

**1. ACCEPTANCE OF TERMS**

- 1.1 Any order, request or other instructions received by the Seller from the Buyer for the supply of Goods or Services, or the Buyer's acceptance of Goods or Services supplied by the Seller, constitutes acceptance of these Terms on the part of the Buyer, following which these Terms will apply to and govern the purchase and supply of Goods and Services.
- 1.2 Where there is more than one Buyer, those Buyers are jointly and severally liable for all money payable under these Terms.
- 1.3 These Terms are irrevocable and may only be rescinded or varied in accordance with these Terms or with the written consent of the Seller.
- 1.4 The Buyer may not cancel or alter, in whole or in part, any order, request or other instructions provided to the Seller without the Seller's prior written consent.
- 1.5 An agent or representative of the Seller is not authorised to make any representation, statement, condition or agreement not expressed by the Seller's manager in writing, nor is the Seller bound by any unauthorised representation, statement, condition or agreement.
- 1.6 The Buyer must give the Seller not less than 14 days prior written notice of any proposed change to the Buyer's name or any details as previously advised to the Seller, including but not limited to changes to the Buyer's address, contact details or business practice.

**2. DESCRIPTION OF GOODS AND SERVICES**

The Goods or Services (as applicable) are as described on the invoice, quote, work authorisation, work order or any other work commencement form as provided by the Seller to the Buyer.

**3. PRICE AND PAYMENT**

**3.1 Price**

- (a) At the Seller's sole discretion, the Price is;
  - (i) as indicated on invoices provided by the Seller to the Buyer for the Goods;
  - (ii) the Seller's then current publicly advertised list price at the date of delivery of the Goods; or
  - (iii) subject to clause 3.1(b), the Seller's quoted price which is binding on the Seller provided that the Buyer accepts the Seller's written quote within 30 days after it is given.
- (b) The Seller may charge the Buyer for any variation to scheduled works or specifications in relation to the Goods or Services and such variation will be shown as a variation on the Seller's invoice to the Buyer. The Buyer must make payment for all variations in full at the time that Goods are delivered or Services are completed.

**3.2 Payment**

- (a) Time is of the essence in relation to payment of the Price and will be stated on the invoice, quote or any other order confirmation from the Seller. If a time is not stated, payment must be made by the Buyer to the Seller on the later of:
  - (i) delivery of the Goods or completion of the Services (as applicable); and
  - (ii) within 14 days of the date of an invoice from the Seller.
- (b) Payment must be made from the Buyer to the Seller by cash, bank cheque or electronic funds transfer or, at the Seller's discretion, by credit card, direct debit or any other method of payment.
- (c) Unless expressly stated in a quote, invoice or other order confirmation from the Seller, the Price excludes all transport/freight costs, storage costs, security costs, insurance, customs and import duties and other out-of-pocket expenses.

**3.3 GST and duties**

- (a) All amounts payable by the Buyer to the Seller and all other references to monetary amounts under these Terms are exclusive of GST, unless expressly stated otherwise.
- (b) The Buyer must pay to the Seller an additional amount equal to the GST liability on a supply or transaction to which GST applies. Unless otherwise agreed in writing, the GST amount under this clause 3.3(b) must be paid within 5 Business Days of the Seller issuing to the Buyer a tax invoice for the supply or transaction to which the GST liability applies.
- (c) The Buyer is responsible for compliance with, and payment of the following applicable after the point at which Goods are delivered:
  - (i) all applicable taxes or tariffs imposed, claimed, levied or assessed by, or payable to, any applicable government bodies or agencies in relation to the import or export of goods and/or services;
  - (ii) all taxes imposed by, or payable to, any applicable government bodies or agencies in relation to the production or manufacture of goods applicable to the supply under these Terms; and
  - (iii) all other applicable import and export laws of any jurisdiction relating to the supply of the Goods.

