

Terms and conditions governing the performance of the ("Agreement") formed between the ("Supplier") for the provision of any ("Services"), materials, supplies or goods ("Goods") as applicable so named on the ("Purchase Order") and Ausworld Procurement & Warehousing Pty Ltd (hereinafter called "Client") in accordance with the Purchase Order.

Definitions

"Agreement" shall mean these terms and conditions of trade and all other schedules, purchase orders and instructions between the parties.
 "Client" shall mean Ausworld Procurement & Warehousing Pty Ltd its successors, agents, subsidiaries and assigns or any person acting on behalf of and with the authority of Ausworld Procurement & Warehousing Pty Ltd.
 "Client Group" shall mean the Client, their contractors furnishing services in connection with or in the vicinity of the Goods and/or Services and their respective employees, directors, agents and invitees which are not members of the Supplier Group.
 "Goods" shall mean all Goods supplied by the Supplier to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, or any other forms as provided by the Supplier to the Client.
 "Intellectual Property" means (a) copyright; (b) all rights conferred under statute, common law or equity in relation to inventions (including patents); (c) registered and unregistered trademarks; (d) registered and unregistered designs; (e) circuit layouts; (f) confidential information; and (g) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
 "Purchase Order" means all of the details pertaining to the particular order as listed on the Purchase Order and governed by this Agreement and its terms and conditions herein.
 "Price" shall mean the price payable for the Services and/or as agreed between the Supplier and the Client in accordance with clause 2 of this contract.
 "Purchase Order": the document containing specific order details and instructions from the Client to the Supplier.
 "Services" shall mean all Services supplied by the Supplier to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
 "Supplier" shall mean the Supplier its successors and assigns or any person acting on behalf of and with the authority of the Supplier as described on any quotation, work authorisation or other form as provided by the Supplier to the Client.
 "Supplier Group" shall mean the Supplier, its subcontractors furnishing Goods and/or Services and their respective employees, directors, agents and invitees.
 "Third Parties" shall mean any person or entity other than Supplier Group and Client Group.
 "Variation" means a written variation agreed, signed and executed by both parties.

1. Acceptance

- 1.1 Acceptance of the Purchase Order by the Supplier or the shipment of any Goods to the Client or commencement of performance hereunder shall constitute the Agreement (hereinafter called "Purchase Order") in these terms and no other terms unless expressly agreed in writing by both parties.
- 1.2 Where the Purchase Order has been transmitted to the Supplier by the Client this shall constitute confirmation of the Purchase Order.
- 1.3 All the terms, conditions and references specified in any part of this Purchase Order shall govern the performance of this Purchase Order.
- 1.4 No waiver of any term or condition of this Purchase Order, nor course of dealing between the Client and the Supplier, nor consent to any departure therefrom by the Client shall be effective unless the same shall be in writing and then such waiver shall be effective only in the specific instance and for the purpose for which it was given.
- 1.5 This Purchase Order may be amended or varied by the Client only by an Agreement in writing signed by a representative of the Client with express authority to amend or vary this Purchase Order.
- 1.6 The Purchase Order shall be governed in all respects by the laws of the State of Queensland.
- 2. Price And Payment**
- 2.1 Schedule of rates and lump sum price items on the Purchase Order include full allowance for compliance with all requirements of the Purchase Order. Schedule of rates and lump sum price items included in the Purchase Order are fixed and firm amounts and not subject to escalation.
- 2.2 The Client has the capacity to vary quantities of items or specifications for items in the Purchase Order or include or remove additional items to this Purchase Order via the issuance of a written Variation. Client shall determine value of Variations using any applicable rates and prices included in the Purchase Order, or if none are applicable using fair and reasonable evaluation methodologies; including consideration of any submission received from Supplier. Variations shall only have effect when they are executed by both Client and Supplier.
- 2.3 Supplier shall commence performance immediately unless otherwise specified by the Client. If Supplier is unable to deliver on the date specified in the Purchase Order, Client reserves the right to cancel all or any part of this Purchase Order.
- 2.4 Supplier is only entitled to submit invoices for rate and price line items included in Purchase Order and for any additional rate and price line items that are included in executed Variations. Supplier is not entitled to submit invoices in respect of any other items. Supplier agrees Client shall be entitled to reject all non-compliant invoices.
- 2.5 If the Client requires work to be performed outside of the Supplier's normal trading hours then the Price shall be increased to include the Supplier's usual overtime rate as agreed by both parties.
- 2.6 The Supplier may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of materials delivered to the site but not installed.
- 2.7 Time for payment for the Goods and/or Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) calendar days from the end of the month in which the invoice is issued.
- 2.8 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Supplier.
- 2.9 Should any claim or demand be made against the Client as a result of any action or omission of Supplier, the Client may withhold the unpaid balance of money due to the Supplier hereunder until the Client is satisfied that the claim or demand has been released or provision has been adequately made thereof.
- 2.10 GST and other taxes and duties that may be applicable shall be added to the price except when they are expressly included in the price.

