

## 1 PARTIES

- 1.1 The **Supplier** is Heliport Design Group Pty Ltd (ABN: 56 163 053 816) of 16 Trade Park Drive Tullamarine in the State of Victoria.
- 1.2 The **Client** is the party or any person acting on behalf of and with the authority of the Client that the Order is provided for.

## 2 DEFINITIONS

**Confidential Information** means any confidential or proprietary information obtained in connection with a contract (including negotiating a contract). It does not include:

- (a) any information which becomes a matter of public record other than by a breach of this clause;
- (b) information which the discloser certifies in writing as not being confidential information; and
- (c) information which the recipient proves it lawfully possessed before obtaining it in connection with a contract.

The **Goods** are the products and/or parts and/or components and/or equipment provided by the Supplier.

**GST** refers to Goods and Services Tax under the *Goods and Services Act 1999* ("GST Act") and the terms used herein have meanings contained within the GST Act.

The **Guarantor** is the person(s), or entity, who agrees to be liable for the debts of the Client.

**Intellectual Property** means all industrial and intellectual property rights including:

- (a) copyright, including certification documentation, software and associated source code, design data, manuals, document templates and marketing materials;
- (b) trade marks (registered or unregistered);
- (c) all patents rights (registered or unregistered);
- (d) company procedures and processes;
- (e) proprietary knowledge and information;
- (f) all applications for registration relating to any of the above, and;
- (g) all licences, consents and authorisations from third parties in respect of, or related to, any of the above.

**Invoices** include invoices for Goods and/or Services supplied.

Reference to **loss and/or damage** includes Indirect, Special or Consequential loss or damage. Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.

**Major failure** refers to Major failure as defined under the *Competition and Consumer Act 2010* and the *Fair Trading Acts* in each of the States and Territories of Australia.

The **Order** shall be defined as any request for the provision of Goods and/or Services by the Client with the Supplier which has been accepted by the Supplier.

The **Price** is the amount invoiced for Goods and/or Services supplied.

The **Services** are all the delivery and/or supply of Goods by the Supplier, consulting and designing of engineering services for the Client's aircraft and/or rotocraft, the sign off and/or authorization and/or approval of engineering design documentation as required

by regulatory bodies, repairs and/or modification and/or servicing conducted by the Supplier, including any advice or recommendations.

**"Security Agreement"**, **"Commingled Goods"**, **"Collateral"**, **"Financing Statement"**, **"Financing Change Statement"** is defined under Section 10 of the PPSA.

**Supply** means the provision the provision of goods and/or services by the Supplier to the Client as described or referred to in any quotation or contract.

**Security interest** as defined in Section 12 of the Personal Property Securities Act 2009 (Cth) ("PPSA").

**Supply** means the provision the provision of goods and/or services by the Supplier to the Client as described or referred to in any quotation or contract.

## 3 GENERAL

- 3.1 These Terms and Conditions together with the Supplier's written or verbal quotation form this Agreement.
- 3.2 Any Order requested by the Client is deemed to be an Order incorporating these Terms and Conditions and may not be varied unless expressly agreed to by the Supplier in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these Terms and Conditions will prevail.
- 3.3 No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
- 3.4 The Terms and Conditions are binding on the Client, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 3.5 In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
- 3.6 Where more than one Client join to complete this Agreement, each shall be liable jointly and severally.
- 3.7 If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these Terms and Conditions.
- 3.8 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent but the Supplier acknowledges that it remains at all times liable to the Client.
- 3.9 The failure by the Supplier to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.

- 3.10 The Client acknowledges that the Supplier may detail these Terms and Conditions on its website. The Client acknowledges that the Supplier's Terms and Conditions may change from time to time and it is the Client's responsibility to check the website prior to ordering Goods and/or Services. In this event, the Terms and Conditions on the Supplier's website at the time the order is placed shall apply to any future dealings as between the parties and the Client is deemed to have notice of any such Terms and Conditions and/or amendments.
- 3.11 No employees, representatives or contractors of the Supplier may vary these terms without prior written authority of the Managing Director.
- 3.12 The Client covenants that it is either the owner of the aircraft, aircraft component, or appliance that is the subject of the Services or is acting with the authority of the Owner.
- 3.13 If you are a Trustee, you agree that you enter into the contract both in your own capacity and as trustee of the trust.
- 3.14 A contract is formed upon:
- (a) the Supplier issuing the Client with a quotation (or estimate) for provision of the service;
  - (b) the Client issuing the Supplier with an Order; and
  - (c) the Supplier accepting the Order from the Client in writing (usually via email reply).

