

These are the entire Terms and Conditions of all Goods and Services supplied by Metro Computers & Supplies Pty Ltd ACN 080 083 129 t/as Metropolitan Computers and Supplies ABN 68 080 083 129 and any associated, related, subsidiary and parent companies, successors and assigns ("the Supplier").

## Glossary

### 1. DEFINITIONS AND INTERPRETATION

**Additional Expenses** means any duties, fees, taxes (including GST), service charges, delivery and freight charges, merchant fees, account keeping fees, dishonour fees, storage fees, handling fees and other levies imposed by these Terms.

**Credit Account** means the approved commercial account You have with Us to purchase Goods and Services on credit pursuant to these Terms.

**Customer** means any person, firm or company placing an order with Us for the purchase of Goods and Services pursuant to these Terms, any Quote or Order and includes Your agents and permitted assigns (all of which are referred to as "You" and "Your").

**Due Date** means the date You must pay for Goods, Services and Additional Expenses, which is the earliest of:

- i) The due date listed on Our invoice or
- ii) 21 days from the date of Our invoice.

**Force Majeure** means something outside a party's reasonable control, including war, strikes, lockouts, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm or flood, theft and vandalism.

**Goods** means products, equipment and merchandise supplied by Us to You pursuant to any Quote, Order and/or these Terms, including but not limited to computers and computer accessories.

**Insolvency Event** means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

**Loss** means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

**Order** means an order for the purchase of Goods and Services placed by You.

**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 and price of the Goods and Services to

be supplied by Us, in accordance with our price lists current at the time of issue and valid for 21 days (unless We advise You differently in writing).

**Services** means technical consulting services provided by Us to You pursuant to any Quote, Order and these Terms.

**Supplier** means the entity specified in these Terms as supplying Goods and Services to You and includes any associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "Us", "We" and "Our").

**Terms** means these Terms and Conditions of Sale.

**Website** means [www.metrocomputers.com.au](http://www.metrocomputers.com.au) as redirected from time to time.

In these Terms:

- (a) A Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods are being supplied;
- (b) a reference to writing includes email and any communication through Our Website;
- (c) a reference to a clause or paragraph is a reference to these Terms;
- (d) a reference to a party to these Terms 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 and any explanatory notes and paragraphs are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- (g) a reference to 'includes' or 'including' is not limiting and should be read as if the words 'but not limited to'; and
- (h) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

## Our Contract

### 2. THIS AGREEMENT AND OUR RELATIONSHIPS

- (a) These are the entire terms and conditions of sale of all Goods and Services supplied by Us to You. Except where the parties agree otherwise (which must be by a duly authorised officer and in writing), these Terms apply notwithstanding any provisions to the contrary which may appear on any other document, including a Quote, Order or Invoice.
- (b) You warrant that You have obtained all the necessary authorisations to enter into and perform the contract created by these Terms. You acknowledge and agree that the signatory of these Terms jointly and severally entered into the Terms with the Customer.
- (c) You accept these Terms by signing and returning a copy of them to Us

Duly signed and accepted in full on behalf of \_\_\_\_\_

Signature \_\_\_\_\_ Name \_\_\_\_\_ Position \_\_\_\_\_ Date \_\_\_\_\_

- or by other conduct, such as verbal acceptance or by placing an Order.
- (d) You engage Us to provide Goods and Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
  - (e) You agree that these Terms are interpreted according to the laws of the State or Territory as We may determine in Our sole discretion. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of New South Wales applying the laws of that State.

### 3. CHANGES AND UPDATES TO THE TERMS

- (a) From time-to-time, and at any time, We may update or alter these Terms. Any updated or altered Terms will apply from the date of alteration. A copy of current Terms can be found on Our Website or by requesting a copy from Us.
- (b) We will endeavour to notify You of any updated or altered Terms. However, there is no obligation whatsoever on Us to notify You of updated or altered Terms and You agree that You must regularly inspect Our Website for any updated or altered Terms.
- (c) You must notify Us in writing of any material change to Your organisation, including a change of name, structure, status, trustee, partner, director, contact details, credit card or bank account details, or address. We may ask You for a new credit application, Terms or any personal guarantee in Your new entity name as restructured or changed.
- (d) We may assign and transfer all or any of Our title, estate, interest, benefit, rights, duties and obligations in these Terms to any person, provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (e) You must not assign, transfer, charge, encumber or otherwise deal with any of Your rights and obligations under these Terms, or attempt or purport to do so, without Our prior written consent.

