

## IBELT CONDITIONS OF SALE

### 1. INTERPRETATION

- (a) These Conditions of Sale shall be subject to the provisions of the Australian Consumer Law and any statutory amendment or re-enactment thereof for the time being in force which the Company is not capable of excluding, restricting or modifying. means the software solution of the Company known as 'Digital Hub' that is designed to be used in connection with the Product.
- (b) In these Conditions of Sale, the words "Agreement" means the Reference Schedule, these Conditions of Sale and any Special Conditions ; "Australian Consumer Law" means the law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any corresponding state or territory legislation; "Company" means the Company listed in Item 1 of the Reference Schedule and its agents, servants and employees, and any of its subsidiaries as defined in section 9 of the *Corporations Act 2001* (Cth); "Commencement Date" means the date set out in Item 3 of the Reference Schedule; "Confidential Information" means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods or services or the Company's business but does not include information which is or becomes generally available in the public domain (other than through any breach of confidence) and information which has been independently developed by the other party; "Consequential Loss" means any loss of revenue, loss of income, loss of business, loss of profits, loss of production, loss of or damage to goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, losses arising from claims by third parties, loss of or damage to credit rating, loss of anticipated savings, loss or denial of opportunity or any other loss, damage, cost or expense incurred by a party or any other person that is indirect or consequential; "Consumer" has the meaning given to it in section 3 of the Australian Consumer Law; "Consumer Guarantee" has the meaning given to it in Part 3-2 of the Australian Consumer Law; "goods" means the Goods described in Item 4 of the Reference Schedule and any other goods agreed to be supplied to the Purchaser by the Company under this Agreement; "GST" has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999* (Cth); "person" includes corporation;

"PPSA" means *Personal Property Securities Act 2009* (Cth) (including any amendment or re-enactment thereof); "Premises" means the premises of the Purchaser as set out in Item 9 of the Reference Schedule; "Price" means the pricing set out in Item 6 of the Reference Schedule; "Purchaser" means the party listed in Item 2 of the Reference Schedule; "Reference Schedule" means the reference schedule relating to these Conditions of Sale setting out particulars in relation to the sale of Goods; "Related Body Corporate" has the meaning given to it in the *Corporations Act 2001* (Cth); "services" means any services to be performed for the Purchaser by the Company under this Agreement including but not limited to any specific services in Item 5 of the Reference Schedule and includes any installation and commissioning that is performed in accordance with clause 5; "Special Conditions" means those additional terms and conditions in relation to the Goods or services as applicable as set out in Item 7 of the Reference Schedule; "Tax Invoice" has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and "Term" means the period set out in Item 8 of the Reference Schedule.

- (c) In these Conditions of Sale, any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

### 2. SALE OF GOODS AND PERFORMANCE OF SERVICES

- (a) The Company agrees to manufacture and sell the Goods to the Purchaser, and the Purchaser agrees to buy the Goods from the Company on the terms and conditions contained in this Agreement.
- (b) The Company agrees to perform any Services and the Purchaser agrees to buy the Services from the Company on the terms and conditions contained in this Agreement.

### 3. DELIVERY AND PERFORMANCE

- (a) Any date quoted for delivery of the Goods and/or performance of the Services is an estimate only and subject to the Australian Consumer Law, the Company shall not be liable to the Purchaser for any loss or damage howsoever arising for failure to deliver the Goods and/or perform the Services on or before the quoted date. The Purchaser shall accept and pay for goods and/or services when tendered notwithstanding any failure by

the Company to deliver the Goods or perform the Services by the quoted date. The terms of payment shall apply upon written advice to the Purchaser that goods are ready for delivery whether in whole or in part.

- (b) The Company will use all commercially reasonable efforts to deliver the Goods by the agreed date for delivery. Except where the Purchaser has rights or remedies under the Australian Consumer Law which cannot be excluded, the Company shall not be liable to the Purchaser or any other party for any loss, damage or injury whatsoever (including Consequential Loss) and the Purchaser is not entitled to repudiate this Agreement by reason of any delay in delivery of the Goods or performance of the Services.
- (c) The Company reserves the right to deliver the Goods by instalments. If delivery is made by instalments, the Purchaser shall not be entitled:
  - (i) to any loss or damage howsoever arising; and
  - (ii) in connection with the failure of the Company to deliver any instalments on or before the agreed date for delivery.
- (d) The parties agree the method of delivery is Ex-Works (as that term is defined under the Incoterms 2020).

