



TERMS AND CONDITIONS OF TRADE

1. Definitions and interpretation

Agreement means these terms of trade and all Contracts, and any written variations thereto.

Additional Charges means any charges which are additional to the amount payable for the Goods and/or Services specified in a Contract, including but not limited to those set out in clause 6.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

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

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whatsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Consumer Guarantees means any guarantee under Division 1 of Part 3-2 of the Australian Consumer Law applicable to a supply of goods or services.

Contract means a contract for the supply of Goods and/or Services formed in accordance with clause 4(c).

Goods means any goods supplied by the Supplier including those supplied while providing Services.

Governmental means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency, corporation or entity (including those constituted or formed under any statute), whether foreign, federal, state, territorial or local.

Incoterms means the International Commercial Terms published by the International Chamber of Commerce, as current from time to time.

Insolvency Event means, in respect of a party any of the following events or any analogous event:

- (a) where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency;
- (b) where the party is a company, a resolution is passed or court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law, or the party is dissolved (other than to carry out a reconstruction while solvent);
- (c) the party is in receivership, in receivership and management, in liquidation or provisional liquidation; under administration; protected from creditors under any statute; or subject to any arrangement, assignment or composition; or
- (d) the party is otherwise unable to pay its debts as and when they fall due.

Intellectual Property Rights means all intellectual property rights, including copyright and neighbouring rights (including moral rights), all rights in relation to inventions (including patents), registered and unregistered trade marks, business names, domain names, registered and unregistered designs, circuit layouts, confidential information, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Loss includes, but is not limited to, loss, liability, costs (including all legal and other professional costs on a full indemnity basis), charges, expenses, award of damages, outgoing, fine or payment of any nature or kind.

Order means a purchase order for Goods or Services placed by a Buyer and as varied in writing from time to time by the parties.

Order Confirmation means the written communication provided by the Supplier to the Buyer confirming acceptance of the Order, description of the Goods or Services to be provided, the Supplier's charges for the provision of Goods or Services and an estimate of the time frame for the delivery of Goods or Services or other written communication provided

by the Supplier to the Buyer stipulating the Supplier's agreement to be bound by the Order.

PPSA 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 PPSA.

Buyer means the person identified on a Quote, Order or Order Confirmation as the Buyer or purchaser and includes the Buyer's agents and permitted assigns.

Quote mean any written or verbal advice provided by the Supplier to the Buyer for the supply of Goods or Services.

Services means the services to be provided by the Supplier to the Buyer in accordance with a Contract and these terms of trade.

Supplier means Fair Metal International Pty Limited ACN 677 090 916 or the entity specified as the supplier of Goods or Services on the Order Confirmation.

2. General

- (a) These terms of trade apply to all transactions between the Buyer and the Supplier relating to the provision of Goods and Services. This includes all Quotes and Contracts, and variations thereto. All terms of trade contained in any document of the Buyer, any term of an Order submitted by the Buyer (not accepted by the Supplier in its Order Confirmation) or elsewhere are fully excluded.
- (b) The variation or waiver of a provision of this Agreement or a party's consent to a departure from a provision by another party is ineffective unless in writing and signed by the parties.
- (c) Despite clause 2(a), any details and terms provided in the Supplier's Order Confirmation in respect of a Contract will take precedence over these terms of trade (only to the extent of any inconsistency) and supersede any relevant prior detail in dealings between the parties. This will apply on a Contract by Contract basis.

3. Quote

- (a) The Supplier may provide the Buyer with a Quote.
- (b) Any such Quote is an invitation to treat only and does not constitute a contractual offer.
- (c) Following provision of a Quote to the Buyer, the Supplier is not obliged to supply any Goods until a Contract is formed (which may be via the provision by the Supplier of an Order Confirmation).
- (d) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of any applicable Consumer Guarantees, this estimate is not binding upon the Supplier.

