (**GST**) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

#### 7. Additional Charges

- (a) The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time

frame (if any).

- (b) The imposition of Additional Charges may also occur as a result of cancellation by the Customer of an Order where cancellation results in Loss of the Supplier, storage costs for goods not collected from the Supplier within 2 weeks of the date on which the Customer is notified by the Supplier that the Goods available for collection, couriers, packing and handling, Government or council taxes or charges, additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Work Order additional to the quoted cost.

## 8. Acceptance of Goods

If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Work Order upon collection or delivery the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Work Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

## 9. Title and risk

- (a) Risk in Goods passes to the Customer immediately upon collection / delivery.
- (b) Property in Goods supplied to the Customer pursuant to these Terms of Trade does not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.
- (c) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer:
- (i) is a bailee of the Goods until property in them passes to the Customer;
  - (ii) irrevocably appoints the Supplier its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
  - (iii) must be able, upon demand by the Supplier, to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;
  - (iv) must not allow any person to have or acquire any security interest in the Goods;
  - (v) agrees that the Supplier may repossess the Goods if payment is not made within 14 days (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and
  - (vi) the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies the

Supplier in respect of any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises.

- (d) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and the Customer makes a new object from the Goods, whether finished or not, or the Customer mixes the Goods with other goods or the Goods become part of other goods (**New Goods**), the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these Terms of Trade or any other contract have been made and the Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.
- (e) For the avoidance of doubt, under paragraph (d), the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Where the Customer is the owner of land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all of the Customer's joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer acknowledges and agrees that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (g) Should the Supplier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer shall indemnify the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own Customer basis.
- (h) To give effect to the provisions of subclauses 9 (h) and (i) inclusive hereof the Customer hereby irrevocably nominates, constitutes and appoints the Supplier or the Supplier's nominee as the Customer's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Supplier and/or the Supplier's nominee shall think fit in the Supplier's absolute discretion against the joint and/or several interest of the Customer in any land, realty or asset in favour of the Supplier and in the Customer's name as may be necessary to secure the said Customer's obligations and indebtedness to the Supplier and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Supplier's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

## 10. Personal Property Securities Act 2009 (Cth)

### **Security for Goods Supplied**

- (a) The Customer acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Goods supplied by the Supplier from time to time and any proceeds of the sale or supply of the Goods to secure payment for the Goods supplied ("**Security Interest**").
- (b) Each sale or supply of Goods by the Supplier under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) The Supplier may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Goods and the proceeds of the sale or supply of the Goods, including as a purchase money security interest (as that term is defined in the PPSA) ("**PMSI**"), pursuant to these Terms.

### **General Security Agreement for Services Supplied**

- (d) For the purpose of any general security agreement ("**General Security Agreement**"), "Collateral" means all the Customer's present and after-acquired personal property, including circulating and non-circulating assets. Collateral includes any personal property in respect of which the Customer has at any time, or may in the future have at any time, a sufficient legal or equitable right, title, interest or power to grant a security interest either in the Customer's own right or as trustee of a trust.
- (e) The Customer acknowledges and agrees that:
  - i) In addition to any other Security Interest created by these Terms, these Terms also constitute a General Security Agreement for the purposes of the PPSA and create a security interest in the Customer's Collateral to secure payment for the Services supplied ("**Security Interest**");
  - ii) Each supply of Services by the Supplier under these Terms is subject to the General Security Agreement for the purposes of the PPSA; and
  - iii) The Supplier may lodge a financing statement on the PPSR in respect of the Security Interest in the Collateral pursuant to these Terms.

### **Assurances**

- (f) The Customer must do all things, provide all information and sign all documents that are necessary and reasonably required to enable the Supplier to acquire a perfected Security Interest in the Goods and/or Collateral (as the case may be) including for the purposes of:
  - i) Ensuring that any Security Interest created under, or provided for, by these Terms:
    - a. Attaches to the Goods and/or Collateral that is intended to be covered by that Security Interest; and
    - b. Is enforceable, perfected and otherwise effective; and
    - c. Has the priority required by the Supplier.
  - ii) Enabling the Supplier to prepare and register a financing statement or financing change statement;
  - iii) Enabling the Supplier to register a PMSI pursuant to the PPSA (where applicable);
  - iv) Enabling the Supplier to register an ALLPAAP pursuant to the PPSA (where applicable); and
  - v) Enabling the Supplier to exercise and maintain any of its rights or powers in connection with any such

Security Interest.

