

## TERMS AND CONDITIONS OF SALE

### 1. DEFINED TERMS

(a) Agreement means these Terms and Conditions, the Delivery and Freight Terms, the Warranty, Returns and Refunds Policy, and, in relation to a particular Order, the details of the transaction that are set out on the Quotation and any document referred to on the Quotation.

(b) Australian Consumer Law means The Australian Consumer Law Schedule to the Competition and Consumer Act 2010 (Cth).

(c) Auto Renew Subscription means any item that is subject to a licence or subscription agreement that provides for the automatic renewal of licence or subscription agreement.

(d) Confidential Information means any non-trivial information however recorded, preserved, disclosed or communicated (whether directly, indirectly, orally or by writing), disclosed by either party to the other party in connection with this Agreement that, if disclosed in writing is marked as "Confidential" or "Proprietary," or, if disclosed orally is identified as "Confidential" or "Proprietary" at the time of disclosure and is specifically identified as confidential in a written document provided by Discloser to Recipient within thirty (30) days after the oral disclosure, or which is, or ought to have been, understood by the parties, using reasonable business judgment, to be confidential. For clarity, Digistor's Confidential Information includes any Quotation, technical drawing and project plan, financial data, sales information, software, price and charges and this Agreement (other than to the extent that Supplier has made it publically available).

(e) Customer means the legal entity (including an individual, sole trader, trust, company, partnership or government agency or body) that is described as the 'Customer' on the Quotation.

(f) Delivery and Freight Terms means the terms relating to the shipment, delivery and collection of Goods which are available at <https://www.digistor.com.au/delivery-and-freight-terms.html>, as may be amended by Supplier from time to time.

(g) Deliver (Delivered and Delivery shall be interpreted accordingly) means either:

(i) where Customer is collecting the Goods from Supplier's (or Supplier's resellers'/manufacturers'/distributors') designated warehouse or collection point, to have the Goods available for collection by Customer (or its courier/handling agent) at Supplier's designated warehouse or collection point at a time after the time that Supplier has notified Customer that the Goods are ready for collection; or

(ii) where Goods are to be shipped to Customer (or Customer's client, a "drop shipment"), the first occasion when Supplier (or its courier/shipping provider) attempts to Deliver the Goods to Customer's suitable (e.g. not a PO Box) delivery address (which may be Customer's client's address) during the hours of 9 am to 5.30 pm Monday to Friday on any day that is not a public holiday at the delivery address (or during such other time as is agreed by Customer +/- 3 hours).

(h) Discloser means the party that makes a disclosure of Confidential Information.

(i) Good means the product that is provided by Supplier as described on the Order.

(j) GST means the Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

(k) "including" and "includes" are not words of limitation.

(l) Order means a binding agreement between Supplier and Customer for the supply of Goods and/or Services on the provisions of the Terms and Conditions and the Quotation.

(m) Personal Information has the same meaning given to it in the Privacy Act 1988 (Cth).

(n) Quotation means a price quoted on a quotation document, including a document created by Supplier (hard copy or in electronic format) and provided to Customer which includes the details of the order, including the description of the Goods or Services, the quantity, specifications (which may be described in an attachment, e.g. manufacturer's brochure), any manufacturer's warranty, the Shipment Date, Delivery address, the price of the Goods or Services, the start date for any Services to be provided, any applicable delivery, shipping, insurance or other fees, GST, and any special terms that apply to the Order which are added to the Quotation by Supplier.

(o) Recipient means the party that receives a disclosure of Confidential Information.

(p) Service means any design, consulting, training or maintenance services that are provided by Supplier as described on the Order.

(q) Shipment Date means the date when the Goods should be ready for collection at Supplier's (or its resellers'/manufacturers'/distributors') warehouse or collection point:

(i) by Customer, or Customer's courier service; or

(l) Where Customer is entitled to a statutory guarantee under sections 60 to 62 of the Australian Consumer Law then to the extent that Supplier fails to comply with such statutory guarantee, Supplier's liability is limited to, at Supplier's option:

(i) supplying the services again; or

(ii) payment of the cost of having the services supplied again, unless it is not fair or reasonable for Supplier to rely on this term of the agreement.

#### Orders from customers who are reselling Goods

(m) Clause 8(m) applies to any Order where the Customer is re-selling the Goods to its clients.