4. Orders

- (a) Orders must be signed by a person purporting to have authority on behalf of the Buyer and on the Buyer's letterhead or contain the Buyer's email signature. The Supplier is entitled to assume that this person has all necessary authority on behalf of the Buyer to place such Orders.
- (b) The Buyer acknowledges that the submission of an Order constitutes its acceptance of these terms of trade, which is a condition of the Supplier entering into each Contract with the Buyer and agreeing to supply Goods or Services to the Buyer.
- (c) A Contract will be formed on the earlier of the Supplier:
 - (i) providing to the Buyer an Order Confirmation (which may accept terms contained in an Order); or
 - (ii) delivering the goods or providing the Services to the Buyer.
- (d) To the extent an Order Confirmation specifies any new or different terms to those specified in the Order, the Buyer will be deemed to have

accepted such new or different terms unless the Buyer gives written notice to the Supplier (within 5 days of the Supplier's provision of the Order Confirmation to the Buyer) specifying the terms which are not accepted by the Buyer. If the Buyer provides such notice, notwithstanding clause 4(c), a Contract will not be formed unless or until the parties agree the terms of the Order Confirmation.

(e) Despite any Contract, the Supplier may in its absolute discretion refuse to provide Goods or Services to the Buyer where:

- (i) Goods are unavailable for supply for any reason beyond the Supplier's control;
 - (ii) credit limits cannot be agreed upon by the parties or have been exceeded by the Buyer;
 - (iii) payment of any amount for Goods or Services previously provided to the Buyer is outstanding or otherwise has not been received by the Supplier;
 - (iv) the Supplier is unable to obtain or maintain a policy of trade credit insurance to cover the supply of Goods or Services, or if such policy (having been obtained) no longer subsists; or
 - (v) the delivery of the Order results in the credit limit issued by the Supplier's trade credit insurer to be exceeded. In these circumstances the Supplier may consider supplying the Goods if the Buyer provides early payment in respect of such Goods or of any unpaid Order, or otherwise provides an alternate form of security for payment of the Goods which is satisfactory to the Supplier.
- (f) Once an Order Confirmation has been provided by the Supplier to the Buyer, the Order cannot be cancelled by the Buyer without the written consent of the Supplier. Where an Order is cancelled, the Buyer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone by the Supplier as a result of the scheduling of the Order which was subsequently cancelled.

5. Invoicing and payment

- (a) The amount payable by the Buyer will be the amount set out in the invoice and any Additional Charges. This will be calculated as:
- (i) the amount for the Goods or Services (or both) as set out in the Order Confirmation; or
 - (ii) where no Order Confirmation has been provided by the Supplier, the Supplier's usual charges for the goods or services (or both) as described in the Order, and any Additional Charges.
- (b) The Buyer must pay an invoice issued by the Supplier to the Supplier within the time prescribed in the Order Confirmation or, if no time is prescribed, within 30 days of a valid tax invoice being issued to the Buyer.
- (c) If any amount under an invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until the overdue amounts are paid in full.
- (d) The Supplier may in its complete discretion apply any payment received from the Buyer to any amount owing by the Buyer to the Supplier.
- (e) The Buyer is not entitled to retain, nor set off, any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of this Agreement, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Buyer's rights for any alleged failure of a Consumer Guarantee or otherwise under the Australian Consumer Law.
- (f) Interest will be incurred at the rate of 4% per year above the National Australia Bank Limited's Business Lending Base Rate (as current from time to time) on all overdue amounts owed by the Buyer to the Supplier, compounded daily, and the Buyer must pay any such interest

to the Supplier on demand.

- (g) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Buyer as a debt due and payable under this Agreement.
- (h) The Buyer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (GST) under the *Tax System (Goods and Services Tax) Act 1999* (Cth) and any other applicable legislation governing GST (GST Law).
- (i) Except where the context suggests otherwise:
- (i) terms used in clauses 5(i) to 5(l) have the meaning given to those terms in the GST Law (as amended from time to time);
 - (ii) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of clauses 5(i) to 5(l);
 - (iii) unless otherwise stated, any amount, payment or consideration referred to under or in connection with this Agreement or a Contract is exclusive of GST; and
 - (iv) any supply the consideration for which is specified to be inclusive of GST, is not subject to clause 5(l).
- (j) If GST is payable in relation to a supply made under or in connection with this Agreement then the party (Recipient) that is required to pay or provide consideration to the other party (Provider) for that supply must, subject to receipt of a valid tax invoice, pay an additional amount to the Provider equal to the amount of that GST at the same time as the other consideration is to be paid or provided for that supply.
- (k) Any payment or reimbursement required to be made under this Agreement, including any Contracts, for a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (l) If the GST payable in relation to a supply made under or in connection with this Agreement varies from the additional amount paid by the Recipient, the Provider must issue an Adjustment Note as required under GST Law, such that:
- (i) a further amount of GST is payable in relation to the supply; or
 - (ii) a refund or credit of GST is obtained in relation to the supply,
- then the Provider will provide a corresponding refund or credit to the Recipient, or the Recipient will be required to pay the amount of that variation to the Provider (as applicable). Any payment, credit or refund under this clause 5(l) is deemed to be a payment, credit or refund of the additional amount payable under clause 5(j).