Despite any provision in these terms, unless expressly agreed in writing by the Supplier, these terms will apply to any contract formed between the Supplier and the Client, even where the above process is not complied with.

- 3.15 These terms:
- (a) apply to each contract;
  - (b) together with our quotation are the sole terms of each contract;
  - (c) do not apply to a contract to the extent they are inconsistent with an applicable quotation;
  - (d) prevail over any terms put out by the Client in any order, unless expressly agreed in writing by the Supplier.

#### **4 PLACEMENT OF ORDERS**

- 4.1 Orders placed by the Client with the Supplier will be considered valid when placing the Order either by email, by facsimile, by telephone or in person.
- 4.2 The Client must provide a written acceptance of the Supplier quotation (or estimate) in writing (usually in the form of a Purchase Order) before the Supplier will supply any Goods and/or Services.
- 4.3 An Order placed by a Client will be deemed to be accepted by the Supplier unless otherwise confirmed in writing by the Supplier.
- 4.4 A Quotation given by the Supplier shall expire 14 days after the date of the written quotation. Quotations are only valid if provided in writing.
- 4.5 The Supplier is under no obligation to accept any Order from the Client or to enter into any contract with the Client for the provision of goods and/or services under these terms.

#### **5 PRICE**

- 5.1 GST will be charged on the Services provided by the Supplier that attract GST at the applicable rate.
- 5.2 The Price will be exclusive of all taxes, duties, statutory charges, transit insurance, transportation costs and other relevant charges for which the Client will be liable for in addition to the Price.
- 5.3 The Supplier reserves the right to change the Price to the Order in the event of a variation which was previously unknown or unforeseen by the parties at the time the Order was placed and notice will be provided in writing by the Supplier within a reasonable time.
- 5.4 At the Supplier's sole discretion the Price shall be either:
- (a) as detailed on invoices provided by the Supplier to the Client in respect of Goods supplied or Services provided; or
  - (b) the Supplier's quoted Price as for the Order (subject to Clause 5.3).
- 5.5 The Supplier may invoice the Customer progressive invoice(s) based on level of effort and costs incurred for any work that is ongoing for an extended period at the Supplier's sole discretion.

#### **6 SUPPLY AND DELIVERY OF GOODS**

- 6.1 The Supplier reserves their right to:
- (a) decline requests for any Goods requested by the Client.
  - (b) cancel or postpone the delivery of Goods at their discretion.
- 6.2 Delivery of the Goods shall be deemed to be complete when the Goods are collected by the Client or are delivered to the Client or to the carrier as nominated by the Supplier and/or Client.
- 6.3 If the Client fails to make all arrangements necessary to take delivery of the Goods the Client shall, at the discretion of the Supplier, be liable for the Supplier's standard Non Delivery Fee and the Supplier shall be entitled, also at its discretion, to charge a reasonable fee for redelivery and storage.
- 6.4 Any date and/or time provided by the Supplier for delivery is intended as an estimate only. While the Supplier shall use its best endeavours to meet estimated delivery dates and/or times, the Supplier shall not be liable for any loss and/or damage suffered by the Client, including Indirect, Special or Consequential loss and/or damage, as a result of a delay in delivery.
- 6.5 Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Goods at specific times requested by the Client during the term of this Agreement.
- 6.6 Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of

providing the Goods and of satisfying the Client's expectations of those Goods.

- 6.7 In the discharge of its duties, the Supplier shall comply with all reasonable directions of the Client as to the nature and scope of the Goods to be provided.
- 6.8 Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.
- 6.9 The Supplier may agree to provide, on request from the Client, additional Goods not included or specifically excluded in the Quotation/Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Goods includes, but is not limited to, alterations, amendments, and any additional visits by the Supplier after provision of the Goods at the request of the Client.