## Supply and Payment

### 4. PRICES, QUOTATIONS AND ORDERS

- (a) You may purchase Goods and Services by placing a written Order with Us. You warrant that the person who places the Order is authorised by You to do so.
- (b) Orders may be subject to minimum amounts, as determined by Us in Our sole discretion from time-to-time.
- (c) We may issue a Quote to You, but a Quote is not an offer to supply Goods and Services to You.
- (d) All Quotes expire on the date displayed in the Quote or otherwise 30 days after a Quote is issued. We may vary or cancel any Quote before an Order is accepted.
- (e) We may accept or decline any Order by notifying You in writing or by delivering the Goods and Services to You.
- (f) If You are a Customer who does not have a Credit Account, We will not be deemed to have accepted Your Order until payment in full has been made (by cash, EFT or cheque).
- (g) You may cancel an Order up to 14 days prior to a scheduled delivery without incurring any cancellation fees. If you cancel an Order within 14 days of a scheduled delivery, then You may be required to pay:
  - a. Cancellations fee at rates advised by Us from time to time; or
  - b. Additional Expenses for cancelling an Order for Goods no longer included on Our price lists; or
  - c. The cost of Your full Order for Goods specifically manufactured to Your custom specifications, less the current scrap value of the Goods as determined by Us.
- (h) Prices of Goods and Services specified on any of Our price lists or Quotes are subject to change from time to time.

- (i) Additional Expenses are separate to the prices for Our Goods and Services and You must pay for all Additional Expenses by the Due Date.
- (j) Unless the parties agree differently in writing, the price You must pay for Goods and Services is the price specified in Our invoice including any Additional Expenses.

### 5. SUPPLY

- (a) The specifications for the Goods and Services to be supplied under these Terms are contained in Your Order/s.
- (b) To facilitate Our supply of the Goods and Services, You must provide information that We reasonably require to supply Goods and Services, including:
  - i) Accurate and complete specifications, instructions measurements, designs, plans, files, records and other information; and
  - ii) All resources that are reasonably necessary to ensure timely approval, development, review and sign-off for all Services plans, including licenses, permissions, passwords, accounts and deliverables, software, information technology systems, premises, facilities, third parties and people with the relevant skills and experiences where applicable.
- (c) You acknowledge and agree that:
  - i) Our Services are limited to the particular consultation, project, solution, tasks, activities or other scope of work that We have agreed to carry out and the specific circumstances that apply in the course of Our Services;
  - ii) We are entitled to rely on the accuracy of and completeness of the information (written or oral) provided to, or obtained by, Us, whether the information is provided by, or obtained from, You, Your officers or staff, or Your advisors or consultants;
  - iii) Any Services provided are based on information that is made available or is available to Us at the time. You acknowledge and agree that actual results of the Services may be different from any objectives, budgets, projections or forecasts since unanticipated or unexpected events frequently occur and the variation may be material; and
  - iv) You must promptly notify Us of any change in information that may have a material impact on the Services, including any information regarding a design wind load, window or door thickness, and any required glazing certificates.

### 6. DELIVERY

- (a) We may make the Goods available for Your collection or deliver the Goods.
- (b) We may appoint a third party carrier to perform Our obligations of delivery under these Terms. Delivery may also be by instalments.
- (c) You authorise Us to deliver the Goods and Services to the place nominated by You (or otherwise to the business addressed described in your account). You also authorise Us to leave Goods at this place whether or not any person is there to accept delivery.
- (d) We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of the Goods and Services being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Goods and Services delivered.
- (e) You must provide a suitable and safe area for Us to deliver the Goods and Services, including a site that is compliant with occupational health and safety legislation and fully insured for Our (or Our agents, employees or contractors) safe use.
- (f) All delivery times indicated by Us are estimates only. Delivery times are subject to the Goods and Services being available and subject to Our reasonable ability to make the delivery on that date. We will endeavour to deliver Goods and Services at the time you need, but if We fail to deliver Goods and Services within a specified time or We fail to deliver any instalment, You are not allowed to cancel Your Order, refuse to accept delivery or refuse to pay for the Goods and Services.
- (g) Delivery of Goods is deemed to occur (and Our obligation is thereby

discharged) when the Goods are:

- i) Handed to You or Your representative; or
  - ii) Delivered to the site nominated by You or appearing on Your invoice for the Goods; or
  - iii) Collected by You or Your representative, whichever occurs first.
- (h) If You do not collect the Goods by the nominated collection date, then We may deliver the Goods to any site nominated by You or appearing on Your invoice for the Goods. We may also store the Goods or refuse to store the Goods if full payment has not been received from You.
- (i) You agree to inspect the Goods immediately on delivery.
- (j) You must pay all Additional Expenses We incur in relation to delivery, including:
- (d) Delivery fees;
  - (e) Storage of the Goods where You have failed to collect them by the nominated collection date;
  - (f) Delay in delivery of the Goods which is caused by You, the conditions of the nominated delivery site or the nature of the Goods being delivered;
  - (g) Any unexpected labour, permit, licence or additional costs in relation to the delivery.
- (k) Entry onto Our premises is at Your own risk. It is also at the risk of Your agents, employees, contractors and other representatives. We are not liable for any Loss whatsoever that You (or any of Your agents, employees, contractors or other representatives) incur at Our premises.

## 7. PAYMENT AND CREDIT

### Payment

- (a) Unless the parties agree differently in writing, You must pay for Goods and Services and all Additional Expenses by the Due Date.
- (b) All amounts payable are exclusive of GST (unless expressly stated otherwise). You must pay Us GST imposed on any supply of Goods and Services made under these Terms at the same time as payment for the Goods and Services.
- (c) If You believe You have a set-off claim against Us, You cannot withhold any payment on that basis without Our prior written consent.
- (d) Payment must be made in a manner approved by Us. We may charge You a reasonable bank processing fees, including surcharges for processing payments made by credit card, dishonour handling fees, and other bank processing fees at amounts advised by us from time to time.
- (e) If You do not pay for Goods and Services by the Due Date, in addition to any other remedies we have, We may:
  - i) Charge You interest on all overdue accounts a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;
  - ii) Require You to pay cash on delivery of any further Goods and Services;
  - iii) Suspend any further deliveries of Goods and Services or cease supplying Goods and Services to You;
  - iv) Demand Your immediate payment of all outstanding amounts;
  - v) Retain any amounts paid by You;
  - vi) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.

### Credit Accounts

- (f) You may apply for a Credit Account with Us to purchase Goods and Services. We have no obligation to provide or continue providing credit facilities to You. You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (g) A Credit Account must only be used by You and it cannot be assigned, transferred or made available for use by any other entity or person

(including by a subsequent purchaser of You) without Our prior written consent.

- (h) Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (i) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to reduce the surplus credit limit before accepting any further Orders.
- (j) You authorise Us to debit Your Credit Account with the price of Goods and Services supplied to You and all other amounts owed by You (including Additional Expenses and interest payable under these Terms).
- (k) We may credit any payments received from You first against any interest charges and Additional Expenses. We may also set-off any credit amount that We owe to You against any debt You owe to Us.
- (l) Time is of the essence in relation to this section. This section survives expiry or termination of these Terms.

## Our Security for Payment

### 8. RISK AND OWNERSHIP

- (a) Unless the parties agree differently in writing, all risk in the Goods and Services passes to You when the Goods and Services are collected by or delivered to You (or Your agent, representative or nominated carrier). Risk includes any Loss, damage or deterioration in the Goods and Services.
- (b) Legal ownership of any Goods does not pass to You until We have received all amounts owing by You on any account whatsoever with Us, including any Additional Expenses.
- (c) Until legal ownership of the Goods passes to You, You hold the Goods for Us as bailee. You must store the Goods separately from Your own or anyone else's Goods. Storage must be in a way that clearly identifies the Goods as Our property and prevents the Goods from being damaged or spoiled.
- (d) You may resell any Goods before legal ownership passes to You, provided that You:
  - i) Resell the Goods to a third party in the ordinary course of business;
  - ii) Act in any transaction as Our fiduciary agent;
  - iii) Hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
  - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
  - v) Allow us to inspect any records of payments received for Goods.
- (e) If You do not pay for any Goods and Services by the Due Date or You suffer an Insolvency Event, then We may repossess the Goods wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any premises occupied by You without notice for the purpose of identifying and repossessing any of the Goods. We reserve these repossession rights without being liable to You or any other third party in any way.
- (f) You must insure the Goods at Your own cost and expense. Insurance must be to the full extent of the price paid or payable for those Goods and remain valid at all times. This includes, but is not limited to, between the time that risk in the Goods passes to You and the date that title in the Goods passes to You.