6. Additional Charges

Additional Charges may occur as a result of:

- (a) charges, fees or expenses incurred for additional work performed at the Buyer's request or required because of the Buyer's conduct, calculated in line with the Supplier's then rates and prices;
- (b) cancellation by the Buyer of an Order where the Supplier accepts that cancellation, subject to the payment of a cancellation fee;
- (c) additional storage costs for Goods not collected from the Supplier within the timeframe specified in the Contract;
- (d) packing or handling charges not included in the Contract;
- (e) a delivery of the Goods under a Contract not being made directly to the Buyer (with any such additional costs for this delivery being recoverable at the rates incurred by the Supplier);
- (f) Governmental or council duties taxes or charges not included in the Contract; or
- (g) any additional work required by the Buyer or any other occurrence which causes the Supplier to incur additional costs to fulfil the Buyer's Order additional to the amount quoted in the Contract which were not anticipated at the time the Order or Order Confirmation (as applicable)

for the Contract) was issued. This includes but is not limited to costs associated with PSS, BAF, container detention exceeding the free 14 day period, increases in export taxes or decreases in export rebates in the country of origin.

7. Provision of Goods or Services

- (a) The Supplier will provide the Services to the Buyer specified under a Contract in accordance with the terms of this Agreement.
- (b) The Supplier will deliver (or procure the delivery of) the Goods under a Contract to the Buyer at the agreed upon location under a Contract.
- (c) If the Buyer fails to advise the Supplier in writing of any fault in Goods or a failure of the Goods to accord with the Buyer's Order within 30 days of delivery of the Goods to the Buyer, then the Buyer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Buyer's Order. Nothing in this paragraph affects the Buyer's rights for any alleged failure of a Consumer Guarantee or otherwise under the Australian Consumer Law.

8. Title and risk

- (a) Subject to clause 9(a)(ii), risk in the Goods passes to the Buyer in accordance with the terms of the Order Confirmation, or, if not specified, on delivery of the Goods at the agreed upon location.
- (b) Property and title in the Goods supplied to the Buyer under a Contract does not pass to the Buyer until all money due and payable to the Supplier by the Buyer in respect of those Goods has been fully paid.
- (c) Where Goods are supplied by the Supplier to the Buyer without payment in full, the Buyer:
 - (i) is a bailee of the Goods until property in them passes to the Buyer;
 - (ii) irrevocably appoints the Supplier to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
 - (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier any Goods supplied by the Supplier from other goods which are held by the Buyer;
 - (iv) must not allow any person to have or acquire any security interest in the Goods (other than a security interest arising as a result of a general security agreement which ranks behind the security interest of the Supplier);
 - (v) agrees that the Supplier may repossess the Goods if payment is not immediately made when due; and
 - (vi) grants an irrevocable licence to the Supplier or its agent to enter the Buyer's premises in order to recover possession of the Goods from the Buyer.
- (d) The Buyer indemnifies the Supplier and its agent for any damage to property or personal injury which occurs as a result of the Supplier or its agent entering the Buyer's premises to recover the Goods.
- (e) Where Goods are supplied by the Supplier to the Buyer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and:
 - (i) the Buyer makes a new object from the Goods, whether finished or not;
 - (ii) the Buyer mixes the Goods with other goods; or
 - (iii) the Goods become part of other goods**(New Goods)**, then the Buyer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Buyer will hold the New Goods as bailee for the Supplier until payment of all sums owing to the Supplier under this Agreement for the related Goods has been made. The Supplier may require the Buyer to store the New Goods in a manner that clearly shows the ownership of the Supplier.
- (f) For the avoidance of doubt, under clause 8(e), the ownership of the

New Goods passes to the Supplier at the beginning of the operation or event by which the Goods were converted into, were mixed with or became part of other goods.