## **7 PROVISION OF SERVICES**

- 7.1 At any time before payment is made by the Client, the Supplier reserves their right to:
- (a) decline requests for any Services requested by the Client.
  - (b) cancel or postpone appointments at their discretion.
- 7.2 At the sole discretion of the Supplier, the Supplier may charge an attendance fee at the prevailing rate for any appointments made by the parties.
- 7.3 Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Client during the term of this Agreement.
- 7.4 Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Client's expectations of those Services.
- 7.5 In the discharge of its duties, the Supplier shall comply with all reasonable directions of the Client as to the nature and scope of the Services provided.
- 7.6 Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.
- 7.7 The Supplier may agree to provide, on request from the Client, additional Services not included or specifically excluded in the Quotation/Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Services includes, but is not limited to, alterations, amendments, and any additional visits by the Supplier after provision of the Goods and/or or Services at the request of the Client.
- 7.8 Delivery of any Goods by the Supplier to the Client shall be deemed to be complete when the Goods are collected by the Client or are delivered to the Client or to the carrier as nominated by the Supplier and/or Client.

## **8 PAYMENT AND CREDIT POLICY**

- 8.1 Unless otherwise agreed by the parties in writing, payments made by the Client shall be deemed to:
- (a) be applied to the Client's oldest invoice first;
  - (b) reduce any costs or interest outstanding before reducing the Price.
- 8.2 Any reference to Client shall include all Clients, unless it refers to a specific group of Clients.
- 8.3 For credit purposes, the two main groups of Clients are Non-Account Clients and Account Clients. All Clients are deemed to be Non-Account Clients for their first Order.
- 8.4 **Non-Account Clients** must make full payment of the Price prior to the delivery of of the Goods and/or in advance of the provision of the Services and/or upon completion of the Services, or otherwise as detailed by the Supplier.
- 8.5 **Account Clients** must make full payment to the Supplier within fourteen (14) days from the date of issue of invoice(s) for the Goods and/or Services, or as otherwise agreed between the Supplier and the Client.

### **Credit**

- 8.6 Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed Credit Application Form.
- 8.7 Any credit granted may be revised by the Supplier at any time and at its discretion.
- 8.8 The Supplier reserves the right to withdraw any credit facility upon any breach by the Client of these Terms of Conditions or upon the Client ceasing to trade and/or being subject to any legal proceedings and/or the Client committing an act of insolvency.
- 8.9 The Client agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

## **9 DISHONOUR OF CHEQUE**

- 9.1 If any cheque issued by the Client or by any third party in payment of the Price and/or Rent is dishonoured:
- 9.2 The Supplier may refuse to supply any further Goods and/or Services until satisfactory payment is received in full, including bank fees and charges;
- 9.3 The Supplier is entitled to treat the dishonour of the Client's cheque as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Client.
- 9.4 The Client may be liable for a dishonoured cheque fee of \$40.00.

## **10 DEFAULT**

- 10.1 Invoices issued by the Supplier shall be due and payable by the date in accordance with Clause 8.4 or 8.5 ("Default Date"), depending on terms agreed with the Supplier.
- 10.2 If the Supplier does not receive the Outstanding Balance for the Price on or before the Default Date, the Supplier may, without prejudice to any other remedy it may have, forward the Client's outstanding account to a debt collection agency for further action.

- 10.3 The Supplier may, in its discretion, calculate interest at the rate of two percentum (2%) higher than the rate for the time being fixed from time to time under Section 2 of the *Penalty Interest Rates Act 1983(Vic)* for all monies due by Client to the Supplier.
- 10.4 In the event of the Client being in default of its obligation to pay and the overdue account is then referred to a debt collection agency and/or law firm for collection, the Client shall be liable for the recovery costs incurred.
- 10.5 In the event where the Supplier or the Supplier's agency refers the overdue account to a lawyer the Client shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

## 11 RISK AND LIABILITY

- 11.1 The Client will ensure when placing Orders that there is sufficient information to enable the Supplier to execute the Order.
- 11.2 The Supplier takes no responsibility if the specifications provided by the Client are wrong or inaccurate and the Client will be liable in that event for the expenses incurred by the Supplier for any work required to rectify the Order.
- 11.3 The Client is responsible for ensuring that the Supplier is made aware of any special requirements pertaining to the Order and the Supplier relies upon the integrity of the information supplied to it.
- 11.4 The Supplier takes no responsibility and will not be liable for any damages or costs resulting in the Goods being faulty as a consequence of insufficient information provided by the Client.
- 11.5 The Supplier takes no responsibility for representations made in relation to the Goods or any delay in the delivery of the Goods made by a third party or third party manufacturer which was organised by the Client.
- 11.6 The Client acknowledges that the Supplier shall not be liable for and the Client releases the Supplier from any loss incurred as a result of delay or failure to provide the Goods and/or Services or to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.
- 11.7 The Supplier does not represent that it will provide and/or deliver any Goods unless it is included in the Quote.
- 11.8 Subject to clauses 12.1 and 12.2, the Client accepts risk in relation to the Goods when the Goods pass to his care and/or control.
- 11.9 The Client is solely responsible for obtaining any relevant governmental or other consents and/or licenses necessary for it to use and/or deal with the Goods and/or Services and must provide confirmation of this in writing to the Supplier. The Supplier will not be required to perform any part of the Agreement should the Client fail to comply with this Clause.