- (g) If the Customer disposes of the Goods or the Collateral, the Customer must:
  - i) Immediately pay any proceeds to the Supplier in reduction of all amounts owing by the Customer to the Supplier, which the Supplier may apply towards amounts owing by the Customer to the Supplier in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by the Supplier in writing; and
  - ii) Not allow any other charge or security interest to exist over those proceeds without the Supplier's written consent if that security interest could rank ahead of Our Security Interest.
- (h) If a higher-priority security interest does arise in the Goods, the Collateral and/or their proceeds of sale despite the Customer's obligations under this section, the Customer must:
  - i) Ensure that the Customer receives cash proceeds for the Goods and/or Collateral of at least equal to the market value of the Goods and/or Collateral; and
  - ii) Immediately pay those proceeds to the Supplier in reduction of all amounts owing by the Customer to the Supplier, which the Supplier may apply towards amounts owing by the Customer to the Supplier in such order as the Supplier sees fit.
- (i) The Customer must not change its name, structure, status or partnership, or assign or sell its business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on the Supplier's registered Security Interest without the Supplier's prior written consent. The Customer agrees that its liability under these Terms is not affected by such an event until a new application for credit in the Customer's new entity name as restructured or changed is made and approved by the Supplier in writing.
- (j) The Customer indemnifies the Supplier against and the Customer must pay the Supplier for all costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms.

### **Exclusion of Notices and Other Obligations**

- (k) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
  - i) The Supplier does not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
  - ii) Sections 142 and 143 are excluded;
  - iii) For the purposes of section 115(7) of the PPSA, the Supplier does not need to comply with sections 132 and 137(3).
- (l) To the extent permitted by law, the Customer agrees to waive:
  - i) The Customer's rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
  - ii) Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.
- (m) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to

be agreed (whichever is the longer).

### **Provision of Information**

- (n) The Customer agrees not to exercise its rights to make any request of the Supplier under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (o) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
  - i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
  - ii) The Supplier discloses information of a kind mentioned in section 275(1) of the PPSA to the extent that the Supplier is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (p) Notwithstanding the obligations of this section, the Customer shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if the Supplier approves such disclosure or request for information in writing.
- (q) Nothing in this part prevents any disclosure of information by the Supplier that it believes is reasonably necessary to comply with any other obligations that the Supplier may have under the PPSA.

### **Other**

- (r) If the Customer defaults in the timely performance of any obligation owed to the Supplier, the Supplier may enforce the Security Interest by exercising all or any of its rights under these Terms, the general law and the PPSA.
- (s) Nothing in this part limits or is limited by any other provision of these Terms and Conditions or any other agreement between the parties.

## **11. Intellectual Property Rights**

- (a) The Customer warrants that it owns all Intellectual Property Rights pertaining to its Work Order for Goods or Services or has a licence to authorise the Supplier to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the Supplier for the purposes of the Work Order. Further, the Customer indemnifies and agrees to keep indemnified the Supplier against all Losses incurred by the Supplier in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.
- (b) Unless specifically agreed in writing between the Supplier and the Customer, all Intellectual Property Rights in any works created by the Supplier on behalf of the Customer vest in and remain the property of the Supplier.
- (c) Subject to payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods or Services under these Terms of Trade for the purposes contemplated by the Work Order.

## **12. Agency and assignment**

- (a) The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these Terms of Trade.
- (b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms of Trade provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under these Terms of Trade.
- (c) The Customer is not to assign, or purport to assign, any of its obligations or rights under these Terms of Trade without the prior written consent of the Supplier.

## **13. Default by Customer**

- (a) Each of the following occurrences constitutes an event of default:
  - (i) the Customer breaches or is alleged to have breached these Terms of Trade for any reason (including, but not limited to, defaulting on any payment due under these Terms of Trade) and fails to remedy that breach within 14 days of being given notice by the Supplier to do so;
  - (ii) the Customer, being a natural person, commits an act of bankruptcy;
  - (iii) the Customer, being a corporation, is subject to:
    - (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
    - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
    - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring);
    - (D) any assignment for the benefit of creditors;
  - (iv) the Customer purports to assign its rights under these Terms of Trade without the Supplier's prior written consent; or
  - (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.

Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:

- (vi) terminate these Terms of Trade;
- (vii) terminate any or all Work Orders and credit arrangements (if any) with the Customer;
- (viii) refuse to deliver Goods or provide further Services;

- (ix) pursuant to clause 9(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
  - (x) retain (where applicable) all money paid on account of Goods or Services or otherwise.
- (b) In addition to any action permitted to be taken by the Supplier under paragraph (b), on the occurrence of an event of default all invoices will become immediately due and payable.

#### 14. Termination

Once a Customer has received their first Quote from the Supplier placed their first Work Order which is accepted by the Supplier then these Terms of Trade (as amended) will continue to govern all Quotes provided by the Supplier and Work Orders placed by the Customer and Accepted by the Supplier until terminated.

In addition to the express rights of termination provided in these Terms of Trade, a party may terminate these Terms of Trade by giving 30 days written notice to the other party from the last legitimately placed Work Order.

#### 15. Exclusions and limitation of liability

- (a) The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these Terms of Trade by any law is excluded.
- (b) All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- (c) The Supplier gives no warranty in relation to the Services provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services including in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
  - (i) any Goods or Services supplied to the Customer;
  - (ii) any delay in supply of the Goods or Services; or
  - (iii) any failure to supply the Goods or Services.
- (d) Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods and/or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without

any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.

- (e) To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on Terms of Trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- (f) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

#### 16. Indemnity

- (a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Work Order or the subject matter of these Terms of Trade including, but not limited to any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand. This provision remains in force after the termination of these Terms of Trade.

#### 17. Force majeure

- (a) If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods or Services, the Supplier is free from any obligation to provide the Goods or Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond the Supplier's 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.

#### 18. Privacy and Credit Consents

- (a) The Supplier may collect personal and credit information in its dealings with the Customer or any

of the Customer's guarantors in accordance with the Credit Reporting Code, the *Privacy Act 1988* (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012* (Cth) and the Australian Privacy Principles. The Customer consents to that information being collected.

- (b) The Customer acknowledges and agrees that:
- i) The Customer has read these Terms and Conditions;
  - ii) The Customer fully understands the nature and effect of these Terms and Conditions;
  - iii) The person executing these Terms and Conditions has the authority to bind the Customer (and applicant of any application for a credit account with the Supplier);
  - iv) The information provided in any application for credit is true and correct in every detail;
  - v) The Customer will regularly update its financial and trading information as the Supplier may reasonably require to maintain the Customer's credit account from time to time;
  - vi) The Customer irrevocably grants permission to the Supplier before, during or after the provision of credit to give and receive information about the Customer to and from any credit reporting agency, credit provider, bank or financial institution or any other corporation, association or person in accordance with the *Privacy Act 1988* (Cth) or otherwise. This information may concern the Customer's consumer and commercial credit and/or trading arrangements. It may consist of credit reports and other credit and trading information concerning the Customer and its business. It may be used to assess or review this application at any time, to collect any overdue payments and to provide credit references in accordance with the provisions of the *Privacy Act 1988* (Cth) or otherwise; and
  - vii) The Customer indemnifies the Supplier in respect of any claims or actions arising out of the Supplier obtaining or providing information concerning the Customer in relation to these Terms and Conditions or any application for credit with the Supplier.

is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.

- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) A notice required or permitted to be given by one party to another must be in writing to the address (or email address) shown on a Quote.
- (h) 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 e-mail before 4 pm on a Business Day, the next Business Day at the place of receipt.
- (i) A party may only change its postal or email address for service by giving notice of that change in writing to the other party.

## 19. Other matters

- (a) These Terms of Trade are governed by the laws of the state where the Supplier's registered office is situated and each party irrevocably submits to the non-exclusive jurisdiction of the courts of such state.
- (b) These Terms of Trade and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) These Terms of Trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these Terms of Trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these Terms of Trade.
- (e) If any provision of these Terms of Trade at any time