- (g) Despite paragraph 8(c), the Buyer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business. This is provided that the security interest of the Supplier in the Goods continue in the proceeds of the Goods. Where the Buyer is not paid by a third party, the Buyer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Buyer notice in writing to that effect and for the purpose of giving effect to that assignment the Buyer irrevocably appoints the Supplier as its attorney.
- (h) Where Goods are supplied by the Supplier to the Buyer without payment in full of all moneys payable in respect of the Goods provided by the Supplier in respect of those Goods, the Buyer acknowledges that the Supplier has a right to register and perfect a security interest in respect of the Goods under the PPSA.
- (i) If:
 - (i) a law in respect of the PPSA applies or commences to apply to this Agreement or any transaction contemplated by them, or the Supplier determines (based on legal advice) that this is the case; and
 - (ii) in the Supplier's opinion, the PPSA law:
 - (A) does or will adversely affect the Supplier's security position or obligations; or
 - (B) enables or would enable the Supplier's security position to be improved without adversely affecting the Buyer,then the Supplier may give notice to the Buyer requiring the Buyer to do anything (including amending this Agreement or requiring the execution of any new terms and conditions) that in the Supplier's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in clause 8(i)(ii)(A) or improve the security position as contemplated in paragraph 8(i)(ii)(B). The Buyer must comply with the requirements of that notice within the time specified in the notice. If, having completed everything reasonably practicable as required under this clause 8(i) in the Supplier's opinion, the Supplier's security position or obligations under or in connection with these terms of trade have been or will be materially adversely affected, the Supplier may by further notice to the Buyer terminate this Agreement and any corresponding Contracts. If this occurs, the Buyer must pay to the Supplier any money owed to the Supplier by the Buyer immediately.
- (j) The Buyer acknowledges and agrees that:
 - (i) the Supplier is a secured party in relation to the Goods and any proceeds of the Goods, and may register its security interest on the register established under the PPSA;
 - (ii) the Supplier may, by notice to the Buyer, require the Buyer to take all steps that the Supplier considers necessary or desirable to ensure its security interest in the Goods is enforceable and to perfect or better secure the position of the Supplier under these terms of trade as a first ranking security;
 - (iii) the Buyer must promptly comply with a notice from the Supplier under clause 8(k)(ii) at the cost of the Buyer;
 - (iv) the Buyer must promptly provide any details necessary for the registration by the Supplier of an effective financing statement and inform the Supplier of any change to information that it provides to the Supplier under this clause 8(k);
 - (v) the Supplier is not required to give any notice or provide reports of any documents under the PPSA (including notice of a verification statement or a notice of retention of collateral under section 135 of the PPSA) unless the notice is required by law and cannot be excluded; and

- (vi) to the extent permitted by law, the Buyer waives its rights pursuant to sections 95, 118, 121, 129, 130, 132(3)(d), 132(4), 135, 137(2), 142, 143 and 157 of the PPSA and those sections will not apply to the enforcement of any security interest given by the Buyer to the Supplier.
- (k) All payments received by the Supplier from the Buyer will be applied in accordance with section 14(6)(c) of the PPSA, or in any other manner as the Supplier sees fit.
- (l) The Supplier may, at the Buyer's request or otherwise, account payments as having been applied towards specific invoices, however, unless the Supplier expressly states in writing to the contrary, any such application is for accounting purposes only and the actual application is to be in accordance with section 14(6)(c) of the PPSA.
- (m) A certificate signed by any manager or officer of the Supplier stating that any amount is the amount owed by the Buyer to the Supplier shall be conclusive evidence of the truth of its contents and binding upon the Buyer unless there is a manifest error on the face of the certificate. If in any circumstances the preceding provisions of this clause shall be ineffective at law, the certificate shall be prima facie evidence of the matters contained therein.
- (n) If it is necessary to determine at any point in time whether any Goods supplied to the Buyer have or have not been paid for by the Buyer, the onus will be on the Buyer to establish and prove that payment has been made for the Goods. If the Buyer is unable to establish that the Goods supplied by the Supplier have been paid for, the Supplier and the Buyer agree and acknowledge that such Goods have not been paid for.
- (o) If the Buyer takes no steps to receive delivery of the Goods within 14 days from the delivery date under a Contract, or where delivery is restricted because the available trade credit limit is not sufficient to cover the anticipated future delivery and additional security or prepayment has not been offered and this continues for 14 days or more following the first day of possible delivery had adequate trade credit been available, then the Supplier may at its option and without notice resell those Goods. The Buyer must pay to the Supplier any amount which is the difference between the original sale price of the Goods under a Contract and the resale price of the Goods.