## 12 WARRANTY

- 12.1 The Supplier warrants that the rights and remedies to the Client in this Agreement for warranty against defects are in addition to other rights and remedies of the Client under any applicable Law in relation to the goods and services to which the warranty relates.

- 12.2 The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.

### Warranty for Services

- 12.3 Subject to Clause 12.1 and 12.2, the Client acknowledges that the Supplier cannot revoke the sign off and/or authorization of engineering documentation once provided.
- 12.4 The Supplier warrants that if any defect in any Service provided by the Supplier becomes apparent and is reported to the Supplier preferably within 14 days of the provision of the Services then the Supplier will (at the Supplier's sole discretion) remedy the defective Service.
- 12.5 To the extent permitted by law, the Supplier's liability in respect of defective services will be limited to:
- (a) the re-supply of the Service, if applicable;
  - (b) the payment of the cost of having the Services supplied again; or
  - (c) the refund of the Price paid by the Client in respect of the Service.
- 12.6 In respect of all claims the Supplier shall not be liable to compensate the Client for any reasonable delay in remedying the defective Services or in assessing the Client's claim. The Client warrants that it will use its best endeavours to assist the Supplier with identifying the nature of the defective Service claim.

### Warranty for Goods

- 12.7 The warranty for Goods supplied shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods. The Supplier will use its best endeavours to assist the Client with any claim with respect of the Goods.
- 12.8 The Client continues to be responsible for all amounts owing to the Supplier in the event that any Goods are supplied on the basis that a manufacturer's warranty is in place and it subsequently becomes known to the parties that the warranty is void or inapplicable.
- 12.9 For Goods manufactured by the Supplier, the Supplier warrants:
- Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replace if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.*
- 12.10 If the Goods and Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for a consumer guarantee under the Australian Consumer Law in relation to those Goods and Services is limited to, at the discretion of the Supplier:
- (a) the resupply of the Goods and Services;
  - (b) the payment of the cost of providing the Goods and Services again.

### Claims made under Warranty

12.11 Subject to clauses 12.1 and 12.2 of this Agreement claims for warranty should be made in one of the following ways:

- (a) the Client must send the claim in writing together with proof of purchase to the Supplier's business address stated in Clause 1.1 of this Agreement;
- (b) the Client must email the claim together with the proof of purchase to the Supplier at the following email address: [accounts@heliports.com.au](mailto:accounts@heliports.com.au)
- (c) the Client must contact the Supplier on the Supplier's business number 03 9079 0130.

12.12 Goods where a claim is made are to be returned to the Supplier or are to be left in the state and conditions in which they were delivered until such time as the Supplier or its Agent has inspected the Goods. Such inspection is to be carried out within a reasonable time after notification.

### 13 RETENTION OF TITLE

13.1 Subject to clause 12.1 and 12.2, the risk in Goods shall pass on delivery and/or supply (including all risks associated with unloading); legal and equitable title in the Goods shall remain with the Supplier until full payment of all Goods supplied by the Supplier to the Client is made. Pending such payment the Client:

13.2 Shall hold the Goods as Bailee for the Supplier and shall return the Goods to the Supplier if so requested.

13.3 Agrees to hold the Goods at the Client's own risk and is liable to compensate the Supplier for all loss or damage sustained to the Goods whilst they are in the Client's possession.

13.4 The Client should store the Goods separately and in such a manner that it is clearly identified as the property of the Supplier and keep the Goods insured to full replacement value.

13.5 The Client must not allow any person to have or acquire security interest in the Goods whilst the Goods are in the Client's possession.

13.6 The Client may sell and/or use the Goods in the ordinary course of business.

13.7 If the Goods are resold before all monies are paid to the Supplier, the Client shall hold the proceeds of sale in a separate identifiable account on trust for the Supplier and promptly account the Supplier for those proceeds in payment of the Price for the Goods.