**4. DEPOSIT**

- 4.1 The Seller may require that the Buyer pays a deposit of up to 50% of the Price for any Goods or Services (**Deposit**) and such Deposit must be paid within 5 Business Days of the Seller making a request for the Deposit.
- 4.2 The Seller is not under any obligation to commence or continue work in relation to the supply of Goods or Service unless a requested Deposit has been received.
- 4.3 The Seller may use or apply the Deposit towards the costs associated with procuring materials, preparatory works or otherwise undertaking works involved in supplying the Goods or Services.
- 4.4 A Deposit is not refundable after the Seller has not commenced work and incurred costs in relation to the supply of the Goods or Services to which the Deposit pertains.

**5. DELIVERY OF GOODS**

- 5.1 Unless the invoice, quote or any other order confirmation from the Seller states otherwise:
  - (a) The Seller will deliver the Goods on a 'Ex Works' (EXW) basis at the Seller's place of business in Bibra Lake, Western Australia (or other location nominated by the Seller) to a carrier or freight forwarder nominated by the Buyer in Perth, Western Australia. The Seller is not obliged to deliver the Goods unless and until the Buyer nominates a carrier or freight forwarder under this clause, other than directly to the Buyer at the Seller's place of business.
  - (b) The Buyer must make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
  - (c) Delivery of the Goods to a carrier or freight forwarder nominated by the Buyer is deemed to be delivery of the Goods to the Buyer.
- 5.2 Clause 5.1 applies to the extent that it is not inconsistent with any other delivery arrangement agreed between the Buyer and the Seller in writing.
- 5.3 The Buyer must take delivery of the Goods tendered even if the quantity is either greater or less than the quantity purchased, provided that the discrepancy in quantity is not more than 5% and the Price is adjusted pro rata to account for the discrepancy.
- 5.4 The failure of the Seller to deliver the Goods to the Buyer does not entitle the Buyer or the Seller to treat these Terms as repudiated.
- 5.5 The Seller is not liable for any loss or damage due to a failure by the Seller to deliver the Goods to the Buyer promptly.

**6. RISK AND TITLE**

- 6.1 All risk for the Goods passes to the Buyer on delivery of those Goods under clause 5.1(c) or, if the Goods are delivered to the Buyer (or an agent or contractor of the Buyer) at an earlier point, at that earlier point. This clause applies to the extent that it is not inconsistent with any other arrangement agreed between the Buyer and the Seller in writing.
- 6.2 If any Goods are damaged or destroyed before title in those Goods passes to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms (including the right to recover payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under these Terms. The production of these Terms by the Seller is sufficient evidence of the Seller's right to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6.3 Title in the Goods will not pass until the Buyer has paid all amounts owing for the particular Goods and the Buyer has met all other obligations due by the Buyer to the Seller in relation to all contracts between the Seller and the Buyer.
- 6.4 The Buyer must keep the Goods separate until the Seller receives payment and all other obligations of the Buyer are met under clause 6.3.

**7. DEFECTS/RETURNS**

- 7.1 The Buyer may, within the Warranty Period, notify the Seller of any Goods (other than materials used in the Seller's Goods and other consumables) or Services that the Buyer reasonably considers to be defective in any material respect, by giving written notice to the Seller to that effect (**Defect Notice**). The Buyer must afford the Seller an opportunity to inspect all alleged defective Goods or Services as soon as practicable following the issue of a Defect Notice.
- 7.2 Subject to clause 7.3, if the Seller, acting reasonably and in good faith, determines that Goods or Services are defective in any material respect, the Seller's liability is limited to (at the Seller's discretion):
  - (a) for Goods – either replacing the Goods or repairing the Goods, provided that:
    - (i) the Buyer has complied with clause 7.1;
    - (ii) the Goods are returned at the Buyer's cost within 30 days after the delivery date of those Goods;
    - (iii) the Seller will not be liable for Goods which have not been transported, stored or used in accordance with any instructions by the Seller and otherwise with reasonable care and skill; and
    - (iv) the Goods are returned to the Seller in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances; and
  - (b) for Services – re-perform or otherwise remedy the Services, provided that the Buyer has complied with clause 7.1.