(i) Customer must not make any representation or provide any warranty that is greater than, or different to, the representations or warranties provided in Supplier's documentation for the Goods;

(ii) Customer must limit its liability for any defective Goods (and any loss, damage or expense that arise out of, or in connection with, the Goods) in its contracts with its clients to:

A. where the client is a "consumer" under the Australian Consumer Law, to the maximum extent permitted by s64A of the Australian Consumer Law;

B. any other buyer of the Goods, to an amount that is no greater than the price paid to Customer by the buyer, or \$500, whichever is the lower;

(iii) Supplier's liability to Customer under s274 Australian Consumer Law is limited to a liability to pay Customer an amount equal to:

A. the cost of replacing the goods;

B. the cost of obtaining equivalent goods; or

C. the cost of having the goods repaired,

whichever is the lowest amount;

(iv) Where a consumer makes any claim against Customer under a statutory guarantee under the Australian Consumer Law in respect of any Goods provided under this Agreement Customer must promptly provide Supplier with written notice of such claim, and if requested by Supplier, must allow Supplier, at Supplier's cost, sole right to manage, settle or litigate, such claim.

### 9. LIMITATION OF LIABILITY AND INDEMNITY

(a) Where clauses 8(a) and 8(b) do not apply:

(i) subject to clause 9(a)(ii) Supplier's liability to Customer in contract, tort (including negligence), breach of statutory duty or otherwise, under an Order is limited to direct losses that do not exceed the amount paid under the Order and, no more than \$250,000 in aggregate for any and all Orders made under the Terms and Conditions.

(ii) Supplier is not liable for:

A. any indirect or consequential loss;

B. loss of profits or revenue, pure economic loss, failure to realise savings, loss of, or corruption to, data,

C. loss of business opportunity or goodwill; or

D. any loss, damage or expense that would not be suffered by any other person acquiring the Goods or Services.

(b) Customer must at all times indemnify and hold harmless Supplier, its directors, officers, employees and agents (those indemnified) from and against any loss, damage, expense (including legal expenses on a full indemnity basis expenses) or liability incurred or suffered by any of those indemnified and all actions, proceedings, claims or demands made against those indemnified to the extent that they were caused directly or indirectly by:

(i) a breach by Customer, its agents or contractors of Customer's obligations under any Order;

(ii) any third-party claim arising out of, or in connection with, the Goods or Services, except for a claim under the Australian Consumer Law that cannot be excluded by contract;

(iii) any willful, unlawful or negligent act or omission of Customer, its agents or contractors, except to the extent that the loss, damage or expenses was caused by the negligent act or omission of Supplier, or the breach of this Agreement, including the Order, by Supplier.

### 10. INTELLECTUAL PROPERTY RIGHTS

(a) Customer acknowledges and agrees that nothing contained or implied in this Agreement or an Order gives Customer ownership of, or gives rise to, any proprietary interest of Customer in Supplier's name, domain name, trade marks,

(ii) if the Quotation states that Supplier is to arrange Delivery of the Goods to Customer's delivery address and includes a delivery charge, by a courier/shipping company who is contracted by Supplier to Deliver the Goods to Customer's delivery address.

(r) Supplier means Digistor Pty Limited ABN 14 007 351 313.

(s) Table of Sub-processors means the list of Supplier's data sub-processors, as may be amended from time to time in accordance with this Agreement. The current list of Sub-processors can be found on Supplier's website at <https://www.digistor.com.au/table-of-sub-processors.html>

(t) Warranty, Returns and Refunds Policy means the terms relating to returns and refunds for Goods and Services which are available at <https://www.digistor.com.au/returns-and-refund-policy.html>, as may be amended by Supplier from time to time.

## 2. CONTRACT FORMATION

(a) When Supplier provides Customer with a Quotation, Supplier makes an offer to Customer for Customer to acquire the Goods or Services on the Quotation on these Terms and Conditions and other details on the Quotation.

(b) Customer may accept the offer only by Customer:

(i) by making payment for the Goods or Services on the Quotation; or

(ii) by providing a valid Purchase Order (PO), email or other written form of acceptance that is acceptable to Supplier, that unconditionally accepts the offer (and does not add or detract any terms or conditions from those set out in the Quotation) and returning it to Supplier within the validity period of the Quotation (or such longer period agreed by Supplier) by email, fax or any other mode of communication accepted by Supplier.