13.8 The Supplier is authorised to enter the Premises or the premises where the Client stores the Goods without liability for trespass or any resulting damage in retaking possession of the Goods until the accounts owed to the Supplier by the Client are fully paid.

13.9 Notwithstanding the provisions above, the Supplier shall be entitled to issue legal proceedings to recover the Price of the Goods.

### 14 PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) ("PPSA")

14.1 The Client acknowledges that these Terms and Conditions will constitute a Security Agreement which creates a security

interest in favour of the Supplier over all present and after acquired Goods and/or Services supplied by the Supplier to the Client to secure the payment of the Price or any other amount owing under this agreement from time to time including future advances.

14.2 The Client acknowledges that by accepting these Terms and Conditions and by virtue of the retention of title clause as provided for in Clause 13, the security interest is a purchase money security interest ("PMSI") as defined under Section 14 of the PPSA for all present, after acquired Goods and/or Services including any Commingled Goods.

14.3 The security interest will continue to apply as an interest in the Collateral for the purposes of PPSA with priority over registered or unregistered security interest.

14.4 The Supplier may register the security interest as PMSI on the Personal Property Securities Register ("PPSR") under the PPSA without providing further notice to the Client.

14.5 The Client agrees the Supplier is not required to disclose information pertaining to the Supplier's security interest to an interest party unless required to do pursuant to PPSA or under the general law.

14.6 The Client agrees and undertakes:

(a) to sign any documents and/or provide further information reasonably required by the Supplier to register Financing Statement or Financing Change Statement on the PPSR;

(b) to indemnify the Supplier for all expenses and/or costs incurred by the Supplier in registering a Financing Statement or Financing Change Statement on PPSR including the costs of amending, maintaining, releasing and enforcing any security interests in the Goods;

(c) not to register and/or make a demand to alter a Financing Statement in the Collateral without prior written consent of the Supplier;

(d) to provide the Supplier with 7 days written notice of any change or proposed change to the Client's business name, address, contact details or other changes in the Client's details registered on the PPSR;

(e) to waive any rights of enforcement under Section 115 of the PPSA for Collateral not used predominantly for personal, domestic or household purposes;

(f) to waive any rights to receive Verification Statement in respect of any Financial Statement or Financing Charge Statement under Section 157 of the PPSA.

### 15 TERMINATION AND CANCELLATION

#### Cancellation by Supplier

15.1 The Supplier may cancel any Order to which these Terms and Conditions apply or cancel delivery of Goods at any time before payment is made by the Client by giving written notice to the Client. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.

15.2 Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Client which remains unfulfilled and all amounts

owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Supplier becomes overdue;
- (b) the Client 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, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

#### **Cancellation by Client**

- 15.3 Any Order cannot be cancelled by the Client unless expressly agreed to by the Supplier in writing.
- 15.4 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15.5 If the Client places an Order with the Supplier and the Supplier places an Order with a third party Supplier to meet the Client's request, the Client shall be liable for the Price of the Goods ordered if the Client cancels the Order and the Goods have already been dispatched.
- 15.6 The Supplier acknowledges that in the event the Supplier contravenes any of the terms of this Agreement, then clauses 15.3, 15.4 and 15.5 will not apply.

#### **16 SET-OFF**

- 16.1 The Client shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Client for default in payment.
- 16.2 The Client acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

#### **17 INSURANCE**

- 17.1 The Supplier is not liable to provide any insurance cover for the provision of the Goods and Services. The Client must insure the Goods for full replacement value and note the interest of the Supplier on the policy.

#### **18 ACCESS**

- 18.1 The Client shall, where relevant, ensure the Supplier has full and safe access to the Premises and any necessary essential services, resources, equipment, materials and information.
- 18.2 The Client will be charged an additional fee if the Supplier's work is interfered with or no proper or safe access is provided to the Supplier.

#### **19 AGREED USE**

- 19.1 The Client acknowledges that the Client may forfeit any rights if any, he may have against the Supplier if:
  - (a) the Goods are applied for any other use to which the Goods are not intended for and/or not in accordance with any applicable manual and/or Rules;
  - (b) any alteration to the Goods is carried out other than in accordance with intended alterations and/or the Goods are not repaired by an authorised repairer.
- 19.2 The Client further acknowledges sole responsibility for any damage or injury to property or person caused by using the Goods in any way and shall indemnify in full the Supplier, its servant and its agent in relation to all such claims.

#### **20 JURISDICTION**

- 20.1 This Agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.