3. Taxes

- 3.1 Unless otherwise stated, if GST is or becomes payable on any Goods and/or Services made under this Purchase Order, the Consideration for that Good and/or Service is to be considered exclusive of GST and the person making the supply may recover from the recipient the amount of the GST at the same time and in the same manner as the Consideration for that Supply is payable provided that the person making the Supply issues a Tax Invoice or Adjustment Note (if applicable) enabling the Recipient to claim all applicable Input Tax Credits. In addition:
 - (a) to the extent that a party is required to reimburse or indemnify another party for costs incurred or losses suffered by another party, those costs and losses do not include any amount in respect of GST for which the other party is entitled to claim an Input Tax Credit; and
 - (b) if the Client is entitled to withhold a portion of an amount due to the Supplier on which GST is payable, the Client is not required to pay the non-withheld portion until the Supplier issues a replacement Tax Invoice or Adjustment Note permitting the Client to claim all applicable Input Tax Credits for the amount not withheld. Once the dispute regarding the withheld amount is resolved, the Client will make payment of the applicable amount upon receipt of a further Tax Invoice or Adjustment Note issued by the Supplier.
- 3.2 Unless otherwise expressly provided for herein, all fees, rates and charges are inclusive of any income, import, excise, sales or use taxes, and of taxes or duties of a similar nature, which lawfully may be imposed on the furnishing of Supplier's personnel, Supplier's items and Services. The Supplier shall indemnify the Client against any and all liabilities or claims for any taxes, duties, penalties or interest assessable against the Supplier which may be levied against the Client or the Supplier by any relevant authorities, provided that this Clause shall not affect the Client's liability to the Supplier for any reimbursements specifically provided for herein.
- 3.3 Capitalised terms in this clause have the meaning given to them in the GST Law as defined in A New Tax System (*Goods and Services Tax*) Act 1999 (*Cth*).

4. Delivery Of Goods and/or Services

- 4.1 Goods shall be shipped F.I.S (Incoterms 2010) unless otherwise specified by the Purchase Order. The Purchase Order shall take precedence on delivery method, specific instructions and nominated destination. Client requires Supplier to comply with completion dates. Client shall arrange transport based on completion dates. Any additional amounts payable by Client due to Supplier's failure to comply with completion dates shall be to Supplier's account. This includes any additional amounts payable by Client in respect of Client provided transport that are incurred due to Supplier's failure to achieve completion dates.
- 4.2 All Goods are subject to Client's inspection on delivery or completion as the case may be notwithstanding prior payment. Goods rejected for just cause will be held for Supplier's disposition with transportation and handling charges to be for Supplier's account.
- 4.3 Supplier warrants that all Goods supplied or Services provided hereunder shall, for a period of one (1) year from the date of supply of the Goods, be free from defect in design, workmanship, or departure from specification, and that the performance thereof shall be in accordance with designs or specifications respectively.
- 4.4 If in the opinion of the Client, the Supplier is in breach of any term hereof or if Supplier fails to supply the Goods or provide the Services because of causes other than those beyond Supplier's reasonable control, or if Supplier becomes bankrupt or insolvent, the Client may in addition to any other remedy, on 3 days written notice to Supplier terminate this Purchase Order and recover from Supplier any losses sustained by reason of such termination. Supplier shall be excused from delivery of Goods or provision of the Services by reason of any cause beyond its reasonable control but only for the duration of such cause provided that the Client may on 7 days written notice terminate this Order if such circumstances continue for more than 7 days.