- 7.3 The Seller's obligation to take the actions in clause 7.2 are conditional upon the following:
- (a) The Seller does not have any liability to the extent that any damage or defect is caused, directly or indirectly, by any act or omission on the part of the Buyer.
  - (b) Defects or damage which are be caused or relate to any of the following are excluded:
    - (i) failure on the part of the Buyer to properly maintain any Goods;
    - (ii) failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller;
    - (iii) any use of any Goods otherwise than for any application specified in any instructions or guidelines provided by the Seller or for their ordinary use or application;
    - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or any act of God.
  - (c) The Seller will not be liable if the workmanship in relation to Goods or Services is repaired, altered or overhauled without the Seller's consent.
  - (d) The Seller is not liable to compensate the Buyer for any claim in either replacing or repairing the Goods or in properly assessing the Buyer's claim.

7.4 For Goods not manufactured by the Seller, the only warranty will be the current warranty provided by the manufacturer of the Goods (if any). The Seller is not under any liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty.

7.5 The Seller may (at its discretion) exchange defective Goods (other than Goods made to special order, Buyer specifications or non-catalogue items) for credit but this may incur a handling fee of 10% of the value of the returned Goods, plus any freight, as determined by the Seller. The Buyer agrees to pay any handling fees or freight costs pursuant to this clause 7.5.

## **8. WARRANTIES**

- 8.1 Any term, condition, guarantee or warranty which would otherwise be implied into these Terms is excluded to the maximum extent permitted by law.
- 8.2 Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts.
- 8.3 The liability of Seller for any breach of any mandatory term, condition, guarantee or warranty implied into these Terms by statute is, to the extent permitted by law, limited at the option of Seller, to any one or more of the following:
- (a) if the breach relates to the supply of goods:
    - (i) the replacement of the goods or the supply of equivalent goods, or payment for the same; or
    - (ii) the repair of such goods, or payment for the same; and
  - (b) if the breach relates to the provision of services, the supplying of the services again or payment for the same.

## **9. PROTECTION OF TECHNOLOGY**

### **9.1 Intellectual Property**

- (a) All Intellectual Property Rights in relation to the Seller's Background IP remain vested in the Seller.
- (b) All Intellectual Property Rights in the Contract IP vest in the Seller upon creation.
- (c) The Buyer assigns to the Seller all Intellectual Property Rights (including future copyright) in the Contract IP upon the creation of those rights and, to the extent that any Intellectual Property Rights are not created at the time of creation of the Contract IP, upon the later creation of those rights.
- (d) In relation to any Intellectual Property Rights of the Seller, the Buyer must:
  - (i) not use or exploit any such Intellectual Property Rights other than as expressly permitted by the Seller in writing; and
  - (ii) not do any act or omit to do any act, nor assist any other person to do or omit to do anything, which may:
    - A. prejudice an application for registration of any such Intellectual Property Rights which are registrable in any jurisdiction;
    - B. invalidate or oppose the registration of any such Intellectual Property Rights which are registered in any jurisdiction; or
    - C. file any application for registration of any such Intellectual Property Rights in any jurisdiction.
- (e) Where any designs or specifications have been supplied by the Buyer for manufacture, by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods does not infringe the rights of any third party.
- (f) The Buyer warrants that all designs or instructions to the Seller for Goods or Services will not cause the Seller to infringe any third party's Intellectual Property Rights in the execution of the Buyer's order.

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- (g) The Seller indemnifies the Buyer in relation to any claim against, and liability of, the Buyer in respect of any infringement of any third party intellectual property rights by the Buyer under clauses 9.1(e) or (f).

### 9.2 **Prohibition on reverse engineering**

- (a) The Buyer acknowledges that the Goods and Services may comprise valuable and commercially sensitive technology of the Seller and any unauthorised use or application of the same contrary to these Terms may result in the Seller suffering loss or damage.
- (b) The Buyer must not (nor permit, allow or cause any third party to):
- (i) copy, reproduce, reverse engineer or duplicate any Goods or other products of the Seller; or
  - (ii) substantially disassemble or deconstruct any Goods (or any part of any Goods) that are 3-dimensional printers, except to the extent necessary for repairs and maintenance of those Goods in the ordinary course, in accordance with the Seller's instructions.
- (c) The Buyer indemnifies the Seller in relation to any breach of clause 9.2(b) by the Buyer.

