

**1. PURPOSE & APPLICATION**

- 1.1. This Agreement, as constituted by these Conditions, is a Security Agreement for the purposes of the PPSA.
- 1.2. These Conditions apply exclusively to all current and future supply of Goods and Services between the Supplier and the Purchaser and are incorporated into all, Quotes and contracts for the supply of Goods and Services provided by the Supplier to the Purchaser.
- 1.3. Unless otherwise agreed between the Supplier and the Purchaser, these Conditions cannot be varied or supplanted by any other terms and conditions, including the Purchaser's terms and conditions of purchase (if any).
- 1.4. If more than one person is the Purchaser those persons contract jointly and severally for themselves and each other.
- 1.5. Where the Purchaser as trustee of a trust incurs a liability for the supply of Goods and Services to the Supplier the Purchaser will incur that liability personally as well as in its capacity as trustee.

**2. GOVERNING LAW**

- 2.1. The law of Victoria from time to time governs the Conditions. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 2.2. Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of Services which cannot be excluded, restricted or modified.
- 2.3. If any provision of these Conditions is unenforceable, that provision must be read down to be enforceable to the extent that it is not invalid, or if it cannot be read down and if it is not possible to give that provision any effect at all, then it is to be severed from these Conditions and the remainder of these Conditions will continue to have full force and effect.

**3. QUOTE & PURCHASE ORDER**

- 3.1. The Supplier will issue the Purchaser with a Quote with these Conditions at the request of the Purchaser.
- 3.2. The Supplier may vary the specifications or particulars in the Quote until a Purchase Order is received and any time after the Quote has lapsed.
- 3.3. The Quote provided with these Conditions will be valid for 30 days from the date of issue.
- 3.4. If the Purchaser wishes to place an order in response to a Quote, it must submit its Purchase Order to the Supplier prior to the expiry of the Quote in accordance with clause 3.3.
- 3.5. The Supplier is under no obligation to accept the terms of the Purchase Order supplied by the Purchaser.
- 3.6. The Purchase Order provided by the Purchaser will be valid for acceptance by the Supplier for 30 days from its issue;
  - (a) The Supplier may make amendments to the Purchase Order prior to its acceptance by the Supplier; however any amendment must be in writing with the final Purchase Order to be confirmed by the Purchaser.

- (b) The Supplier may vary the specifications or particulars in the Purchase Order until the final Sales Order is received by the Purchaser.
  - (c) A Purchase Order is only final and binding once the Supplier accepts the Purchase Order supplied by the Purchaser.
- 3.7. The Price contained in a Quote, Purchase Order or Sales Order is exclusive of freight, GST and all other taxes, duties or government charges levied in respect of the Goods and/or Services except to the extent that they are expressly included in the Quote, Purchase Order or Sales Order.

**4. DELIVERY**

- 4.1. Unless otherwise agreed between the parties, the Supplier will arrange for the delivery of the Goods to the Purchaser.
  - 4.2. Where the Price quoted by the Supplier includes delivery or where the Supplier delivers on behalf of the Purchaser:
    - (a) the Purchaser is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods to the Purchaser to the point of delivery;
    - (b) the Supplier may make part delivery of the Goods or provision of Services and the Supplier may invoice the Purchaser for the Goods or Services provided; and
    - (c) the Purchaser indemnifies the Supplier against any loss or damage suffered by the Supplier, its sub-contractors or employees as a result of delivery, except where the Purchaser is a consumer and the Supplier has not used due care and skill.
  - 4.3. The time estimated for delivery of the Goods or provision of the Services commences when the Supplier receives final instructions from the Purchaser. Estimated delivery dates are estimates only and not a contractual commitment. The Supplier will use reasonable endeavours to meet any estimated dates but will in no event be liable for any loss or damage to the Purchaser or any third party for delay in delivery or installation however caused. Delay shall not constitute a breach of contract.
  - 4.4. If delivery is attempted and is unable to be completed the Purchaser is deemed to have taken delivery of the Goods. Where it is necessary for the Supplier to store the Goods the subject of delivery, the Purchaser is liable to the Supplier for any expenses incurred by the Supplier by the Purchaser's non-acceptance of the Goods including any reasonable storage charges payable monthly on demand, after such charges have been advised to the Purchaser.
  - 4.5. Any delay in the delivery of the Goods by the Supplier does not relieve the Purchaser of any obligation to accept or pay for the Goods.
- 5. RISK**
- 5.1. The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Purchaser immediately on the Goods being delivered to the Purchaser.
  - 5.2. The Goods are sold to the Purchaser on the basis that the Purchaser has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Goods.