4.5 If, during the currency of this Purchase Order, the Client is unable to accept delivery of Goods because of any cause whatsoever beyond Client's reasonable control, then such delivery shall be partially or wholly suspended during continuance of such cause and the time for such delivery shall be correspondingly extended. Client necessarily reserves the right in such event to cancel this Purchase Order but Client shall pay Supplier all actual direct costs and expenses incurred by Supplier with respect to this Purchase Order prior to date of cancellation. Lack of funds shall not be considered a cause beyond control of either party.

4.6 At the Supplier's sole discretion delivery of the Goods and/or Services shall take place when the Client takes possession of the Goods and/or Services at the Client's nominated address.

4.7 The Client shall make all arrangements necessary to take delivery of the Goods and/or Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods and/or Services as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery.

4.8 The Supplier may deliver the Goods and/or Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

5. Packaging

- 5.1 Supplier shall pack all Goods as specified in the Order, but if not specified, then packaged in accordance with the standards reasonably required to protect the Goods for transport to the Site.
- 5.2 Supplier will provide all documentation relating to the Goods, including packaging list which must be included in the delivery package.
- 5.3 Goods that require shrink-wrapping shall be wrapped appropriately.
- 5.4 Supplier will advise the Client of any hazardous Goods supplied and provide information with respect to safety, health and environmental hazards. The material safety data sheet (MSDS) must state to Client the Goods in the delivery. Failure to supply the MSDS document shall result in Goods not accepted by Client.

6. Risk

- 6.1 If the Supplier retains ownership of the Goods and/or Services nonetheless, all risk for the Goods and/or Services passes to the Client on delivery per the INCOTERMS on the Purchase Order.
- 6.2 Where a third party has supplied materials for the Supplier to complete the Goods and/or Services, the Client acknowledges that the Supplier accepts no liability for the suitability of purpose, quality and any faults inherent in the materials. The Supplier shall not be responsible for any defects in the works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of the materials supplied.
- 6.3 If any of the Goods and/or Services are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods and/or Services. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 6.4 Where the Client expressly requests the Supplier to leave Goods and/or Services outside the Supplier's premises for collection or to deliver the Goods and/or Services to an unattended location then such Goods and/or Services shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods and/or Services are insured adequately or at all.
- 6.5 The Client shall indemnify the Supplier from and against all costs incurred and damages caused as a result of the Supplier following the Client's instructions.

7. Title

- 7.1 The Supplier and the Client agree that ownership of the Goods and/or Services and or goods shall not pass until:
 - (a) the Client has paid the Supplier all amounts owing for the particular Goods and/or Services; and
 - (b) the Client has met all other obligations due by the Client to the Supplier in respect of all contracts between the Supplier and the Client.
- 7.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Supplier's ownership or rights in respect of the Goods and/or Services shall continue.
- 7.3 It is further agreed that:
 - (a) until ownership of the Goods and/or Services passes to the Client in accordance with clause 7.1 then the Client is only a bailee of the Goods and/or Services and must return the Goods and/or Services to the Supplier on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods and/or Services on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods and/or Services being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods and/or Services other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods and/or Services then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
 - (d) the Client should not convert or process the Goods and/or Services or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
 - (e) the Client shall not charge or grant an encumbrance over the Goods and/or Services nor grant nor otherwise give away any interest in the Goods and/or Services while they remain the property of the Supplier;
 - (f) the Supplier may recover possession of any Goods and/or Services in transit whether or not delivery has occurred;
 - (g) until such time as ownership of the Goods and/or Services shall pass from the Supplier to the Client the Supplier may give notice in writing to the Client to return the Goods and/or Services or any of them to the Supplier. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods and/or Services shall cease;
 - (h) if the Client fails to return the Goods and/or Services to the Supplier then the Client irrevocably authorises the Supplier or the Supplier's agent to enter upon and into land and premises owned, occupied and/or used by the Client, or any premises as the invitee of the Client, where the Goods and/or Services are situated and take possession of the Goods and/or Services; and
 - (i) the Supplier may commence proceedings to recover the Price of the Goods and/or Services sold notwithstanding that ownership of the Goods and/or Services has not passed to the Client.