9. Incoterms — sale or delivery of Goods from, or to, outside of Australia

- (a) Unless otherwise specified or agreed in writing by the Supplier, any agreements concerning the sale or delivery of Goods from, or to, outside of Australia shall be made in accordance with Incoterms rules specified in an Order Confirmation and the Buyer acknowledges and agrees that:
 - (i) delivery of the Goods will be deemed to have occurred immediately when the Supplier has fulfilled its obligations as to delivery pursuant to Incoterms;
 - (ii) the risk of loss or damage to Goods shall pass to the Buyer in accordance with Incoterms;
 - (iii) the Supplier will not, and will not be responsible for, obtaining any insurance in respect of a Contract and any Goods the subject of such Contract, unless required to do so pursuant to Incoterms or otherwise as expressly agreed in writing by the Supplier;
- (b) In the event of any inconsistency between this Agreement and the Incoterms rules specified in an Order Confirmation, then the relevant Incoterms rules specified in an Order Confirmation shall prevail over this Agreement in respect of that Order Confirmation to the extent of the inconsistency.

10. Intellectual Property Rights

The Buyer acknowledges that:

- (a) all Intellectual Property Rights embodied in or used in connection with

- the Goods and/or Services, or which may be developed in connection with the Goods and/or Services (whether registered or unregistered) will be and remain the property of the Supplier (**Supplier IP**);
- (b) unless otherwise agreed in writing, any Supplier IP created or developed following the date of a Contract will vest in the Supplier as soon as the Intellectual Property Rights are created or developed and will at all times remain the property of the Supplier. The Buyer will assign any right, title and interest in such Supplier IP immediately upon creation, free of any encumbrances, security interest and third party rights and such assignment will operate as a present assignment of future Intellectual Property Rights; and
- (c) nothing in this Agreement grants a licence or any rights to use Supplier IP in any way.

11. Agency and assignment

- (a) The Buyer agrees that the Supplier may at any time appoint or engage an agent and/or subcontractor to perform an obligation of the Supplier arising out of or pursuant to this Agreement.
- (b) The Supplier has the right to assign any of its rights under this Agreement or may novate and/or transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from this Agreement provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Buyer under this Agreement.

12. Default and Termination

- (a) Each of the following occurrences constitutes an event of default:
 - (i) the Buyer breaches this Agreement for any reason (including, but not limited to, defaulting on any payment due under this Agreement);
 - (ii) the Buyer is subject to an Insolvency Event;
 - (iii) the Buyer purports to assign its rights under this Agreement without the Supplier's prior written consent; or
 - (iv) the Buyer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, the Supplier may:
 - (i) terminate this Agreement;
 - (ii) terminate any one or more Contracts and credit arrangements (if any) with the Buyer;
 - (iii) refuse to deliver Goods or provide further Services;
 - (iv) pursuant to clause 8(c), repossess and re-sell any Goods delivered to the Buyer, the payment for which has not been received; or
 - (v) retain (where applicable) all money paid by the Buyer on account of Goods or Services or otherwise, provided that the Supplier does not retain any money for Goods and/or Services not provided to the Buyer (without limiting the Supplier's set off rights under this Agreement).
- (c) In addition to any action permitted to be taken by the Supplier under clause 12(b), on the occurrence of an event of default all invoices will become immediately due and payable.
- (d) The Supplier may terminate this Agreement or any Contract, or reduce the scope of any Contract, for any reason by providing at least 30 days' written notice to the Buyer.
- (e) If any provision of this Agreement is otherwise unenforceable by virtue of the operation of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth), upon the occurrence of an Insolvency Event in respect of a particular party, notwithstanding any other provision of this Agreement, to the maximum extent permitted by law:
 - (i) time is of the essence in respect of all obligations of that party under this Agreement (whether falling due for performance before, upon or after the occurrence of that Insolvency Event); and
 - (ii) any breach of this Agreement by that party (whether occurring

before, upon or after the occurrence of that Insolvency Event), however minor, will (alone or, severally, in combination with the occurrence of that Insolvency Event) be deemed to be a material breach of this Agreement, and, if any such material breach has occurred or occurs, the parties acknowledge and agree that such provision will instead be enforceable by virtue of the occurrence of that material breach.