### 9. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

- (a) You acknowledge and agree 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 Us from time to time and any proceeds of the sale of the Goods to secure payment for the Goods ("**Security Interest**").

- (b) Each sale or supply of Goods by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We 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 of the Goods, including as a purchase money security interest (as that term is defined in the PPSA) ("PMSI"), pursuant to these Terms.

#### Assurances

- (d) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods, including for the purposes of:
  - i) Ensuring that any Security Interest created under, or provided for, by these Terms:
    - 1. Attaches to the collateral that is intended to be covered by that Security Interest; and
    - 2. Is enforceable, perfected and otherwise effective; and
    - 3. Has the priority required by Us.
  - ii) Enabling Us to prepare and register a financing statement or financing change statement;
  - iii) Enabling Us to register a PMSI under the PPSA; and
  - iv) Enabling Us to exercise and maintain any of the Our rights or powers in connection with any such Security Interest.
- (e) If You dispose of the Goods, You must:
  - i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
  - ii) Not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
- (f) If a higher-priority security interest does arise in the Goods despite Your obligations under this section, You must:
  - i) Ensure that You receive cash proceeds for the Goods of at least equal to the market value of the Goods; and
  - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (g) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

#### Exclusion of Notices and Other Obligations

- (h) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
  - i) We do 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, We do not need to comply with sections 132 and 137(3).
- (i) To the extent permitted by law, You agree to waive:
  - i) Your 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 part or a receiver exercises a right, power or remedy.
- (j) 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

- (k) You agree not to exercise Your rights to make any request of Us 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.
- (l) 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) We disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are 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.
- (m) Notwithstanding the obligations of this section, You 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 We approve such disclosure or request for information in writing.
- (n) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

#### Other

- (o) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (p) Nothing in this part limits or is limited by any other provision of these Terms and Conditions or any other agreement between the parties.

### Dealing with Issues

#### 10. RETURNS

- (a) Unless We agree otherwise in writing, We are not required to accept returned Goods from You or issue You with a credit for Goods. Any returns or credits are at Our sole discretion. Our consent to return Goods will not be unreasonably withheld.
- (b) If You wish to return any Goods, You must notify Us in writing within 7 days of delivery of the Goods together with the reason for return. If You do not notify Us in this way then We may refuse to accept Your claim.
- (c) If We agree to accept Goods by return or provide You with a credit, You must provide Your proof of purchase for the Goods being returned.
- (d) Unless We otherwise agree in writing, You are responsible for and We may charge You Additional Expenses associated with returning Goods, including reasonable restocking, disposal or repacking charges at amounts advised by Us from time-to-time.
- (e) Any Goods which are not in original or resaleable condition cannot be returned, including Goods not in their original shipping cartons.
- (f) Any Goods which have been supplied according to Your custom specifications, or which have been damaged or altered by You, cannot be returned or credited.
- (g) Credits may only be redeemed against future orders and subject to Our minimum order policy. No cash refunds will be issued for credits.

#### 11. WARRANTIES AND OTHER CLAIMS

- (a) Neither party excludes or limits the application of any statute (including the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law as amended from time to time ("the Act")), where to do so would contravene that statute or cause any provision of these Terms to be void. Nothing in these Terms modifies, restricts or excludes the conditions, warranties, and undertakings and other legal rights under the Act and any other law applicable to the supply of Goods and Services which cannot be modified, restricted or excluded.
- (b) Except as expressly set out in the Act, We make no warranties, guarantees or other representations in connection with Goods and



Services supplied under these Terms.