### 9.3 **Benefit for Related Bodies Corporate**

In relation to this clause 9, the Seller:

- (a) acts in its own right and as agent for and on behalf of each of its Related Bodies Corporate;
- (b) holds the benefit of this clause 9 as trustee for each of the Seller's Related Bodies Corporate; and
- (c) may enforce this clause 9 on behalf of and for the benefit of each of the Seller's Related Bodies Corporate.

### 9.4 **Survival**

This clause 9 survives the termination of any contract between the Buyer and the Seller.

## 10. **CONFIDENTIALITY**

10.1 Subject to clause 10.2, the Buyer must at all times:

- (a) hold in strict confidence all Confidential Information;
- (b) not disclose or permit or cause the Confidential Information to be disclosed to any person other than any of the Buyer's employees who require that Confidential Information for the purposes of ordering, receiving and applying (for their ordinary use) the Goods and Services (**Approved Purpose**);
- (c) not make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from that Confidential Information) except and solely to the extent necessary for the Approved Purpose; and
- (d) ensure that any permitted person to whom the Buyer passes any of the Confidential Information (unless disclosed under 10.2(b)) acknowledges and complies with the confidentiality obligations under this clause 10 as if that person were the Buyer.

10.2 The obligations in clause 10.1 do not apply to the Buyer to the extent that:

- (a) the Seller has provided its prior written consent to the use or disclosure of the Confidential Information in a manner that would, but for the consent, be contrary to clause 10.1;
- (b) disclosure of the relevant Confidential Information is required to comply with any law or order of a court, arbitrator or government body; and
- (c) disclosure of the relevant Confidential Information made to any legal counsel, accountant, insurance advisor, bank or other professional adviser in relation to the Buyer's affairs provided that the professional adviser is bound by an obligation or confidentiality in regards to the information disclosed.

10.3 The Buyer agrees that damages may not be an adequate remedy for breach of this clause 10 and that the Seller will be entitled to equitable relief, including temporary and permanent injunctive relief without the obligation of posting a bond (cash or otherwise), in the event of actual or threatened unauthorised disclosure or use of Confidential Information in breach of this clause 10.

10.4 The obligations under this clause 10 survive the termination of any contract between the Buyer and the Seller.

## 11. **SECURITY INTERESTS**

### 11.1 **PPSA**

- (a) Possession of Goods is transferred to the Buyer by the Seller on the basis that the Seller retains a purchase money security interest (pursuant to the PPSA) in the Goods, proceeds of the Goods and any other goods with which the Goods are commingled.
- (b) The Buyer:
  - (i) must promptly do anything the Seller requires to ensure that any security interest arising under these Terms is a perfected security interest and has priority over all other security interests;
  - (ii) undertakes not to register a financing change statement or make an amendment demand pursuant to section 178 of the PPSA in respect of such registration;