For clarity, where Customer issues a Purchase Order the parties acknowledge and agree that unless the Purchase Order includes manually added order-specific terms and conditions that are different to, or are stated to be in addition to, these Terms and Conditions, the issue of the Purchase Order is an unconditional acceptance of Supplier's offer as the parties acknowledge and agree that the pre-printed terms and conditions on a Purchase Order are not included in the Order. Where Customer includes on the Purchase Order any manually added order-specific terms and conditions that are different to, or are stated to be in addition to, these Terms and Conditions, clause 2(c) applies.

(c) If the parties agree to any amendment to a Quotation, each amendment must be specifically initialled by Customer and the Quotation must be signed by an authorised person of Supplier in order for the amendment to become part of the Order.

(d) Once a Quotation has been accepted in accordance with clause 2(b) it becomes an Order, provided that if the Order is conditional upon any requirement being met, e.g. payment of an initial instalment, the Quotation is deemed not accepted until all the conditions are met in full within the validity period of the Quotation (or such longer period agreed by Supplier). Supplier has no obligation to commence any Services, commence the supply or manufacture of any Goods until a binding unconditional Order is in place.

(e) Once a binding unconditional Order is in place it may not be cancelled by Customer.

(f) If Customer makes any other orders of Goods or Services from Supplier then these Terms and Conditions shall apply to those other orders, unless a separate written agreement has been entered into in respect of those other orders.

(g) Where Supplier is acting as a reseller of a third party's Goods or Services and the third party is unable or unwilling to supply Supplier the Goods or Services that form part of an Order for on-supply to Customer (for example, because the third party has recently declared the Goods at "end of life" or Customer is on a list of persons to whom it is illegal to export the Goods to) then Supplier reserves the right to cancel the Order for such Goods or Services and any Goods or Services whose use depends on the cancelled Goods or Services, by giving Customer written notice of cancellation. In this case Supplier must promptly provide a refund of any amounts paid for such Goods or Services and any Goods or Services whose use depends on the cancelled Goods or Services. To the extent permitted by law, this refund is Supplier's sole liability to Customer and Customer's exclusive remedy for such cancellation. Supplier will use its best efforts to notify Customer of any such cancellation within 5 business days of the date of the Order.

## 3. SUPPLY OF GOODS

### Delivery

(a) Subject to receipt of any payment or initial instalment that is stated on the Order as being payable prior to Delivery, Supplier will use its best efforts to ensure that the Goods are available for collection from Supplier's (or Supplier's resellers/manufacturers/distributors') designated warehouse or collection point by the Shipment Date stated on the Quotation.

(b) If the Quotation states that Supplier is to arrange Delivery of the Goods to

trade names or any other intellectual property rights of Supplier and its related bodies corporate (or the manufacturer or any Goods), including any intellectual property rights in any Goods or item delivered through any Services. Customer must not seek, or claim, any intellectual property rights, in any Goods or item delivered through any Services. Customer must not use, copy, adapt, translate, manufacture or otherwise exercise any intellectual property right in any of Supplier's (or the manufacturer's) patents, trade marks, service marks, logos, industrial designs, illustrations, drawings, proposals or copyright materials, without the express written consent of Supplier.

(b) Customer must not deface, remove or cover any:

(i) trade mark, service mark, logo or indicia of branding, or

(ii) safety related notice, warning, disclaimer or restricted use notice, on any Goods.

(c) Upon receipt of full and final payment for the Services under an Order, Supplier grants Customer a perpetual, non-transferable, worldwide, royalty free, license to use any materials that were newly created during the performance of the Services and delivered to Customer as part of the deliverables under that Order, for the internal use of Customer subject to any terms agreed at the time of the supply of the Services.

## 11. PRIVACY

### Australian Privacy Law

(a) Each party must, when it collects, receives, uses, discloses, transfers or otherwise handles Personal Information in the course of performing its obligations under this Agreement:

(i) comply with the Privacy Act as though it were a bound by the Privacy Act and any subordinate legislative instruments or regulations;

(ii) comply with any the other party's policies in relation to any Personal Information or any reasonable directions of the other party of which it has been given written notice.