8. Insurances

- 8.1 Without limiting the Supplier's liabilities or obligations contained herein, the Supplier shall maintain at all times during the term of the Purchase Order the following insurances with reputable companies with provision against cancellation or alteration without thirty (30) calendar days prior notice to the Client:
 - (a) Workers' Compensation Insurance as required by law, including common law liability for an amount not less than AUD \$50,000,000 per occurrence and for any number of persons;
 - (b) General Public Liability Insurance for death, personal injury and property damage to an amount of not less than AUD \$10,000,000 for any one occurrence in a form satisfactory to the Client; and
 - (c) Insurance to cover loss of or damage to the Supplier's items (for their full replacement value) from all risks except such risks as the Client is liable for under Clause 7. Except as otherwise provided herein, all deductibles under insurance policies effected shall be paid by the Supplier without recourse therefore against the Client, Client Group or its principals, employees, agents or other contractors under any circumstances.
- 8.2 The Supplier shall furnish certificates of currency and terms of the requisite insurance to the Client prior to the commencement of work and within fourteen (14) calendar days of any renewal. Further the Client may request certificates of currency beyond the Purchase Order dates depending on but not limited to warranty periods, installation periods and maintenance periods.
- 8.3 If the Supplier fails to produce verification of currency of insurance, then the Client may at its option either itself arrange the insurance and recover the premiums payable in respect thereof from the Supplier or deduct same from any amount due or becoming due to the Supplier, or may refuse to make any payments otherwise due to the Supplier until such verification is produced.
- 8.5 The Supplier shall not commit any act or make any omission which may provide grounds for an insurer to refuse payment of any claim or which may otherwise prejudice the interests of the Client under any such policy.
- 8.6 The Supplier shall in the event of any loss, injury, damage or claim do all things necessary to obtain the full benefit of all the said insurances including but without limitation the giving of prompt notice of any loss or claim.

9. Supplier Responsibilities

- 9.1 It is the intention of the Supplier and agreed by the Client that:
 - (a) the Supplier shall obtain and pay for all approvals, consents or permits required for the Goods and/or Services prior to commencement of the Goods and/or Services by the Supplier; and
 - (b) the Supplier shall maintain adequate insurances; and
 - (c) following instructions on the placement, installation and /or supervision for the Goods and/or Services shall be the sole responsibility of the Supplier, the Client shall not be liable for errors or omissions arising from the Supplier failing to comply with this clause.

10. Access

- 10.1 The Client shall be entitled to access the Supplier's premises during production manufacture, assembly or testing to inspect all parts of the Goods where the Client deems such inspection is necessary to ensure the completed Goods in all respects is in accordance with this Purchase Order.