- (c) Goods which are not manufactured by Us are subject solely to the warranties (if any) specified by the third-party manufacturers or suppliers to Us. We give no warranties beyond the third-party manufacturer or supplier warranties
- (d) If You think any Goods are defective, damaged, missing or misdelivered, You must notify Us in writing **within 7 days** of delivery/collection of those Goods. You must take all steps necessary to mitigate any Loss arising from any defect in the Goods supplied. You will be deemed to accept the Goods (including any defects) if You do not make a complaint in accordance with these Terms.
- (e) Any complaint under this section must be accompanied by:-
  - i) Proof of purchase;
  - ii) Written details of the alleged defect including photographs;
  - iii) Appropriate documentation (such as installation and maintenance records).
- (f) You must allow Us or Our authorised representatives access to the Goods for inspection.

## 12. DISPUTE RESOLUTION

- (a) If a dispute arises between the parties, either party may give the other a notice of the dispute. If such a dispute notice is issued, the parties must deal with the dispute in accordance with the following procedure:
  - i) Either party must not commence legal proceedings (except for interlocutory relief) about the dispute unless the dispute has been referred for resolution under these Terms;
  - ii) Either party must not oppose an application for a stay of any legal proceedings issued in respect of a dispute pending completion of the procedure in these Terms;
  - iii) When a dispute notice is given, each party must immediately refer the dispute to its senior management. Senior management representatives of each party must endeavour to resolve the dispute as soon as possible, but at least within 30 days of the dispute notice (or other period as agreed between the parties);
  - iv) In Our sole discretion, We may elect to resolve the dispute by mediation via the Australian Disputes Centre (**ADC**) before commencing arbitration or litigation. The mediation must be conducted in accordance with the ADC Guidelines for Mediation which operate at the time the matter is referred to ADC. The ADC Guidelines set out the procedures to be adopted, the process of selecting the mediator and the costs involved. This paragraph survives termination of these Terms;
  - v) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists;
  - vi) The parties must keep all information relating to the dispute confidential, unless otherwise required by law or at the direction of a court. The parties may not use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute.

## Limiting Our Liability

### 13. LIMITS AND EXCLUSIONS

- (a) To the extent permitted by law, all implied terms, guarantees, conditions and warranties are excluded from these Terms, including:
  - i) all conditions and warranties as to the quality or merchantability of the Goods or their fitness for any particular purpose (whether express or implied and even if that purpose is made known to Us);
  - ii) No sale under these Terms constitutes a sale by sample or description. You acknowledge that a sample Good may vary from the Goods supplied and that any description of Goods is for identification purposes only; and
  - iii) You are responsible for ensuring that the Goods are suitable for Your intended use. You agree that You have not relied on any inducement, representation or statement made by Us or on Our

behalf in purchasing the Goods.

- (b) To the extent permitted by law, Our liability to remedy a defect under a statutory guarantee or warranty will be limited to Our choice of:
  - i) re-supplying the Goods and/or Services; or
  - ii) repairing the Goods; or
  - iii) paying the cost to repair the Goods; or
  - iv) reimbursing some or all of the invoice value paid by You for the Goods and/or Services.
- (c) We will not be liable to You under any statutory guarantees or warranties if:-
  - i) The Goods and Services have not been paid for;
  - ii) The Goods have been abused, misused or neglected by you;
  - iii) We cannot establish any defect in the Goods after inspection;
  - iv) You have used the Goods other than for the purposes for which they were designed, including for an illegal purpose;
  - v) The Goods have been incorrectly repaired, altered or modified;
  - vi) The Goods have been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure or other stress; or
  - vii) A defect is the result of Your failure to assemble, use, handle and maintain the Goods in accordance with Our care and maintenance recommendations or industry-accepted standards.
- (d) In any other situation, including but not limited to Our breach of these terms, tort law or negligence, then Our liability to You in connection with these Terms will not exceed the price of the Goods and/or Services supplied by Us (to the extent that is permitted by law).
- (e) We are not liable for any consequential loss arising in connection with these Terms whatsoever, including but not limited to loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages or indirect or consequential loss of any kind.
- (f) Neither party will be liable for a breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for Goods.