#### **21 PRIVACY ACT 1988**

- 21.1 The Client and/or the Guarantor/s agrees;
  - (a) for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Supplier.
  - (b) that the Supplier may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency.
  - (c) the Client consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

## **22 NO SOLICITATION**

22.1 The Client agrees that it will not, without prior written consent of the Supplier, directly or indirectly solicit, employ or engage any of the Supplier's staff, agents or contractors during the term of a contract and for a period of 12 months from the completion of a contract if such staff, agents or contractors have been involved in provision of the Supply to the Client.

## **23 CONFIDENTIAL INFORMATION**

23.1 The Client must not:

- (a) use the Supplier's confidential information and/or material for any other purpose other than the purpose for which they were provided;
- (b) disclose, transfer, transmit or otherwise make available the Supplier's confidential information and/or material to any third party in any manner or form.

23.2 The recipient agrees that the discloser retains ownership of all confidential information provided to the recipient.

23.3 The recipient agrees to return all confidential information received from the discloser upon request.

23.4 The obligations imposed under this clause (Clause 23) survive the termination of a contract.

## **24 INTELLECTUAL PROPERTY**

24.1 The Supplier will retain all copyright and other proprietary rights in any of the Supplier's confidential information and material, including documents, drawings, certifications and instructions provided to the Client.

24.2 The Client will retain all copyright and other proprietary rights in any materials it provides to the Supplier. Unless otherwise agreed in writing, the Client grants the Supplier a perpetual, transferrable, non-exclusive licence, at no cost to the Supplier, to use the Client's IP to:

- (a) carry out the Supply; and/or
- (b) provide supplies to third parties which include or incorporate the Client's IP.

24.3 The agreement by the Supplier to sell or supply the Goods or provide the Services to the Client shall not confer any right upon the Client to own any intellectual property ("IP") the Supplier uses or creates. At all times such IP remains the sole property of the Supplier.

24.4 Any Goods and/or Services designed by the Supplier and/or created by the Supplier are subject to the *Copyright Act 1968*.

24.5 The Supplier warrants that the Supplier holds the rights to authorise the reproduction of all intellectual property in the Goods and/or Services provided to the Client.

24.6 The Client warrants that it shall not, whether directly or indirectly, infringe or allow any party to infringe on any intellectual property rights in relation to the Goods and/or Services provided.

24.7 The Client hereby indemnifies and agrees to keep indemnified the Supplier against all direct, Indirect, Special or Consequential losses, liability, and or expenses incurred by the Supplier in relation to and/or in any way related with

any breach of intellectual property rights by the Client in relation to the Goods and/or Services supplied.

24.8 The Client agrees to indemnify the Supplier (including legal fees on an indemnity basis) for any claims made by a third party in relation to Goods supplied based on special requirements, specifications and/or designs provided by the Client.

24.9 The Client agrees to provide the Supplier with written notice within ten (10) days of becoming aware of any claim that the use of the data or materials provided by it and used by the Supplier in the Supply under a contract infringe any IP rights of any third party. Such notice must set out full details of the claim insofar as they are available.

24.10 In the event that any party brings a claim against the Client or Supplier alleging the Supply provided by the Supplier infringes their IP rights, the Client agrees to:

- (a) notify the Supplier immediately in writing of any such alleged infringement;
- (b) give the Supplier the option to conduct the defence of such a claim, including negotiations for settlements or compromise prior to the institution of legal proceedings;
- (c) not admit, handle, deal with or compromise any claim except with the prior written permission of the Supplier;
- (d) follow all reasonable directions provided by the Supplier in relation to any claim and provide the Supplier with reasonable assistance in conducting the defence of such a claim;
- (e) permit the Supplier to modify, alter or substitute the infringing part of the supply, at the expense of the Supplier, to render the supply non-infringing.

24.11 If the Supplier is unable to resolve the dispute on terms acceptable to the Supplier, it may direct the Client to cease using the relevant IP and the Supplier will pay the Client reasonable compensation as determined by the Supplier up to an amount not exceeding the contract value in respect of the Supply. The Supplier may, without liability, suspend or cancel any supply and related contract which has become the subject of a claim by a third party alleging infringement of any IP rights.

## **25 ENTIRE AGREEMENT**

25.1 These Terms and Conditions as defined in 3.1 constitute the whole Agreement made between the Client and the Supplier.

25.2 This Agreement can only be amended in writing signed by each of the parties.

25.3 All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.

25.4 Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.