5.3. The Purchaser assumes all risk and liability for loss, damage or injury to persons or to property of the Purchaser, or third parties arising out of the use, installation or possession of any of the Goods sold by the Supplier, unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL.

## 6. TITLE TO THE GOODS

6.1. Ownership of and title to the Goods remains with the Supplier until the Supplier receives full payment in cleared funds as well as any other money that the Purchaser may owe to the Supplier at any time on any account.

6.2. Until ownership of and title to the Goods passes to the Purchaser:

- (a) the Purchaser will not, without the Supplier's consent:
  - (i) make any alterations to the Goods or do or allow anything to happen to the Goods that might contribute to the deterioration in their value or otherwise adversely affect the interests of the Supplier;
  - (ii) sell or dispose of the Goods except in the ordinary course of its business; and
  - (iii) charge, encumber or create a Security Interest in the Goods.
- (b) the Purchaser must hold the Goods as fiduciary bailee and agent for the Supplier;
- (c) the Purchaser must keep the Goods separate from its goods and maintain the Supplier's labelling and packaging;
- (d) the Purchaser must hold the proceeds of sale of the Goods on trust for the Supplier in a separate account with a bank to whom the Purchaser has not given security however failure to do so will not affect the Purchaser's obligation as trustee;
- (e) the Purchaser will keep proper stock records and records of account with respect to the purchase, receipt, sale of, and other dealings with the Goods;
- (f) the Supplier may give notice in writing to the Purchaser to return the Goods to the Supplier and, upon such notice, the Purchaser's right to obtain ownership or any other interest in the Goods will cease;
- (g) If the Purchaser supplies the Goods to any third party before ownership of and title to the Goods passes to it, whether or not with the Supplier's consent, the Purchaser holds the proceeds of the resupply of the Goods on trust for the Supplier and will pay the proceeds of sale to the Supplier upon receipt;
- (h) in addition to its rights under the PPSA, the Supplier may, without notice, enter upon the Purchaser's Premises, or any other site where it suspects the Goods are, to repossess the Goods, notwithstanding that the Goods may have been attached to other goods not the property of the Supplier without incurring liability to the Purchaser or any third party, and for this purpose the Purchaser grants the Supplier an irrevocable licence to do so and will indemnify the Supplier from and against all costs, claims, demands, actions or adverse consequences of such action; and
- (i) the Supplier may exercise its right of entry (including the use and extent of force) in accordance with applicable laws.

## 7. PRICES

7.1. The Purchaser must pay to the Supplier:

- (a) the Price;
- (b) such other costs in respect of the provision of the Goods and Services specified in the Quotation, Purchase Order or Sales Order as additional costs.

7.2. Prices are exclusive of GST and all other taxes, duties or government charges levied in respect of the Goods and Services except to the extent that they are expressly stated to be included in the Price.

7.3. If the Purchaser requests a variation to the Agreement, the Supplier may seek to alter the Price to account for the variation by giving notice to the Purchaser, and the Purchaser may:

- (a) accept the new Price and continue with the Agreement; or
- (b) refuse the new Price and cancel the Agreement insofar as it relates to the subject of the requested variation.

7.4. Where there is any change in the costs incurred by the Supplier in relation to the Goods or Services, the Supplier may seek to vary its Price to take account of any such change by notifying the Purchaser and the Purchaser may:

- (a) accept the new Price and continue with the Agreement; or
- (b) refuse the new Price and cancel the Agreement insofar as it relates to the subject of the requested variation.

## 8. PAYMENT

8.1. Unless stated otherwise in the Quote, Purchase Order or Sales Order, payment of the Price must be made in accordance with the Tax Invoice issued by the Supplier.

8.2. Unless otherwise agreed in writing by the Supplier, payment of the Price must be made by cash, bank cheque, credit card or EFTPOS.

8.3. Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

8.4. Payment terms may be revoked or amended at the Supplier's sole discretion immediately upon giving the Purchaser written notice, and such revocation or amendment will apply to any Quote, Purchase Order or Sales Order placed by the Purchaser after such notice.