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- (iii) agrees that the following provisions of the PPSA will not apply and the Buyer will not have any rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 121(4); section 125; sections 129(2) and (3); section 132; section 142; and section 143;
  - (iv) agrees to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and will not authorise the disclosure of such information except in accordance with section 275(7) of the PPSA;
  - (v) waives its right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement;
  - (vi) agrees that the Seller is required to give a notice under the PPSA only if the notice is obligatory and the giving of the notice cannot be excluded under the PPSA, and the Buyer waives any rights to receive any notices unless they are required to be given and cannot be excluded; and
  - (vii) agrees to notify the Seller in writing of any change to the Buyer's details within 5 days from the date of such change.
- (c) The parties agree that these Terms constitute a security agreement for the purposes of the PPSA and, without prejudice to the Seller's rights under the PPSA:
- (i) Until the time when ownership of the Goods passes from the Seller to the Buyer, the Seller may give notice in writing to the Buyer to return the Goods to the Seller. Upon that notice being given, the rights of the Buyer to obtain ownership or any other interest in the Goods will cease.
  - (ii) If the Buyer fails to return the Goods to the Seller, then the Seller or the Seller's agent as the invitee of the Buyer, may enter land and premises owned, occupied, leased or otherwise used by the Buyer, or any premises where the Goods are situated and take possession of the Goods without being responsible for any damage caused by that entry.
  - (iii) The Buyer is a bailee only of the Goods and until the time when the Seller receives payment in full for the Goods, the Buyer must hold any proceeds from the sale or disposal of the Goods on trust for the Seller.
- (d) The Buyer must not charge the Goods in any way nor grant or otherwise give any interest (including a security interest) in the Goods while they remain the property of the Seller.
- (e) The Seller may require payment of the Price or the balance of the Price for the Goods due together with any other amounts due from the Buyer to the Seller, and the Seller may take any lawful steps to require payment of the amounts due and the Price.

### 11.2 **Other registers**

Without limiting clause 11.1:

- (a) the Seller may register any security interests granted by the Seller or that otherwise arise in relation to these Terms or by law on any register of security interests in any jurisdiction outside of Australia; and
- (b) the Buyer must promptly do anything that the Seller requires to ensure that such security interest is a perfected security interest.

### 12. **DEFAULT & CONSEQUENCES OF DEFAULT**

12.1 Interest at the rate of 10% per annum (calculated daily) accrues, and must be paid by the Buyer to the Seller, on overdue amounts owed by the Buyer, from the date when payment becomes due until the earlier of payment or judgment.

12.2 If the Buyer defaults in payment of any invoice when due, the Buyer indemnifies the Seller from and against all the Seller's costs and disbursements on a solicitor and own client basis, in addition to all of the Seller's nominee's costs of collection. The Buyer's indemnity to the Seller extends to administrative, collection and solicitor fees (on a solicitor and own client basis) that are incurred by the Seller or will be incurred by the Seller in preserving and/or enforcing its rights under the PPSA.

12.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods or Services to the Buyer and any of its other obligations under these Terms. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause 12.3.

12.4 In the event that:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as and when they fall due;
- (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, receiver and manager, liquidator (provisional or otherwise), administrator, bankruptcy trustee or similar person is appointed in relation to the Buyer or any asset of the Buyer;

then without prejudice to the Seller's other remedies at law or under these Terms:

- (d) the Seller will be entitled to cancel all or any part of any order of the Buyer for Goods and Services which remains unperformed in addition to and without prejudice to any other remedies; and
- (e) all amounts owing to the Seller will, whether or not due for payment, immediately become due and payable.

**13. CANCELLATION**

The Seller may immediately cancel these Terms or cancel delivery by giving written notice to the Buyer. The Seller will not be liable for any loss or damage arising from any cancellation.

**14. BUYER'S DISCLAIMER AND INDEMNITY**

14.1 Subject to any express provisions of these Terms and to the extent permitted by law, the Buyer disclaims any right to rescind or cancel these Terms or to sue for damages or to claim restitution in relation to any misrepresentation made to the Buyer by any employee, agent or representative of the Seller, and the Buyer acknowledges that the Buyer relies solely upon the Buyer's own skill and judgment and that the Seller is not bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacturer which is personal to the Buyer and not capable of assignment to any subsequent buyer of the Goods.

14.2 The Buyer indemnifies the Seller from and against all liabilities, losses, damages, costs and expenses (including consequential and indirect loss or damage) incurred or suffered by the Seller, and from and against all actions, proceedings, claims and demands made against the Seller caused (wholly or in part) by an act or omission on the part of the Buyer in relation to these Terms, including without limitation any failure on the part of the Buyer to follow the Seller's instructions for use in relation to Goods or Services.