#### **4. QUANTITIES AND QUALITY**

- (a) The Purchaser warrants that any goods supplied or services performed by the Company which are based in whole or in part upon designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser shall not infringe any intellectual property rights of third parties and that any such designs, drawings or specifications shall be complete in every respect to enable the Company to supply the Goods and/or perform the Services in compliance with all requirements of the Purchaser or of any applicable law. The Purchaser shall indemnify and hold harmless the Company against any action, loss, cost, claim or damage (including Consequential Loss) that may be brought against or suffered by the Company for any breach of this warranty by the Purchaser.
- (b) The Purchaser warrants that any design, drawing or specification supplied to the Company shall be complete in every respect (including without limitation all necessary technical information) sufficient to enable the Company to supply the Goods and/or perform services to comply with all applicable performance, durability, health, safety, conformity and labelling requirements whether of the Purchaser or the Purchaser's customer or howsoever arising at law and the Purchaser shall indemnify the Company fully in respect of loss, damages, costs and expenses (including Consequential Loss) incurred by the Company which results from any incompleteness

in the Purchaser's specification or design.

- (c) Subject to the Australian Consumer Law, the Company does not warrant or guarantee and it shall not be a term of any agreement between the Company and the Purchaser, that any goods supplied or services performed by the Company which are based upon any designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser will achieve any standard of performance or capacity whatsoever and the Purchaser acknowledges that it does not rely on the skill and the judgment of the Company for the fitness of the Goods or services for any purpose of the Purchaser.
- (d) The Purchaser's materials and parts shall be delivered to the Company free of all charge to the Company. All materials removed as part of the Company's processes or as a consequence of performing the Services become the property of the Company and are allowed for in the Company's estimate or quotation.
- (e) The Company shall not be liable for the value of any of the Purchaser's materials and parts sent for fitting or other purposes, or for any loss or damage whatsoever resulting from the performance of any works on the Purchaser's material and parts by the Company.
- (f) The Purchaser's materials or parts sent for fitting shall be suitable in every way for the machining, cutting or fitting specified in the Agreement and the Company is to have no obligation to check such suitability. The Purchaser will pay the Company for work done and for consequential damage to machines and tools of the Company arising directly or indirectly from any unsuitability of the Purchaser's materials or parts.

#### **5. INSTALLATION, COMMISSIONING, ACCEPTANCE AND USE**

##### **5.1 Installation**

The Purchaser may but is not required to engage the Company to install the Goods. If the Purchaser elects to install the Goods itself or through its Representatives and that installation is not carried out in accordance with the installation instructions in the Company's manual, the Warranty will be invalidated.

##### **5.2 Commissioning**

- (a) The Company will carry out its commissioning of the Goods remotely.
- (b) The Purchaser acknowledges in order for the commissioning to be conducted remotely, it is responsible for providing all of the data and carrying out the steps required by the Company within a reasonable timeframe advised by the Company, which timeframe must be at least 7 Business Days after the Purchaser receives the Company's request for the data to be provided or the steps to be carried out.
- (c) The Purchaser acknowledges and agrees that if it fails to provide the correct data and/or carry out the required steps under clause

5.2(b), this may result in inaccurate readings for the purposes of remote commissioning and calibration (if applicable) of the Goods.

- (d) If requested and where practical for the Company, the Company will provide the services of sufficient technically qualified personnel to complete the commissioning of the Goods at the Premises, the cost of which shall be borne by the Purchaser.
- (e) The Company will inform the Purchaser in writing when the Goods are commissioned and are ready for acceptance.
- (f) The Goods will be deemed to be accepted:
  - (i) within 5 Business Days after the Company has informed the Purchaser that the Goods have been commissioned in accordance with clause 5.2(d) (if applicable) unless the Purchaser notifies the Company of any material errors in respect of the Goods in that time, in which case acceptance occurs under clause 5.2(g); or
  - (ii) if the Purchaser fails to comply with its obligations under clause 5.2(b) on the date that the required data and steps are required to be carried out by the Purchaser under clause 5.2(b).
- (g) If the Purchaser notifies the Company of a material error in accordance with clause 5.2(f)
  - (i) acceptance will occur once the Company advises the Purchaser that the material error has been rectified.