8.5. The time for payment is of the essence.

## 9. DEFAULT IN PAYMENT

9.1. If the Purchaser defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Purchaser to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Purchaser, and the Supplier may, without prejudice to any of its other accrued or contingent rights:

- (a) charge the Purchaser interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* (Vic) plus 2% for the period from the due date until the date of payment in full;
- (b) charge the Purchaser for, and the Purchaser must indemnify the Supplier from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any Goods;

- (c) cease or suspend supply of any further Goods or Services to the Purchaser;
  - (d) by written notice to the Purchaser, terminate any uncompleted contract with the Purchaser.
- 9.2. Subject to any applicable statutory stay of proceedings, and without prejudice to the Supplier's other remedies at law, clauses 9.1(c) and 9.1(d) may also be relied upon, at the Supplier's option:
- (a) where the Purchaser is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
  - (b) where the Purchaser is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Purchaser.

**10. NO SET-OFF**

- 10.1. The Purchaser is not entitled to:
- (a) set-off or attempt to set-off against any amount owed to the Supplier or any amount the Purchaser alleges is owed to it by the Supplier;
  - (b) withhold payment of any amount payable under the Agreement to the Supplier because of any disputed claim; nor
  - (c) set-off against any amount payable under the Agreement any monies which are not then presently payable by the Supplier or in relation to which the Supplier disputes liability.

**11. TERMINATION**

- 11.1. If the Purchaser commits an Act of Default which is not remedied within 7 days of the Supplier giving written notice of the Act of Default, then subject to any applicable statutory stay of proceedings the Supplier may terminate this Agreement or place the Purchaser on stop supply including the cancellation of delivery of all orders until the Purchaser has remedied the Act of Default.
- 11.2. If the Supplier terminates this Agreement pursuant to clause 11.1:
- (a) all amounts payable by the Purchaser to the Supplier will immediately become due and payable notwithstanding that the due date has not arisen; and
  - (b) the Supplier may immediately reclaim any advertising or point of sale material incorporating the Supplier's Intellectual Property and the Purchaser grants the Supplier an irrevocable licence to enter upon the Purchaser's Premises to reclaim such material without incurring liability to the Purchaser or any other person.
- 11.3. If the Supplier commits an Act of Default which is not remedied within 7 days of the Purchaser giving written notice of the Act of Default, then subject to any statutory stay of proceedings the Purchaser may terminate this Agreement and obtain a refund of any amount of the Price already paid for Goods not supplied, less any other amounts due and payable to the Supplier under this Agreement.

**12. CANCELLATION**

- 12.1. No purported cancellation or suspension of an order or any part of it by the Purchaser is binding on the Supplier once the order has been accepted.
- 12.2. If the Purchaser seeks to cancel an order or any part of it after the acceptance of the Purchase Order by the Supplier, and the Supplier accepts the cancellation:
- (a) The Purchaser must reimburse the Supplier any out of pocket expenses the Supplier incurs as a result of the cancellation; and
  - (b) If work has been completed by the Supplier or part thereof is delivered to the Purchaser, the Purchaser must pay for such Goods in accordance with these Conditions.
- 12.3. If the Supplier has reason to believe that it will be unable to fulfil a Purchase Order within a reasonable time or at all due to circumstances beyond its reasonable control, the Supplier may, without penalty or liability, cancel the Purchase Order, in which case, the Supplier will refund the Purchaser any amount of the Price already paid in respect of any Goods or Services the subject of that Purchase Order that will not be supplied.

**13. LIABILITY**

- 13.1. Except as these Conditions specifically state, or as contained in any express warranty provided in relation to the Goods or Services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services or any contractual remedy for their failure.
- 13.2. If the Purchaser is a consumer nothing in these Conditions restricts, limits or modifies the Purchaser's rights or remedies against the Supplier for failure of a statutory guarantee under the ACL.
- 13.3. If the Purchaser on-supplies the Goods to a consumer and:
- (a) the Goods or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then which ever is the lowest amount specified in section 276A(1) of the ACL, being:
    - (i) the cost of replacing the Goods; or
    - (ii) the cost of obtaining equivalent Goods; or
    - (iii) the cost of having the Goods repaired, is the absolute limit of the Supplier's liability to the Purchaser;
  - (b) the Goods or Services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 (indemnification of suppliers by manufacturers) of the ACL is the absolute limit of the Supplier's liability to the Purchaser;
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or Services by the Purchaser or any third party.
- 13.4. If clause 13.1 or 13.2 do not apply, then other than as stated in these Conditions or any written warranty statement the Supplier is not liable to the Purchaser in any way arising under or in connection with the sale, installation, use of, storage or any other dealings