- 11. Indemnification**
- 11.1 Supplier agrees to indemnify Client Group from any liability or claims whatsoever, incurred by Client Group due to the use by Client Group of a patented device, process, goods, materials or apparatus, which is supplied by Supplier or is embodied in Goods and/or Services supplied by Supplier in connection with this Purchase Order.
- 11.2 The Supplier shall be liable for and hereby indemnifies against liability, and agrees to waive all claims against the Client Group in respect of any loss of or damage to the property of the Supplier Group arising out of or in connection with this Purchase Order whether or not caused by resulting from or contributed to by the negligence or other legal fault in any form of the Client Group.
- 11.3 The Client shall be liable for and hereby indemnifies against liability, and agrees to waive all claims against the Supplier Group in respect of any loss of or damage to the property of the Client Group arising out of or in connection with this Purchase Order whether or not caused by resulting from or contributed to by the negligence or other legal fault in any form of the Supplier Group.
- 11.4 Except as otherwise provided in this Clause, each party to this Purchase Order hereby indemnifies the other against liability for injury to or death of persons and for loss of or damage to property of Third Parties to the extent that such injury, death, loss or damage is caused, or contributed to, by such first-mentioned party.
- 11.5 The Supplier hereby indemnifies the Client Group against liability for injury to or death of any of the Supplier Group notwithstanding any negligence or other legal fault causing such injury or death by any of the Client Group. The Client hereby indemnifies the Supplier Group against liability for injury to or death of any of the Client Group notwithstanding any negligence or other legal fault causing such injury or death by any of the Supplier Group.
- 11.6 Notwithstanding anything in this Purchase Order to the contrary, neither party shall be liable to the other for indirect, special or punitive damages arising from the performance or non-performance of the Services including without limitation, loss of profit, or business interruption, whether or not foreseeable and howsoever caused.
- 12. Engineering Data**
- 12.1 The Supplier shall furnish any applicable engineering data listed on the Purchase Order specific to the Client order. This may include but not limited to data sheets, engineering data, installation instructions, user, maintenance or operating manuals, spare parts lists and all other documentation deemed necessary to install, operate and maintain the Goods and/or Services. Said engineering data is to be delivered at such a time to not delay or hinder installation, operation and maintenance of the Goods and/or Services.
- 13. Intellectual Property**
- 13.1 Client retains the ownership of all Intellectual Property rights in and to the Goods and/or Services. Supplier retains the ownership of all Intellectual Property rights of any content or information Supplier submits to the Agreement. Nothing in these terms and conditions transfer the Intellectual Property Rights to the Goods and/or Services. Client grants you a limited, revocable, personal, non-transferable, non-exclusive license to use the Goods and/or Services for purposes in line with the *Copyright Act 1968 (Cth)*. Supplier grants you a royalty-free, sub-licensable, transferable, irrevocable and perpetual licence to use, any contributions you make to the Goods and/or Services in connection with our operation of the Agreement.
- 14. Confidential Information**
- 14.1 All information so obtained by Supplier in relation to the Client's operations shall be confidential and Supplier shall ensure that neither their personnel nor their families divulge any such information to Third Parties.
- 14.2 All drawings and specifications furnished by Client or Supplier vest in Client and such documents shall not be disclosed by Supplier to any Third Party (except in connection with performance of this Purchase Order) or used by Supplier in connection with the supply of goods or materials for Third Parties without prior written consent of Client.
- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")**
- 15.1 The Client shall inspect the Goods and/or Services on delivery and shall within seven (7) calendar days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Supplier shall afford the Client an opportunity to inspect the Goods and/or Services within a reasonable time following delivery if the Client believes the Goods and/or Services are defective in any way. If the Client shall fail to comply with these provisions the Goods and/or Services shall be presumed to be free from any defect or damage. For defective Goods and/or Services, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods and/or Services or repairing the Goods and/or Services except where the Client has acquired Goods and/or Services as a consumer within the meaning of the CCA or the FTA of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods and/or Services, or repair of the Goods and/or Services, or replacement of the Goods and/or Services.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 15.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods and/or Services. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A.
- 15.6 If the Supplier is required to replace the Goods and/or Services under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Client has paid for the Goods and/or Services.
- 15.7 If the Client is not a consumer within the meaning of the CCA, subject to the conditions of warranty set out in clause 8.8, the Supplier warrants that if any defect in any Goods and/or Services supplied by the Supplier become apparent and are reported to the Supplier within twelve (12) months of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the Goods and/or Services.
- 15.8 The conditions applicable to the warranty given by clause 8.7 are:
- limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;
 - the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - failure on the part of the Client to properly maintain any Goods and/or Services; or
 - failure on the part of the Client to follow any instructions or guidelines provided by the Supplier; or
 - any use of any Goods and/or Services otherwise than for any application specified on a quote or order form; or
 - the continued use of any Goods and/or Services after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - fair wear and tear, any accident or act of God.
 - the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.
 - limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods and/or Services. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods and/or Services;
 - in respect of all claims the Supplier shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
 - otherwise negated absolutely.
- 15.9 Subject to clause 8.1, returns will only be accepted provided that:
- the Client has complied with the provisions of clause 8.1; and
 - the Supplier has agreed that the Goods and/or Services are defective; and
 - the Goods and/or Services are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - the Goods and/or Services are returned in as close a condition to that in which they were delivered as is possible.
- 15.10 Notwithstanding clauses 8.1 to 8.7 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Client failing to properly maintain or store any Goods and/or Services;
 - the Client using the Goods and/or Services for any purpose other than that for which they were designed;
 - the Client continuing the use of any Goods and/or Services after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - the Client failing to follow any instructions or guidelines provided by the Supplier;
 - fair wear and tear, any accident, or act of God.
- 15.11 In the case of second hand Goods and/or Services, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods and/or Services prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Supplier has agreed to provide the Client with the second hand Goods and/or Services and calculated the Price of the second hand Goods and/or Services in reliance of this clause 8.11.