### 5.3 Use of Goods

The Purchaser must ensure that the use of the Goods complies with all applicable laws, by-laws, regulations, standards and requirements and the manufacturer's operations and maintenance manuals (if any provided).

## 6. ACCESS AND ASSISTANCE

- (a) In respect of any work done by the Company in relation to the Goods to be supplied to or the Services to be performed for the Purchaser at a location other than the Company's premises, it shall, subject to any written agreement to the contrary, be the duty of the Purchaser to ensure that the conditions under which the work has to be performed, the layout, means of access, accessibility of the different parts of the subject matter being worked upon or handled and other material circumstances shall be suitable for the Company, failing which the Company shall be entitled to charge a reasonable increase in the price of the Goods or Services which reflect the increased costs to the Company incurred due to the prevailing circumstances.
- (b) Where Services are to be performed at the Premises, the Purchaser agrees to provide the Company on a timely basis with such access, utilities and equipment as the Company may reasonably require in order to perform the Services. If the Purchaser fails to provide such

assistance, the Company will be entitled to delay performance of the Services until such time as the Purchaser has complied with this obligation and charge a reasonable increase in the price of the Goods or services which reflect the increased costs to the Company incurred due to the prevailing circumstances.

## 7. WAIVER

Failure by the Company to insist upon strict performance of any term of this Agreement or to enforce its rights under this Agreement shall not be deemed a waiver thereof or of any rights which the Company may have and shall not, and nor shall any express waiver, be deemed to be a waiver of any subsequent breach of any term or condition.

## 8. LIMITATION OF LIABILITY

- (a) Except when the Australian Consumer Law applies and the conditions, warranties and rights implied by that law cannot be excluded, restricted or modified:
  - (i) all representations, promises, statements, warranties and conditions (whether statutory, express or implied) regarding any goods supplied or services performed by or on behalf of the Company are expressly excluded;
  - (ii) no claim can be made by the Purchaser against the Company unless the Purchaser notifies the Company in writing of the facts or matters which form part of any such claim within 14 days of the Purchaser becoming aware of the same;
  - (iii) the Company shall not be liable to the Purchaser for Consequential Loss which arises out of or in connection with this contract; and
  - (iv) the Company's liability for any and all loss or damage resulting from any cause whatsoever will be limited (at the Company's discretion) to in the case of goods supplied to the Purchaser, the replacement or repair of the Goods or the cost of having the Goods replaced or repaired or, in the case of services performed for the Purchaser, a refund of the price paid for the Services.
- (b) Where the Australian Consumer Law applies and permits the Company to limit the remedies available to it for a breach of a Consumer Guarantee, the Company hereby limits its remedies to such Consumers for a breach of a Consumer Guarantee, in the case of goods, to the repair or replacement of the Goods, the supply of equivalent goods or the payment of the cost of having the Goods repaired or replaced or having equivalent goods supplied and, in the case of services, to supplying the Services again or paying the cost of having the Services supplied again.

- (c) Except to the extent that the Purchaser is entitled to a remedy under the Australian Consumer Law and any manufacturer's warranty, the Company shall not be liable for:
- (i) any defects or damage caused in whole or in part by misuse, abuse, neglect, electrical or other overload, non-suitable lubricant, improper installation, repair or alteration, improper readings and recordings of the Goods (other than to the extent caused by the Company);
  - (ii) any transport, installation, removal, labour or other costs;
  - (iii) goods not manufactured or services not performed by it but the Company will endeavour to pass on to the Purchaser the benefit of any claim made by the Company and accepted by the manufacturer of such goods and/or services under a warranty given by the manufacturer provided that nothing contained in this sub-clause shall limit the rights of the Purchaser to proceed against the Company pursuant to the Australian Consumer Law; or
  - (iv) technical advice or assistance given or rendered by it to the Purchaser whether or not in connection with the supply of goods or performance of services for or to the Purchaser provided always that the Company has rendered such services with due care and skill and that any materials supplied in connection with those services are reasonably fit for the purpose for which they are supplied.
- (d) The Purchaser acknowledges and agrees that:
- (i) the readings derived from the goods do not purport to be all-inclusive or comprehensive and before acting in reliance on that information it must ensure appropriately qualified personnel conduct their own analysis in respect of the operation of the Goods and the readings it produces;
  - (ii) appropriately qualified personnel should at all times check the accuracy, reliability and completeness of the information derived from the readings before relying on it;
  - (iii) selecting goods and/or services requires the Purchaser to use its own skill and judgement as to which goods and/or services meets the Purchaser's requirement;
  - (iv) it has such skill and judgement and undertakes to exercise it at all times in selecting goods and/or services;
  - (v) it will be responsible for ensuring that goods and/or services selected are fit or suitable for the Purchaser's purpose; and
  - (vi) subject to any rights or remedies that the Purchaser has under the Australian Consumer Law which cannot be lawfully