**15. PRIVACY ACT**

The Buyer agrees that Personal Information provided may be used and retained by the Seller for the following purposes and for other purposes as agreed between the Buyer and Seller or required by law from time to time:

- (a) provision of Services and Goods;
- (b) marketing of Services and Goods by the Seller, its agents or distributors in relation to the Services and Goods;
- (c) analysing, verifying and checking the Buyer's credit, payment and status in relation to provision of Services and Goods;
- (d) processing of any payment instructions, direct debit facilities or credit facilities requested by the Buyer; and
- (e) enabling the daily operation of the Buyer's account and the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.

**16. UNPAID SELLER'S RIGHTS TO DISPOSE OF GOODS**

The Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on that disposal if the following occurs, whether the property in the Goods has passed to the Buyer or has remained with the Seller:

- (a) the Seller retains possession or control of the Goods;
- (b) payment of the Price is due to the Seller;
- (c) the Seller has demanded from the Buyer in writing payment of the Price in accordance with these Terms; and
- (d) the Seller has not received payment of the Price of the Goods.

**17. LIEN**

The Seller has the following rights where the Seller has not received the whole of the Price, or the payment has been dishonoured, and such rights will continue despite the commencement of legal proceedings or judgment for the Price having been obtained:

- (a) a lien on the Goods;
- (b) the right to retain them for the Price while the Seller is in possession of them;
- (c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed;
- (d) a right of resale; and
- (e) the right of disposal in clause 16.

**18. GENERAL**

18.1 These Terms (including any contract between the Seller and the Buyer in relation to the supply of Goods or Services) are governed by the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia, the Federal Court of Australia and the Federal Circuit Court of Australia (as applicable).

18.2 If any provision of these Terms is invalid, void, illegal or unenforceable, then that provision is to be ignored in the interpretation of these Terms such that the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

18.3 The Seller is not under any liability whatsoever to the Buyer for any indirect or consequential loss or expense (including loss of profit) suffered by the Buyer relating to a breach of these Terms by the Seller.

18.4 On breach of these Terms by the Seller, the remedy of the Buyer is limited to damages. The Seller's maximum liability is the total Price for all Goods and Services supplied to the Buyer.

18.5 The Buyer does not have any right to set-off against the Price any amounts due from the Seller.

18.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.

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- 18.7 The Seller reserves the right to review and amend these Terms at any time at its absolute discretion. If the Seller amends these Terms, that change will take effect from the date on which the Seller notifies the Buyer of those amendments.
- 18.8 Neither party is liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party, provided that the party in default takes reasonable steps to mitigate any loss or damage arising as a result.
- 18.9 The United Nations Convention on Contracts for the International Sale of Goods is excluded from application to these Terms.