(b) Each party must:

(i) collect, use and disclose the Personal Information only as authorised or for the purposes of:

A. the performance of the rights and obligations under this Agreement and any activities that are reasonably necessary or incidental thereto;

B. the administrative tasks associated with the performance of the Agreement, including invoicing, payment, contract management, risk management, insurance, renewals, delivery, maintenance and support;

C. where Supplier is the recipient of the Personal Information, marketing and promoting Supplier's other goods and services to Customer;

(c) not disclose the Personal Information except:

(i) to its personnel to the minimum extent necessary for the purposes of performing its obligations under this Agreement;

(ii) subject to clause 11(f)(iii) as required by law; or

(iii) with the prior written consent of the other party; and

(iv) ensure that any person to whom Personal Information is disclosed under paragraph (ii), uses, discloses, transfers, retains and otherwise manages such Personal Information consistently with that party's obligations under this Agreement.

(d) Neither party may transfer or disclose any Personal Information to any recipient located outside of Australia, or any other country in which the Personal Information was first collected (the Relevant Countries), or allow or permit any person located outside the Relevant Countries to access or receive any Personal Information, without the prior written consent of the other party.

(e) Except as otherwise required by law or as otherwise agreed between the parties, each party must return to the other party all materials in the first party's possession, custody or control containing Personal Information handled in connection with this Agreement in the following circumstances:

(i) when the Personal Information is no longer required by the other party for the purposes of this Agreement;

(ii) upon termination or expiry of this Agreement;

(iii) upon demand by the first party; or

(iv) if required by law.

(f) Where there is a eligible data breach (as defined in the Privacy Act 1988 (Cth)) involving the Personal Information (as defined in the Privacy Act 1988 (Cth)) that has been provided by the other party, then the party that has suffered the eligible data breach must:

(i) immediately, and in any event within 24 hours of the discovery of the eligible data breach, notify the other party of the eligible data breach, to the other party with all information that is required to be provided to the Office of the Australian Information Commission and/or the affected individual, as required under the Privacy Act 1988 (Cth);

(ii) co-operate with the other party in any investigation or audit (including by providing access to the breaching party's premises, personnel, processes and systems) in respect of the eligible data breach;

Customer's delivery address and includes a delivery charge, Supplier shall arrange for its courier/shipping company to collect the Goods from Supplier's designated warehouse or collection point on or shortly after the Shipment Date and Deliver them to Customer's delivery address.

(c) All deliveries are subject to the Delivery arrangements set out in the Delivery and Freight Terms and the Order in respect of the Goods and/or Services on the Order.

(d) Supplier may Deliver the Goods on any Order in one or more deliveries and during any of the periods that the courier/shipping company is expected to make the Delivery (as set out in the Delivery and Freight Terms).

(e) Customer must, or must ensure that any Customer client who receives a drop shipment must, inspect the Goods at the time of Delivery to ensure that they conform to the requirements of the Order. If Customer believes that any of the Goods do not meet the requirements of the Order Customer must give Supplier written notice of the alleged defect within 7 days of the inspection. To the extent permitted by law, Customer may not reject the Delivery of the Goods if the quantity of Goods Delivered varies by +/-10%, but Customer may claim a pro rate adjustment to the price payable for any shortfall by giving written notice to Supplier within 7 days of the inspection.

#### Risk, Title and Use

(f) Risk in the Goods passes to Customer at the time when the Goods are Delivered. Title in any hardware passes to Customer at the time when the hardware is Delivered.

(g) Customer must:

(i) store, assemble, use and maintain the Goods in accordance with any documentation provided with the Goods, the specifications or any instructions provided by Supplier;

(ii) not use, nor permit the use of, the Goods for the purpose for which they were not designed. No Goods provided under any Order are designed for, or are permitted to be used for, any purpose which has a high risk of death or personal injury or for any unlawful activity.

(h) Where the Goods comprise a software license or subscription and the manufacturer requires that Customer enters into an agreement directly with the manufacturer then:

(i) Customer must enter into the agreement with the manufacturer (or authorised manufacturer's distributor) directly;

(ii) Customer must pay the prices and GST that are due for the Goods or Services to Supplier (and Supplier will make a payment for the Goods or Services to the relevant person under its reseller agreement for these Goods or Services);

(iii) it is agreed and acknowledged that the Goods or Services are "supplied" by the manufacturer (or other distributor) directly to Customer, and Supplier's role is merely to facilitate the introduction of the Goods or Services to Customer and to receive payment of the relevant prices and GST.

#### **4. AUTO-RENEW SUBSCRIPTIONS**

(a) By purchasing an Auto Renew Subscription, Customer expressly authorises and requests Digistor Pty Ltd (as lawful agent of Customer) to automatically renew the Goods' license or subscription for successive renewal terms each equal in length to the initial term, at the purchase price for Customer's initial term, using the payment information Customer provided for the initial purchase, until Customer cancels the underlying licence or subscription agreement in accordance with its terms.