excluded, the Company shall not be responsible for any selection made by the Purchaser and will not have any liability to the Purchaser for any loss, damages, costs or expenses suffered by the Purchaser as a result thereof.

## 9. TERMINATION

- (a) The Company may terminate this Agreement in whole by written notice to the Purchaser if:
- (i) the Purchaser fails to pay any sum under this Agreement by the due date for payment;
  - (ii) the Purchaser fails to perform any term of this Agreement requiring performance by it (other than a payment provision) and that failure is incapable of remedy, or if capable of remedy, continues for 21 days after the Purchaser receives a notice from the Company requiring that the failure be remedied; or
  - (iii) the Purchaser suffers from an Insolvency Event.
- (b) For the purpose of this clause, Insolvency Event means the happening of any of the following in relation to the Purchaser:
- (i) an application is made to a court for an order that the Purchaser be wound-up or that a provisional liquidator be appointed (unless the application is withdrawn, struck out or dismissed within 45 days of it being made);
  - (ii) a liquidator is appointed in respect of the Purchaser;
  - (iii) a resolution is passed or a decision taken to appoint an administrator in respect of the Purchaser or there is a Controller (as defined in the *Corporations Act 2001* (Cth)) appointed in respect of any of its assets;
  - (iv) except to reconstruct or amalgamate while solvent on terms approved by the Company, the Purchaser enters into, or resolves to enter into, an arrangement or composition with, or assignment for the benefit of, all or any of its creditors, or it, or anyone on its behalf, proposes a reorganisation, moratorium, deed of company arrangement or other administration involving any of them or the winding up or dissolution of the party;
  - (v) the Purchaser is, states that it is or is presumed under any applicable law to be, insolvent;
  - (vi) the Purchaser becomes an insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth)) or action is taken which could result in that event; or
  - (vii) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) or any similar section, the Purchaser is taken to have failed to comply with a statutory demand.



## 10. TERMINATION CONSEQUENCES

On the termination of this Agreement in whole or in part under Clause 9:

- (a) if the Goods have not been paid for in full, then the Purchaser shall immediately pay (in cash) the amount of the Purchase Price outstanding as at the termination date; and
- (b) in default of payment by the Purchaser under clause 10(a), the Company may take possession of the Goods and sell the Goods at public auction or by private contract subject to such conditions as the Company may think fit or otherwise lease, hire out or licence the Goods for such period and at such rental as the Company may think fit. The Purchaser shall pay all costs, charges and expenses incurred by the Company in taking possession of the Goods.

## 11. INDEMNITY

The Purchaser shall indemnify, defend and hold the Company and their respective shareholders, directors, employees, contractors and agents harmless from and against all losses suffered or incurred by any one or more of them arising directly or indirectly as a result of or in connection with:

- (a) any negligent, wilful or unlawful act or omission by the Purchaser (or its employees, agents, contractors, invitees or customers) in connection with the Goods;
- (b) the use of the Goods by the Purchaser or any third party (except where the losses arise in circumstances where the Goods have been:
  - (i) used properly, with due care and in accordance with this Agreement; and
  - (ii) installed and maintained in accordance with this Agreement;
- (c) any breach by the Purchaser of the Purchaser's obligations under this Agreement.