13. Exclusions and limitation of liability

- (a) Nothing in this clause 13 is intended to have the effect of excluding, restricting or modifying any liability of the Supplier in relation to a failure to comply with a Consumer Guarantee.
- (b) All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any applicable Consumer Guarantees, small deviations or slight variations from them which do not substantially affect the Buyer's use of the Goods or Services will not entitle the Buyer to reject the Goods upon delivery, or to make any claim in respect of them.
- (c) Any representation, statement, advice, recommendation, information, assistance or service given by the Supplier to the Buyer is made in good faith but without any representation nor warranty of accuracy, appropriateness or reliability. The Buyer acknowledges and warrants that it has made its own due and reasonable enquiries, and it does not enter into this Agreement in reliance on any conduct (including any representation, statement, advice, recommendation, information, assistance or service) by or on behalf of the Supplier, except as expressly stated in this Agreement or any Order Confirmation.
- (d) The Buyer expressly agrees that use of the Goods and Services is at the Buyer's risk. To the maximum extent permitted by law, the Supplier excludes all conditions, warranties and representations expressed or implied by law or otherwise in relation to the Provision of the Goods and/or Services under this Agreement.
- (e) To the maximum extent permitted by law, under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Buyer or any other person for any Loss as a result (direct or indirect) of (without limitation):
 - (i) any Goods or Services supplied to the Buyer, including any defect, deficiency or discrepancy in the Goods or Services;
 - (ii) any delay in or failure to supply the Goods or Services; or
 - (iii) any warranties or representations purportedly made.
- (f) To the maximum extent permitted by law, the liability (if any) of the Supplier arising from the breach of the conditions or warranties or any Consumer Guarantee referred to in this clause is, at the election of the Supplier, limited to and completely discharged:
 - (i) in the case of the supply of Goods, by either:
 - (A) the supply by the Supplier of any goods equivalent to the Goods (or the payment of the cost of re-supply or of acquiring equivalent goods); or
 - (B) the replacement by the Supplier of the Goods supplied to the Buyer (or the payment of the cost of having the goods replaced); and
 - (ii) in the case of the supply of Services, the supplying of the Services again or the payment of the cost of having the Services supplied again (including in respect of any advice, recommendations, information or services),
and in all other circumstances, the Supplier's aggregate liability under or in connection with the Agreement, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action is, in the aggregate, limited to \$10,000.
- (h) To the maximum extent permitted by law, the Supplier is not liable

to the Buyer, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action, include any liability for any indirect, punitive, incidental, special, consequential loss or damages and including, without limitation, damages for loss of use, loss of data, loss of profits, or loss of business opportunity, regardless whether in the contemplation of the parties as at the time.

- (i) The Buyer acknowledges that the Goods or Services are not goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

14. Indemnity

- (a) The Buyer indemnifies and keeps indemnified the Supplier, its employees, officers and agents (**those indemnified**) against all Loss sustained or incurred by those indemnified arising out of or in connection with any Claim from any person (including, but not limited to, the Buyer) in connection with the provision of Goods or Services, any Contract or the of this Agreement.
- (b) This provision remains in force after the expiry or termination of this Agreement.