- 15.12 The Supplier may in its absolute discretion accept non-defective Goods and/or Services for return in which case the Supplier may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Goods and/or Services plus any freight costs.
- 15.13 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.
- 16. The Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")**
- 16.1 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 17. Personal Property Securities Act 2009 ("PPSA")**
- 17.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 17.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or Services that have previously been supplied and that will be supplied in the future by the Client to the Supplier.
- 17.3 The Supplier undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Client may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
 - indemnify, and upon demand reimburse, the Client for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods and/or Services charged thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of the Client;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or Services in favour of a Third Party without the prior written consent of the Client;
 - immediately advise the Client of any material change in its business practices of selling the Goods and/or Services which would result in a change in the nature of proceeds derived from such sales.
- 17.4 The Client and the Supplier agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 17.5 The Supplier waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 17.6 The Supplier waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 17.7 Unless otherwise agreed to in writing by the Client, the Supplier waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 17.8 The Supplier must unconditionally ratify any actions taken by the Client pursuant to this clause.
Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- 18. Bank Guarantee**
- 18.1 At the Client's sole discretion:
- The Supplier shall deliver to the Client a bank guarantee upon the execution of this Agreement.
 - If at any time the Supplier fails to observe or perform any of the Supplier's obligations under this Agreement, the Client may at its sole discretion at any time after such failure call up and appropriate to itself absolutely all or such part of the amount of the bank guarantee necessary in the reasonable opinion of the Client to compensate the Client for any loss or damage suffered by the Client by reason of such failure.
 - Any such appropriation by the Client will not:
 - constitute a waiver by the Client of such failure or its right to damages for such failure;
 - prejudice any other remedy or right of the Client in respect of such failure; nor
 - without further action by the Client be deemed to terminate this Agreement.
 - If the amount of the bank guarantee or any part of it is appropriated by the Client and the Agreement remains on foot the Supplier shall within seven (7) calendar days of demand by the Client provide to the Client an additional or a substituted bank guarantee for such amount as ensures that the amount secured is not reduced below the amount specified by the Client.
 - The Supplier shall, if so requested by the Client, increase the amount secured by the bank guarantee to such amount as the Client reasonably requires having regard to the value of the Goods and/or Services supplied, by providing such additional or substituted bank guarantee or bank guarantees as may be required by the Client to cover the total value of the Goods and/or Services supplied.
 - Upon finalisation of this Agreement and/or any amounts owing on any accounts held by the Supplier, the Client shall return to the Supplier any bank guarantee provided by the Supplier.
- 19. Cancellation**
- 19.1 The Client may cancel any Purchase Order to which these terms and conditions apply or cancel delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Supplier. On giving such notice, the Supplier shall repay to the Client any sums paid in respect of the Purchase Order Price. The Client shall not be liable for any loss or damage whatever arising from such cancellation.
- 19.2 In the event that the Supplier cancels delivery of the Goods and/or Services the Supplier shall be liable for any loss incurred by the Client (including, but not limited to, any loss of profits) up to the time of cancellation. The Supplier may only cancel delivery of Goods and/or Services by providing the Client with written notice of cancellation.
- 19.3 The Supplier reserves its right to refuse the cancellation of Goods and/or Services manufactured to the Client's specifications or non-stock list items after the Supplier has commenced production of the Goods and/or Services.
- 19.4 In the event of cancellation by the Client, the Supplier reserves its right to charge a restocking fee at the Supplier's sole discretion.
- 20. Privacy Act 1988**
- 20.1 If the requirement surfaces the Supplier agrees for the Client to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Supplier in relation to any credit provided by the Client.
- 20.2 The Supplier agrees that the Client may exchange information about the Supplier with those credit providers and with related body corporate for the following purposes:
- to assess an application by the Supplier; and/or
 - to notify other credit providers of a default by the Supplier; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Supplier is in default with other credit providers; and/or
 - to assess the creditworthiness of the Supplier including the Supplier's repayment history in the preceding two years.
- 20.3 The Supplier consents to the Client being given a consumer credit report to collect overdue payment on commercial credit.
- 20.4 The Supplier agrees that personal credit information provided may be used and retained by the Client for the following purposes (and for other agreed purposes or required by):
- the provision of the Goods and/or Services; and/or
 - the marketing of the Goods and/or Services by the Supplier, its agents or distributors; and/or
 - analysing, verifying and/or checking the Supplier's credit, payment and/or status in relation to the provision of the Goods and/or Services; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Supplier; and/or
 - enabling the daily operation of Supplier's account and/or the collection of amounts outstanding in the Supplier's account in relation to the Goods and/or Services.
- 20.5 The Client may give information about the Supplier to a CRB for the following purposes:
- to obtain a consumer credit report;
 - allow the CRB to create or maintain a credit information file about the Supplier including credit history.
- 20.6 The information given to the CRB may include:
- personal information as outlined in this Clause;
 - name of the credit provider and that the Client is a current credit provider to the Supplier;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - details concerning the Supplier's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) calendar days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Supplier no longer has any overdue accounts and the Client has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - information that, in the opinion of the Client, the Supplier has committed a serious credit infringement;
 - advice that the amount of the Supplier's overdue payment is equal to or more than one hundred and fifty Australian dollars (AUD \$150).
- 20.7 The Supplier shall have the right to request (by e-mail) from the Client:
- a copy of the information about the Supplier retained by the Client and the right to request that the Client correct any incorrect information; and
 - that the Client does not disclose any personal information about the Supplier for the purpose of direct marketing.
- 20.8 The Client will destroy personal information upon the Supplier's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Agreement or is required to be maintained and/or stored in accordance with the law.
- 20.9 The Supplier can make a privacy complaint by contacting the Client via e-mail. The Client will respond to that complaint within seven (7) calendar days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) calendar days of receipt of the complaint. In the event that the Supplier is not satisfied with the resolution provided, the Supplier can make a complaint to the Information Commissioner at www.oaic.gov.au.