## 12. TITLE LIEN

- (a) Title to the Goods to be delivered will not pass to the Purchaser until payment in full for the Goods and all other amounts owing by the Purchaser to the Company (whether under this or any other agreement) has been received by the Company.
- (b) Until the date of final payment of all amounts referred to in clause 12(a) above, the Purchaser:
  - (i) shall store the Goods so that they are clearly identified as the property of the Company and will hold the Goods as a fiduciary bailee of the Company;
  - (ii) shall not dispose of the Goods except in the ordinary course of the Purchaser's business or move the Goods from the Purchaser's premises without the Company's prior written consent;
  - (iii) acknowledges and warrants that the Company has a security interest for the purposes of the PPSA in the Goods and that such security interest attaches to the Goods when the Purchaser obtains

- possession of the Goods;
  - (iv) must not allow any person other than the Company to have or acquire any security interest in the Goods for the purposes of the PPSA;
  - (v) must insure the Goods for their full insurable or replacement value (whichever is higher) with a reputable insurer; and
  - (vi) must not remove, deface or obliterate any identifying mark or number on any of the Goods.
- (c) Despite anything to the contrary in this clause 12, the Purchaser may use the Goods in its production processes or resell the Goods before ownership has passed to the Purchaser. Any sale of the Goods by the Purchaser shall be solely on the condition that such sale shall be on the Purchaser's own behalf in the ordinary course of the Purchaser's business at full value and the Purchaser shall deal as principal when making such sale. In such circumstances, title to the Goods shall pass from the Company to the Purchaser immediately before the time at which resale by the Purchaser occurs.
  - (d) In addition to any lien to which the Company may, by statute or otherwise, be entitled, the Company shall, in the event the Purchaser fails to pay for the Goods in full as required under this Agreement or becomes insolvent, enters into bankruptcy or is wound up, be entitled to:
    - (i) without notice and without liability to the Purchaser (or any person claiming through the Purchaser) enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass (even though they may be attached or annexed to other goods or land not the property of the Purchaser) and for this purpose the Purchaser irrevocably licenses the Company to enter such premises and undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Company from and against all loss suffered or incurred by the Company as a result of exercising such rights; and
    - (ii) a general lien on all property or goods belonging to the Purchaser in its possession (although such goods or some of them have been paid for) for the unpaid price of any other goods sold and delivered to the Purchaser by the Company under this or any other arrangement understanding or contract.

## 13. RISK

- (a) Unless otherwise agreed in writing all goods shall be at the Purchaser's risk upon delivery to the Purchaser's premises (or a third party site nominated by the Purchaser) or upon such goods being made available for collection or

loading by the Purchaser or the Purchaser's carrier or agent.

- (b) The Purchaser shall take delivery of the Goods promptly upon the delivery date or dates, or at the intervals stated in this Agreement or as soon thereafter as Purchaser is notified by the Company that the Goods are available for delivery. If for any reason the Purchaser fails to call off or give delivery instructions, or take delivery of the Goods on the due date, or upon receipt of such notification, or otherwise causes or requests a delay in delivery, then, without prejudice to any other rights of the Company hereunder, the Company shall be entitled to store or arrange for the storage of the Goods and if it does so:
- (i) it shall so inform the Purchaser in writing;
  - (ii) the Purchaser must pay or reimburse the reasonable costs (including insurance) of such storage from the due date, or the date of notification as stated above, until delivery to the Purchaser; and
  - (iii) If 30 days after the day on which the Company notified the Purchaser that the Goods were ready for delivery, the Purchaser has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, charge the Purchaser for any shortfall below the quoted or list (as applicable) price of the Goods.

#### **14. PAYMENT**

- (a) Unless otherwise agreed in writing payment terms are net cash 30 days from the end of the month in which, in the case of goods, the Goods are delivered to the Purchaser or the Purchaser's carrier or agent or, in the case of services, the Services are completed by the Company.
- (b) If the Company does not receive forwarding instructions sufficient to enable it to despatch the Goods within 14 days of notification that they are ready, the Purchaser shall be deemed to have taken delivery of the Goods and the terms of payment shall apply from such date.
- (c) The Company may require the payment of a deposit which, in such circumstances, must be paid by the Purchaser upon execution of this Agreement unless otherwise agreed between the parties.
- (d) The Company may charge the Purchaser on any overdue amounts interest at the rate that is equal to the maximum percentage specified by the Reserve Bank of Australia as the Cash Rate Target as at the date the relevant invoice was issued, plus 2%.
- (e) If the Company must take steps or action to recover any amount due to it, the Purchaser will be responsible for all costs and disbursements incurred by the Company in recovering the monies due.