- with the goods or services by the Purchaser or any third party.
- 13.5. The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Purchaser or any third party, howsoever caused, including but not limited to loss of turnover, revenue, profits, business, loans, rental equipment or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 13.6. The Purchaser acknowledges that:
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Supplier in relation to the Goods or Services or their use or application.
  - (b) it has not made known, either expressly or by implication, to the Supplier any purpose for which it requires the Goods or Services and it has the sole responsibility of satisfying itself that the Goods or Services are suitable for the use of the Purchaser.
- 13.7. Any statement made by the Supplier, its agents or distributors concerning the plant or Goods or any part thereof having regard to the capacity, output performance efficiency or suitability for any particular purpose is made only as bona fide estimate without warranty as to its correctness except in the case where there is some express provision contained in the Agreement.
- 13.8. The Supplier, its agents or distributors shall not be liable for any inaccuracies in any drawings, bills of quantity specifications or any other information supplied by the user, person or firm on behalf of the user unless agreed in writing that forms part of a Quote, Purchase Order or Sales Order. The Supplier shall not in any circumstances be liable in respect of any accidents or happenings where such information happens to be faulty or inaccurate.
- 13.9. Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of Services which cannot be excluded, restricted or modified.
- 14. GOODS RETURNED FOR CREDIT**
- 14.1. The Purchaser must inspect the Goods on delivery. This responsibility remains with the Purchaser even where the Goods are delivered to a third party.
- 14.2. Subject to clause 14.3 and 14.5, the Supplier will not be liable for any defects, shortages, damage or non-compliance with the specifications in the Agreement unless the Purchaser notifies the Supplier with full details and description within 7 days of delivery of the Goods or completion of the Services, whichever is later, otherwise the Purchaser is deemed to have accepted the Goods and Services.
- 14.3. When any shortages, claim for damaged goods or non-compliance with the Agreement specifications is accepted by the Supplier, the Supplier may, at its option, replace the goods, or refund the price of the goods.
- 14.4. Subject to clause 14.5, the Supplier will not under any circumstances accept goods for return that:
- (a) have been specifically produced (including customisation such as but not limited to being cut to size), imported or acquired to fulfil the Agreement;
  - (b) are discontinued goods or no longer stocked by the Supplier;
  - (c) have been altered in any way;
  - (d) have been used; or
  - (e) are not in their original condition and packaging.
- 14.5. If the Purchaser is a consumer, nothing in this clause 14 limits any remedy available for a failure of the guarantees in the ACL.
- 14.6. Goods will be deemed to comply with the specifications of this Agreement if they are manufactured, made, cut, finished and/or supplied to dimensions and measurements that are within acceptable industry tolerances.
- 14.7. The Goods may vary from product to product, including without limitation as to their colour, finish and design. Any sample provided is intended as a general guide only. To the extent permitted by law, the provision of a sample does not constitute a supply of goods by sample and the Supplier is not liable to the Purchaser for any variation in colour, finish and/or design of the Goods.
- 14.8. To the maximum extent permitted by law, the Supplier excludes responsibility, and does not accept any liability, if the colour, design, measurement and/or dimensions of the Goods varies from those contained in any catalogue, brochure or other promotional or information document, which is intended as a guide only.
- 14.9. Goods returned for credit will only be accepted by prior agreement with either of the responsible Senior Manager, General Manager, National Sales Manager or Service Manager where:
- (a) they have been wrongly or over supplied; and
  - (b) they have been returned within 14 days of the invoice date.
- 14.10. The Supplier reserves the right to accept the return of Goods on credit after 14 days of the date of invoice.
- 14.11. In all cases except for the wrong or over supply of Goods a reasonable restocking fee will apply. The value of the restocking fee will be at the discretion of the Supplier.
- 14.12. The Supplier reserves the right to not accept Goods returned for credit in line with clause 14 including but not limited to:
- (a) the Goods returned in non-merchantable quality; and
  - (b) the Goods are a non-stocked, non-standard item, or altered or made to order or procured for the specific purposes of the Purchaser.
- 15. INDEMNITY**
- 15.1. To the maximum extent permitted at law, the Purchaser will indemnify, hold harmless and at all times hold the Supplier fully and effectively indemnified against any losses, costs, actions, claims, demands, expenses, judgments, court orders or other liabilities arising directly or indirectly out of or in connection with:
- (a) the sale or hire of the Goods by the Purchaser to any third party;
  - (b) any breach by the Purchaser of any of its representations, obligations, warranties or undertakings contained in these Conditions;
  - (c) any negligent act or omission of the Purchaser; or
  - (d) any infringement of the Goods IP by the Purchaser or a related party of the Purchaser.