15. Force majeure

- (a) If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods or Services, the Supplier is free from any obligation to provide the Goods or Services while those circumstances continue. The Supplier may elect to terminate this Agreement or keep the Agreement on foot until such circumstances have ceased or suspend or reduce the amount of Goods to be delivered. The Supplier will not be liable to the Buyer for any Loss incurred or sustained by the Buyer in connection with the Supplier's delay or non-performance of its obligations under this Agreement in connection with the occurrence of any such circumstances.
- (b) Circumstances beyond the Supplier's control include, but are not limited to, unavailability or price increases of materials or components; freight, strikes, trade disputes or labour disturbances; lockouts, riots, natural disasters, fire, war, acts of God, Governmental decrees, proclamations; or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

16. Governing law, Jurisdiction and Disputes

- (a) This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of New South Wales, Australia.
- (b) The parties irrevocably agree that the courts of New South Wales, Australia (and any courts competent to determine appeals from those courts) have exclusive jurisdiction to settle any dispute or proceedings that arises out of, or in connection with, this Agreement or its subject matter or formation (including non-contractual disputes or claims). Each party waives any objection it may have now or in the future to the venue of any proceedings and any claim it may have regarding any proceedings or claim being brought in an inconvenient forum.

17. Binding terms and conditions

- (a) The Buyer by placing an Order with the Supplier will be deemed to have accepted these terms of trade.
- (b) The Order will not be binding on the Supplier and does not form part of a Contract except to the extent the terms of an Order are accepted by the Supplier in an Order Confirmation.
- (c) The only terms which are binding on the Supplier in respect of each Contract are:
 - (i) those set out in these terms of trade and the Order Confirmation (if any, and which may include the agreed terms of an Order);

- (ii) those, if any, which are imposed by law which cannot be excluded; and
 - (iii) such further terms as may be agreed to in writing by the Supplier.
- (d) Any additional terms sought to be imposed by the Buyer (whether part of the Order or otherwise) are not part of this Agreement and will not be binding on the Supplier, unless specifically agreed to in writing by the Supplier.
- (e) The acceptance of goods delivered by the Supplier which refer to these terms of trade shall be deemed to be the acceptance of these terms of trade (if not previously accepted by the Buyer such as, for example, in accordance with clause 17(a) above).

18. Entire agreement

To the extent permitted by law, this Agreement constitutes the entire agreement and understanding between the parties relating in any way to its subject matter, unless agreed otherwise by the Supplier and the Customer in writing, and will supersede any prior agreement or understanding of the parties (written or otherwise). Each party acknowledges and warrants that it does not enter into this Agreement, including each Contract, in reliance on any previous negotiations, understandings, representations, warranties, memoranda or commitments. No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.

19. Miscellaneous

(a) Electronic signature and exchange. Each party warrants that immediately prior to entering into this Agreement it unconditionally consented to the requirement for a signature under any law being met and any other party to this Agreement executing it by any method of electronic signature that other party uses (at its discretion), including signing on an electronic device or by digital signature. This Agreement may be executed in any number of counterparts by or on behalf of a party and by the parties in separate counterparts. Delivery of an executed counterpart of this Agreement by facsimile, or by email in PDF or other image format, will be equally effective as delivery of an original signed hard copy of that counterpart.

- (b) The Buyer agrees that this Agreement may be varied, added to, or amended by the Supplier at any time by at least 15 days' written notice. Except as otherwise agreed in writing by the parties, the Buyer agrees that after the notice period, the variation or amendment to the Agreement will take effect. All variations to the Agreement, including any Contract from time to time, must be in writing.
- (c) In entering into these terms of trade, the Buyer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these terms of trade.
- (d) If any provision of this Agreement at any time is or becomes illegal, void or unenforceable, that provision (or relevant part) will be severed and the remaining provisions of this Agreement will continue to have full force and effect.
- (e) A party's failure or delay to exercise or enforce a power, right or remedy (or partial exercise thereof) does not preclude nor operate as a waiver of that power, right or remedy provided by law or under this Agreement.
- (f) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on the Order and Order Confirmation (or as varied pursuant to this paragraph) and: (i) delivered personally; (ii) sent by pre-paid mail to the address of the addressee specified in the relevant Order and Order Confirmation; (iii) sent by email to the email address of the addressee specified in the relevant Order and Order Confirmation.
- (g) A notice or other communication is taken to have been given (unless otherwise proven) if mailed, on the second Business Day after posting; or if sent by email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (h) A party may only change its postal or email address for service by giving notice of that change in writing to the other party.
- (i) A provision of this Agreement is not to be interpreted to the disadvantage of a party because that provision was proposed, requested or drafted by or on behalf of that party.