- (f) The timing of payment is of the essence in all cases.
- (g) The Purchaser shall not in any circumstances or for any reason whatsoever be entitled to make any deduction or withhold any sum from the price by way of set-off or counterclaim.

#### **15. PRICE**

- (a) Except for when a price has been quoted or otherwise expressly agreed in writing, the price of the Goods and/or services shall be the Price set out in Item 6 of the Schedule, plus the amount which the Company is required to pay on account of any excise, GST or any other taxes or charges which may be established or levied by any governmental authority (domestic or foreign) upon the Goods or services.
- (b) The Company reserves the right by giving notice to the Purchaser at any time before delivery or performance to increase the price of the Goods and/or services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as increases in raw materials or labour, foreign exchange fluctuation, currency regulation or alteration of duties), any change in delivery dates, quantities or specifications of the Goods or services which is requested by the Purchaser or any delay caused by any instructions of the Purchaser or failure by the Purchaser to give adequate information or instructions.
- (c) Unless otherwise specified, any prices quoted do not include transportation costs. The parties agree the method of delivery is Ex-Works (as that term is defined under the Incoterms 2020).
- (d) Unless otherwise agreed, packing will be charged for in addition to the price of the Goods and packing cases and materials are not returnable. The Goods will be suitably packed for withstanding the conditions of normal delivery/shipment. Tropical or other special packing will only be supplied on written request and will also be charged for in addition to the price.

#### **16. GST**

If any supply made by the Company under or in connection with this Agreement is a taxable supply, the Purchaser must pay to the Company, in addition to any amount or consideration payable by the Purchaser in relation to that supply, the amount of any GST payable in respect of the taxable supply at the time the consideration for the supply is payable.

#### **17. SAMPLES**

Subject to any Consumer Guarantees that may apply, all samples are sent and inspected solely to enable the Purchaser to judge the quality of the bulk and shall not render any sale a sale by sample. All samples are to remain the property of the Company and shall be returned to the Company on request.

## 18. TOOLING DIES & OTHER MATERIALS

- (a) All patterns, dies, moulds or other equipment used in the manufacture of the Goods or the performance of the Services shall remain the property of the Company unless otherwise expressly agreed in writing.
- (b) The Purchaser shall not permit any third party to use such equipment nor disclose to any third party any technical, dimensional or design details or any other information in respect of such equipment at any time.
- (c) All designs, drawings, specifications, brochures, catalogues, websites, price lists, advertising material and computer software are the copyright of and shall remain the property of the Company and must not be copied, reproduced or divulged either directly or indirectly to any other person without the Company's prior written permission.
- (d) The Purchaser shall not use the Company's name, logo or other intellectual property rights in advertising or publicity without the Company's prior written consent.

## 19. INTELLECTUAL PROPERTY

- (a) All plans, drawings, data, descriptions or other specifications, including the software with the exception of the data generated by the software provided under a separate subscription agreement to be used in conjunction with the Goods (together with the Intellectual Property Rights in them) are the exclusive property of the Company.
- (b) The Company remains the owner or licensee (as the case may be) of all Company Background Intellectual Property Rights.
- (c) The Company grants to the Purchaser a non-exclusive, non-transferable, royalty-free licence to use the Company Background Intellectual Property Rights only to the extent necessary to enable the Purchaser to use, have the full benefit of and, if applicable, resell the Goods it acquires from the Purchaser.
- (d) The Purchaser remains the owner or licensee (as the case may be) of all of the Purchaser's Background Intellectual Property Rights.
- (e) The Purchaser grants or will procure the granting to the Company, of a non-exclusive, non-transferable, royalty-free licence to use, reproduce, copy and modify the Purchaser's Background Intellectual Property Rights and all documents, materials plans, drawings, reports, specifications or data supplied by the Purchaser, as necessary to enable the Company to perform its obligations under this Agreement or have the full benefit of the Created IP.
- (f) Any Intellectual Property Rights created or developed under or in connection with this Agreement or in the course of supplying the Goods (Created IP) are owned by the Company.
- (g) For the purposes of this clause:
  - (i) Company Background Intellectual Property

Rights means all Intellectual Property Rights owned or used by the Company prior to the date of this Agreement.