## **16. PERSONAL PROPERTY SECURITIES ACT 2009**

- 16.1. Notwithstanding anything to the contrary contained in these Conditions, the PPSA applies to these Conditions.
- 16.2. Terms used in this clause 16 that are defined in the PPSA have the same meaning as in the PPSA.
- 16.3. The Purchaser acknowledges and agrees that:
- (a) these Conditions constitute a Security Agreement for the purposes of the PPSA which creates a Security Interest in favour of the Supplier in the Goods and in all present and after acquired property supplied by the Supplier to the Purchaser (or for the Purchaser's account) until the Price has been paid for in full;
  - (b) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Purchaser at any particular time;
  - (c) the Supplier may, without notice to the Purchaser register its Security Interest in the Goods, in all present and after acquired property and in their proceeds as a Purchase Money Security Interest on the Register; and
  - (d) the Purchaser must do whatever is necessary in order to give a valid security interest over the Goods which is able to be registered by the Supplier on the Personal Property Securities Register; and
  - (e) the Security Interest is not discharged nor the Purchaser's obligations affected by the administration of the Purchaser.
- 16.4. The security interest arising under this clause 16 attaches to the Goods when the Goods are collected or dispatched from the Supplier's premises and not at any later time.
- 16.5. Where permitted by the PPSA, the Purchaser waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95 (removal of accession), 118 (enforcement of security interests in accordance with land law decisions), 121(4) (enforcement of security interests in liquid assets), 130 (disposal of collateral), 132(3)(d) (amounts paid to other secured parties), 132(4) (statement of account in respect of seized collateral), 135 (retention of collateral) and 157 (notice to grantors) of the PPSA.
- 16.6. The Supplier and the Purchaser contract out of and nothing in the provisions of sections 96 (retention of accession), 125 (disposal or retention of collateral), 129 (disposal by purchase), 142 (redemption of collateral) and 143 (reinstatement of security agreement) of the PPSA will apply to these Conditions.
- 16.7. To the extent permitted by the PPSA, the Purchaser agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Purchaser or which place obligations on the Supplier will apply only to the extent that they are mandatory or the Supplier agrees to their application in writing; and
  - (b) where the Supplier has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 16.8. The Purchaser must immediately upon the Supplier's request:

- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
- (b) procure from any person considered by the Supplier to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Supplier may at any time require.

16.9. The Supplier may allocate amounts received from the Purchaser in any manner the Supplier determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Supplier.

16.10. For the purposes of section 275(6) (response to request for information) of the PPSA, the parties agree and undertake that these Conditions and any information pertaining to the sale of Goods and details of the Goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Conditions or the sale of the Goods, except as otherwise required by law or that is already in the public domain.

## **17. FORCE MAJEURE**

17.1. Neither party will be liable for any delay or failure in the performance of any obligation or the exercise of any right under this Agreement or for any loss or damage if such performance or exercise is prevented or hindered in whole or in part by reason of a Force Majeure Event.

17.2. Nothing in this clause will excuse payment of any money due or which becomes due under this Agreement.

## **18. INTELLECTUAL PROPERTY**

18.1. All Intellectual Property of the Supplier is the sole property of the Supplier.

18.2. When Goods or parts of Goods thereof are supplied to the Purchaser pursuant to the designs of the of Purchaser, the Purchaser indemnifies the Supplier against any damages or costs incurred by the Supplier in regard to proceedings brought against the Supplier for infringement of any patents, or other rights.

18.3. The Purchaser warrants that any design or instruction furnished or given to the Supplier by the Purchaser shall not cause the Supplier to infringe any letters patent, registered designs or trademarks, in the execution of the Purchasers order.

## **19. DRAWINGS AND OTHER LITERATURE**

19.1. Drawings, explanatory and illustrated literature and any other appended matter submitted for descriptive or explanatory purpose are estimated only and are not to be construed as part of the contract in dimensions, details specification or otherwise.