### 19. INTERPRETATION

19.1 The following words have the meaning given to them below when used in these Terms:

- (a) **Business Day** means a day other than a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia.
- (b) **Buyer** means a person who orders or otherwise requests goods or services from the Seller and any other person acting on behalf of and with the authority of the first-mentioned person.
- (c) **Confidential Information** means, other than to the extent that it constitutes Excluded Information, all records, documents or other information, in whatever form, which relate to the business, affairs or activities of the Seller (including a Related Entity of the Seller) or that is marked by or behalf of the Sellers as being confidential or is of a confidential nature, including methods of operation, Intellectual Property Rights, customer lists, products, prices, fees, costs, technology, inventions, trade secrets, know-how, software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialised information or proprietary matters.
- (d) **Contract IP** means all Intellectual Property Rights created, discovered, developed, derived or that otherwise come into existence in relation to performance of a contract between the Buyer and the Seller or otherwise in relation to the supply of the Goods or Services by one or both of the Buyer and the Seller, including any Intellectual Property Rights developed or derived from the Seller's Background IP.
- (e) **Excluded Information** means any records, documents or other information to the extent that such information:
- (i) becomes publicly available (except if it is in the public domain by reason of the failure of a party to perform and observe its obligations under these Terms);
  - (ii) is acquired from a third party entitled to disclose it on a non-confidential basis; or
  - (iii) is independently developed without use of Confidential Information.
- (f) **Goods** means any goods, products, software or consumables (as applicable) sold, licensed or otherwise supplied, or the subject of an order or other request for supply, by the Seller to the Buyer (and where the context permits includes any supply of any Services).
- (g) **GST** means any applicable goods and service tax, value added tax, sales tax, excise tax, consumption tax or other tax calculated on or by reference to the value added to goods, services or materials (as applicable), including the tax levied under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (h) **Intellectual Property Rights** means all rights and interests throughout the world vesting or otherwise in relation to industrial or intellectual property protectable under law, whether registered, unregistered or registrable, and whether now existing or that come into existence in the future, including:
- (i) any patent, trade mark, copyright (including future copyright), moral right, design, plant breeder's rights, circuit layout rights or any other corresponding property or right under the laws of any jurisdiction;
  - (ii) rights in respect of an invention, discovery, trade secret, know-how, concept, idea, methodology, information (including, where applicable, Confidential Information), data, algorithm or formula; any right to apply for grant or registration of intellectual property or intellectual property rights; and
  - (iii) all renewals and extensions and all similar or equivalent rights or forms of protection in relation to intellectual property or intellectual property rights.
- (i) **Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Commonwealth of Australia).
- (j) **PPSA** means the *Personal Property Securities Act 2009* (Commonwealth of Australia).
- (k) **Price** means the price for Goods and/or Services (as applicable), as determined by the Seller under clause 3.1, which excludes GST.
- (l) **Seller** means Aurora Labs Limited (Australian Company Number 601 164 505) and its successors and assigns.
- (m) **Seller's Background IP** means any and all Intellectual Property Rights of the Seller (or licensed to the Seller by a third party) which are in existence before the date on which the Buyer first engaged the Seller to supply Goods or Services or which come into existence after that date, other than in relation to the supply of Goods or Services.
- (n) **Services** means all services performed or otherwise supplied, or the subject of an order or other request for performance or supply, by the Seller to the Buyer, including advice or recommendation (and where the context permits includes the supply of Goods).
- (o) **Terms** means these Terms & Conditions of Sale.
- (p) **Warranty Period** means the period of 12 months from the date Goods are delivered or Services are completed, as the case may be, or such other period specified in invoice, quote or any other order confirmation from the Seller.

19.2 In these Terms:

- (a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes any gender;
- (d) the words “includes” and “including” are not words of limitation;
- (e) a reference to a statute includes its subordinate legislation, proclamations, ordinances and a modification, replacement or re-enactment of the same;
- (f) a reference to person, includes a reference to:
  - (i) an individual, a body corporate, a trust, a partnership, a joint venture an unincorporated body or other entity, whether or not it is a separate legal entity;
  - (ii) if the person is an individual, the person’s personal representatives and assigns; and
  - (iii) if the person is not an individual, the person’s successors and assigns;
- (g) an agreement, representation or term of these Terms in favour of or on the part of two or more people, benefits or binds them jointly and severally;
- (h) a reference to currency is to the Australian currency;
- (i) a reference to time is to Australian Western Standard Time in Perth, Western Australia;
- (j) if the date on which an act, matter or thing must be done or take place is not a Business Day, then that act, matter or thing must be done or take place on the next Business Day;
- (k) if a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event;
- (l) a provision in these Terms must not be construed adversely to a party solely on the ground that the party was responsible for the preparing these Terms or that provision;
- (m) a reference to “writing” or “written” includes any electronic transmission or communication by facsimile;
- (n) a reference to a right includes a benefit, remedy, discretion or power;
- (o) the terms **Related Bodies Corporate** and **Related Entity** has the meaning given to those terms in the *Corporations Act 2001* (Commonwealth of Australia); and
- (p) the phrase “in relation to” has the widest possible import and encompasses the phrases “in connection with”, “in respect of”, “arising out of” and “resulting from”.

19.3 Incoterms (2015) as published by the International Chamber of Commerce (**Incoterms**) apply to these Terms. The clauses of these Terms prevail to the extent of any conflict or inconsistency with Incoterms. Defined Incoterms have the same meaning when used in these Terms.