- (ii) Intellectual Property Rights means:
  - (A) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
  - (B) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;
  - (C) confidential information and trade secrets;
  - (D) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
  - (E) proprietary rights under the *Circuit Layouts Act 1989* (Cth).
- (iii) Purchaser Background Intellectual Property Rights means all Intellectual Property Rights owned or used by the Purchaser prior to the date of this Agreement.

## 20. PPSA

- (a) Unless a contrary intention appears, words or expressions used in this clause 18(d) that are defined in the PPSA have the same meaning given to them in the PPSA.
- (b) If the Company determines that this Agreement or the supply of the Goods creates a security interest in its favour over any personal property, the Company may apply for any registration, or give any notification, in connection with that security interest and the Purchaser must promptly, upon the Company's request, do anything to:
  - (i) provide more effective security over the relevant personal property;
  - (ii) ensure that any such security interest in favour of the Company is at all times enforceable, perfected and otherwise effective and ranks as a first priority security interest;
  - (iii) enable the Company to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
  - (iv) enable the Company to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPSA.

- (c) Neither party will disclose to a person or entity that is not a party to this contract, information of the kind mentioned in section 275(1) of the PPSA unless section 275(7) of the PPSA applies or that information is publicly available.
- (d) If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under this Agreement or the supply of the Goods, the Purchaser agrees that the following provisions of the PPSA will not apply:
  - (i) section 96 (person with an interest in the whole may retain accession);
  - (ii) section 117 (obligations in land secured by personal property and land);
  - (iii) section 120 (enforcement of security interest in liquid assets);
  - (iv) section 121(4) (enforcement of liquid assets – notice to grantor);
  - (v) section 123 (secured party may seize collateral);
  - (vi) section 125 (obligation to dispose of or retain collateral);
  - (vii) section 126 (apparent possession of collateral);
  - (viii) section 130 (notice of disposal), to the extent that it requires the Company to give notice to the Purchaser;
  - (ix) section 132(3)(d) (contents of statement of account after disposal);
  - (x) section 132(4) (statement of account if no disposal);
  - (xi) section 142 (redemption of collateral); and
  - (xii) section 143 (reinstatement of security agreement).
- (e) Without limiting clause 20(d) above, the Company does not need to give the Purchaser any notice required under the PPSA unless the requirement for the notice cannot be excluded.

## 21. FORCE MAJEURE

- (a) Without prejudice to the generality of any previous exclusion or limitation of liability but subject to any rights or remedies either party has under the Australian Consumer Law which cannot be excluded, neither party shall be liable for any failure to fulfil any term of any transaction (other than payment terms) governed by this Agreement if fulfilment has been delayed, hindered or prevented by any circumstances whatsoever which are not within that party's control.
- (b) If, due to a circumstance outside of the Company's control, the Company is able to fulfil some but not all of the demand for its goods and/or services, the Company may allocate its available supplies and resources amongst its customers in such a manner as the Company in its absolute discretion considers to be fair.

## 22. ANTI-BRIBERY LAWS

- The Purchaser shall:
- (a) in performing its obligations under this

- Agreement, comply with all applicable laws, statutes, regulations and codes from time to time and hold all required permits and licences required to receive the Goods and/or services;
- (b) comply with all laws relating to anti-bribery, anti-corruption, anti-slavery and human trafficking (including the *Modern Slavery Act 2018* (Cth) and its regulations and codes from time to time) ) and any policies of the Company relating thereto as notified to the Purchaser from time to time and not contravene any such law or policy;
- (c) promptly notify the Company if any request or demand for financial or other advantage of any kind is received by the Purchaser in connection with the provision of the Goods or the performance of the Services or if any foreign public official is appointed as an officer or employer of or acquires an interest in the Purchaser;
- (d) have and enforce as appropriate its own policies and procedures to ensure compliance with this clause 22; and
- (e) ensure that any person for whom the Goods or services are to be provided complies with this clause 22.