21. General

- 21.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 Any reference in these terms and conditions to any Statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended, extended or re-enacted.
- 21.3 These terms and conditions and any contract to which they apply shall be governed by the laws of the State of Queensland and each party submits to the non-exclusive jurisdiction of the courts of the State of Queensland.
- 22.** Any complaints or disputed regarding the provision of the Goods and/or Services are to be reported the Client as a dispute notice. The first step of dispute resolution is to resolve any complaints by senior management meetings without needing to involve Third Parties. The escalation is to seek arbitration in the state of Queensland. The Client reserves the right to enforce these terms and conditions equitably including but not limited to arbitration in the State of Queensland. This clause shall survive termination of this Agreement.
- 22.1 The Supplier agrees that the Client may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Client notifies the Supplier of such change in writing.
- 22.2 This Agreement is personal to the Client and the Supplier may not assign the Agreement without the Client's written consent.
- 22.3 Neither party shall be liable for any breach of contract or liable for any defaults, delays, or failures to perform any of the party's obligations under the contract due to but not limited to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.4 The Supplier or Supplier Group warrants that it has the power to enter into this Agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this Agreement creates binding and valid legal obligations on it.
- 22.5 These terms and conditions shall prevail to the extent of any inconsistency with any other document or Agreement between the Client and the Supplier.
- 22.6 The failure by the Client to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Client's right to subsequently enforce that provision.