### 14. INDEMNITIES

- (a) To the extent permitted by law, You indemnify Us against and You must pay Us for any Loss that We may suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) in relation to the Goods and Services and/or these Terms, including but not limited to any breach of these Terms by You, Your negligence, Your failure to perform the obligations in these Terms, third party claims against Us and any claim made by You against Us.
- (b) Specifically, You must indemnify Us for and hold Us harmless (or Our agents, employees or contractors) from:
  - i) All reasonable legal costs which We incur as a result of any breach, act or omission by You under these Terms however arising, including legal or mercantile agent fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Goods and Services and any action taken to secure any Charge;
  - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with the Credit Account, supply of Goods and Services and any deed of guarantee, indemnity and charge;
  - iii) Any Loss We incur from You cancelling Your Order less than 14 days prior to a scheduled delivery, including any Additional Expenses;
  - iv) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
  - v) Any Loss arising out of or caused by delivery of the Goods (including delivering the Goods to an unattended site, Your failure to provide a safe, suitable and compliant nominated delivery site Loss suffered as a result of third party carriers nominated by You and property damage or personal injury caused by delivering or unloading the Goods);

- v) Any Loss associated with a complaint or warranty claim where no defect is found;
  - vi) Any Loss arising out of Your (or Your agent, employee, contractor or other representative's) attendance at Our premises;
  - vii) Any damage to the Goods that occurs between the time that risk in the Goods passes to You and the time that the full price of the Goods is paid by You to Us.
- (c) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms.
- (d) For absolute clarity, this indemnity does not apply to Loss which is directly caused by Our breach of these Terms or Our negligence.

## Ending the Agreement

### 15. TERMINATION

(a) Our termination rights are:

#### What We can do

We can by written notice:

- Suspend or cancel delivery of Goods
- Suspend or cancel current Order(s) for the supply of Goods and Services
- Suspend or terminate Your Credit Account
- Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired
- Register a default with any credit reporting agency, where applicable
- Enforce Our rights under any Security Interest
- Suspend or terminate the contract created by these Terms

("Our Termination Rights")

(b) When We can exercise Our termination rights:

#### When We can do those things

- When You have not paid for Goods and Services by the Due Date
- You exceed the limit of Your Credit Account
- You breach a material term of these Terms
- Either of the parties suffer a Force Majeure Event which delays or prevents performance of the whole or any part of these Terms; and/or
- You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA
- You engage in illegal activity related to the sale of Goods and Services
- You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation
- An Insolvency Event occurs

(c) Otherwise, either party may terminate these Terms:

- i) Immediately by written notice if the other party is in breach of a material term of these Terms and the breach is not rectified within 7 days of the written notice; or
- ii) In all other circumstances, by giving the other party 14 days' written notice.

(d) If termination of these Terms occurs, We may:

- i) recover any of Our property and all related data, documentation and records in Your possession, custody or control;
- ii) recover any unpaid sums on Your account;
- iii) recover from You any Loss sustained as a consequence of the termination, including loss of the benefits which the performance of these Terms would have conferred Us;
- iv) be regarded as discharged from any further obligations under these Terms; and
- v) pursue any additional or alternative remedies provided by law.

## General Information

### 16. GENERAL

- (a) Any clauses which are expressed to or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) If any part of these Terms becomes void or unenforceable for any reason, then that part will be severed and, to the extent possible, all remaining parts continue with full force and effect without being affected by the severance of any other parts.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.
- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.

### 17. PRIVACY

- (a) We may collect Your personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with Our Privacy Policy pursuant to the Privacy Act 1988 (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012*, and the Australian Privacy Principles. You consent to that information being collected. You can obtain a copy of Our Privacy Policy by contacting Us in writing or by visiting Our Website.

### 18. ELECTRONIC COMMUNICATIONS

- (a) All communications between the parties (including purchase orders) must be in writing. In addition to any other delivery method, You agree to communicate and receive invoices by e-mail.
- (b) You agree that e-mail communications between the parties constitute an "electronic communication" within the meaning of the Electronic Transactions Act 2000 (NSW) ("the Act")
- (c) You agree that the receipt and service of notices via e-mail is "an information system for the purpose of receiving electronic communications" within the meaning of the Act.
- (d) You agree that evidence of the "dispatch" (within the meaning of the Act) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the Act. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

Version: February 2022