## 23. CONFIDENTIAL INFORMATION

- (a) The Purchaser is authorised to use the Confidential Information in the following circumstances only:
  - (i) to its officers, employees and contractors who need to know the Confidential Information for the purpose of using or selling the Goods or services supplied under this Agreement subject to the Purchaser taking reasonable steps to ensure that any such persons are fully aware of the confidential nature of the Confidential Information before the disclosure is made;
  - (ii) where disclosure is required by law, provided that the Purchaser has given the Company notice where practicable and provided all assistance and co-operation which the other party reasonably considers necessary for that purpose; and
  - (iii) to professional advisers of the Purchaser provided that the recipients are subject to obligations of confidentiality, and must not otherwise use or disclose any Confidential Information.
- (b) The obligations under this clause 23 will survive the termination or expiry of this Agreement.

## 24. CREDIT REPORTING AND PRIVACY

- (a) The Purchaser consents to the Company obtaining from a credit-reporting agency a credit report containing personal credit information about the Purchaser in relation to any credit provided by the Company.
- (b) The Purchaser agrees that the Company may exchange information about the Purchaser with



any credit providers named in a consumer credit report issued by a reporting agency for the following purposes:

- (i) to assess an application by the Purchaser;
  - (ii) to notify other credit providers of a default by the Purchaser;
  - (iii) to exchange information with other credit providers as to the status of this credit account, where the Purchaser is in default with other credit providers; and
  - (iv) to assess the credit worthiness of the Purchaser.
- (c) The Purchaser consents to the Company being given a consumer credit report to collect overdue payment on commercial credit.
- (d) The Company may give, information about the Purchaser to a credit reporting agency for the following purposes:
- (i) to obtain a consumer credit report about the Purchaser; and
  - (ii) to allow the credit reporting agency to create or maintain a credit information file containing information about the Purchaser.
- (e) The Purchaser agrees that personal data provided by the Purchaser may be used and retained by the Company for the following purposes and for other purposes as may be agreed between the Purchaser and the Company or required by law from time to time:
- (i) the provision of goods and services;
  - (ii) the marketing of goods or services by the Company, its agents or distributors in relation to the Company's goods and services;
  - (iii) analysing, verifying or checking the Purchaser's credit, payment and status in relation to provision of goods and services;
  - (iv) processing of any payment instructions, direct debit facilities and credit facilities requested by the Purchaser; and
  - (v) enabling the daily operation of the Purchaser's account and the collection of amounts outstanding in the Purchaser's account in relation to the Goods or services.

## 25. SPECIAL CONDITIONS

The Special Conditions (if any) apply to this Agreement. The provisions of this Agreement prevail to the extent that any conflict exists between the provisions of this Agreement and the Special Conditions unless any provision the Special Conditions expressly says that it overrides a provision of this Agreement (in which case the provision the Special Conditions only overrides the provision in this Agreement which it expressly says will be overridden).

## 26. MISCELLANEOUS

- (a) This Agreement is personal to the Purchaser and must not be assigned to a third party without the prior written consent of the Company.
- (b) The Company may in its discretion and without notification to the Purchaser sub-contract the whole or any part of the production or delivery of the Goods agreed to be sold to the Purchaser.
- (c) Where an indemnity is provided under this Agreement it is not necessary for the indemnified party to incur an expense or make a payment before enforcing a right of indemnity conferred by this Agreement or to mitigate its loss.
- (d) Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.
- (e) This Agreement shall be governed by the laws of the State of Victoria and the Purchaser submits to the non-exclusive jurisdiction of the courts of that state.
- (f) If a provision of this Agreement would, but for this clause, be unenforceable, that provision must be read down to the extent necessary to avoid that result and, if the provision cannot be read down, must be severed without altering the validity and enforceability of the remainder of this Agreement.
- (g) Except as expressly stated in this Agreement and subject to the Australian Consumer Law, this Agreement constitute the entire agreement between the parties and no conditions, understanding or agreement purporting to modify or vary the terms of this Agreement shall be binding on the Company unless otherwise agreed in writing and signed by the Company. The Company may set off from any amounts it owes to the Purchaser or the Purchaser's Related Body Corporate, any amounts the Purchaser or the Purchaser's Related Body Corporate owes to the Company or the Company's Related Body Corporate.
- (h) Any provision of this Agreement that expressly or by implication are intended to come into or continue in force on or after termination shall remain in full force and effect.