19.2. All drawings and specifications are and shall remain the property of the Supplier and must not be copied, reproduced or divulged either directly or indirectly to any other person without the prior permission of the Supplier.

## **20. CONFIDENTIALITY**

All information supplied by a party to the other party will be treated as confidential except to the extent that it becomes public knowledge, and will not be disclosed to a third party without the prior written consent of the party who originally supplied the information, or as required by law.

## **21. VARIATIONS**

The Supplier may from time to time amend these Conditions for legitimate business reasons upon

written notice to the Purchaser, and such variations will apply from the date such notice is given.

## 22. **PRIVACY POLICY AND USE OF INFORMATION**

The Supplier complies with the Privacy Act 1988 as amended and is bound by the Australian Privacy Principles dealing with the collection, use and storage of personal information about individuals.

## 23. **DISPUTE**

23.1. If a dispute arises under this Agreement, the parties will attempt to negotiate a resolution by good faith negotiations.

23.2. Failing a resolution as a result of good faith negotiations, after notice of 14 days provided by the Supplier the dispute shall be referred to the arbitration of a person to be agreed upon by both parties, failing such agreement, to the President of the Institute of Engineers of Australia at the time upon the application of either party.

## 24. **WAIVER**

A single or partial exercise or waiver of a right relating to these Conditions will not prevent any other exercise of that right or another right.

## 25. **NOTICE**

A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

## 26. **INTERPRETATION**

Unless otherwise inconsistent with the context:

**ACL** means The Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

**Act of Default** occurs if either party:

- (a) commits a material breach of these Conditions;
- (b) subject to any applicable statutory stay of proceedings:
  - (i) commits an act of bankruptcy, enters into any composition or arrangement with its creditors or does anything which would make it liable to be put into liquidation;
  - (ii) is subject to a resolution or an application for liquidation;
  - (iii) has a receiver, other form of insolvency administrator or statutory or official manager appointed over any of its assets; or
- (c) anything analogous to or having similar effect to any of the other events above arises.

**Agreement** means the agreement between the relevant Supplier and Purchaser for the supply of the Goods or Services as constituted by these Conditions, the Sales Order and Quotation;

**Conditions** means the Conditions of Trade as set out in this document, as amended or updated from time to time by the Supplier;

**Consequential Loss** means loss of revenue, profits, anticipated savings or business opportunity and any form of consequential, special, indirect, punitive or exemplary loss or damages;

**consumer** is as defined in the ACL and in determining if the Purchaser is a consumer, the determination is made if Purchaser is a consumer under the Agreement;

**Purchaser** means the person or entity named as the purchaser in the Sales Order, Quotation or Purchase Order or any person or entity acting on their behalf;

**Purchaser's Premises** means any site owned, possessed, used or controlled by the Purchaser;

**Force Majeure Event** means any event or circumstances which is beyond the reasonable control of the effected party which results in or causes the failure of that party to perform any of its obligations under this Agreement;

**Goods** means goods specified in the Sales Order for supply by the Supplier to the Purchaser;

**GST** has the meaning prescribed to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and its associated Regulations as amended;

**Intellectual Property** means all rights resulting from intellectual activity and includes copyright, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and all rights and interests of a like nature, including but not limited to methods and techniques, together with any documentation relating to such rights and interests;

**Law** means any relevant federal, state or local statute, ordinance, rule, regulation or standard, and includes the ACL, as amended from time to time;

**Loss** means any liability, including any loss, claim, damage, demand, injury or death, and any penalty imposed by a statutory or other authority;

**Person** includes a corporation;

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;

**Price** means the price specified in a Quote, Purchase Order or Sales Order for the Goods and Services;

**Purchase Order** means an order by the Purchaser for the supply of Goods and Services pursuant to these Conditions, as set out in a Sales Order or as placed by the Purchaser in accordance with any other order process imposed by the Supplier as advised to the Purchaser from time to time;

**Quote** means an indication of the Price of the Goods and Services requested by the Purchaser to be supplied by the Supplier;

**Register** means the Personal Properties Securities Register as established under the PPSA;

**Sales Order** means the document entitled "Sales Order / Tax Invoice" and which constitutes a Tax Invoice for the purposes of *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended);

**Services** means the services specified in a Sales Order;

**Supplier** means whichever one of Kaishan Australia Pty Ltd ACN 114 574 515 or any related corporations who agrees to supply Goods and Services to the Purchaser under an Agreement.