(b) Supplier may change the renewal price as of the next renewal date if Supplier provides Customer with at least 10 business days' notice of the change by email (Customer can elect to cancel the automatic renewal in accordance with clause 4(d) if Customer does not agree to the change).

(c) This Agreement and the underlying licence or subscription agreement will apply to each renewal transaction.

(d) Customer may cancel its agreement for an Auto-Renew Subscription at any time at least 10 business days prior to the renewal date by emailing Supplier's subscription team at operations@digistor.com.au, calling them on +612 9431 6000 or logging into Customer's account online and cancelling.

#### **5. SERVICES**

(a) Supplier will use its best efforts to perform the Services as from the date stated on the Quotation and perform them by the dates stated on the Quotation, or if no dates are stated on the Quotation, Supplier will perform them within a reasonable time.

(b) Any Services are provided:

(i) on a time and materials basis only; and

(ii) under the direction and control of Customer.

(c) Supplier will charge Customer for all time spent on the Services (including travelling time to and from Customer's premises) and Customer must pay for such time whether it is less than, or more than, any estimate given. Supplier shall use its

(iii) not disclose to any third party (including the Information Commissioner as defined in the Australian Information Commissioner Act 2010 (Cth)) the existence or circumstances surrounding any eligible data breach, without the non-breaching party's prior written approval, unless the non-breaching party does not make any notification that it is lawfully required to do and the breaching party is required by law to make the notification.

(g) Customer must provide to Supplier upon request any information required by Supplier to assess the creditworthiness of Customer. Customer consents to Supplier obtaining from, or providing to any credit provider named in a credit report, credit reporting agency, or any person Customer authorises Supplier to contact, any of Customer's personal or corporate information, including information relating to creditworthiness, credit standing, credit history or credit capacity, for the purposes of assessing, or providing information in relation to, Customer's creditworthiness and/or deciding whether to grant or continue to provide credit approval to Customer.

#### Obligations Under EU Privacy Law

(h) Where a party is subject to GDPR, that party warrants to the other party that it will comply with GDPR.

(i) GDPR means the General Data Protection Regulation 2016/679. In clauses 11(h) to (x) word or phrases that are defined in GDPR shall be interpreted using the meaning given to them in GDPR.

(j) Where a party is subject to GDPR and is a data controller under GDPR in respect of the personal data that is being transferred to the other party for processing in connection with this Agreement then the parties must comply with clauses 11(h) to (x).

(k) Where the Data Processor processes personal data on behalf of the Data Controller then:

(i) the Data Controller must solely determine the nature, purpose and the manner in which the personal data shall be processed, and the nature and purposes are limited to:

A. the performance of the rights and obligations under this Agreement and any activities that are reasonably necessary or incidental thereto;

B. the administrative tasks associated with the performance of the Agreement, including invoicing, payment, contract management, risk management, insurance, renewals, delivery, maintenance and support;

C. where Supplier is the Data Controller, marketing and promoting Supplier's other goods and services (and the goods and services of those entities that Supplier represents) to the Data Processor;

D. any other purpose that the Data Controller provides a documented instruction regarding; or

E. processing that is required by the laws of the European Union or any EU member state to which the Data Controller is subject, in which case the Data Processor shall, to the extent permitted by such law, inform the Data Controller of that legal requirement before the relevant processing of that personal data;

(ii) the Data Controller shall ensure that it has all necessary or appropriate consents and notices in place to enable lawful transfer of personal data to the Data Processor for the duration and purposes of the Agreement;

(iii) the Data Controller instructs the Data Processor (and authorises its subprocessors, if any) to process personal data and transfer personal data to any country or territory (or international organisation) as reasonably necessary for the performance of its obligations and rights under this Agreement, provided always that any transfer of personal data to which the GDPR applies outside of the EU is:

A. to country or territory which the European Commission has determined there exists an adequate level of protection in accordance with Article 45 of GDPR; or

B. subject to appropriate safeguards and on condition that enforceable data subject rights and effective legal remedies for data subjects are available in accordance with Articles 46 or 49 of GDPR; and

C. is notified to the Data Controller in advance;

(iv) the Data Processor must assist the Data Controller by adopting and maintaining appropriate technical and organisational measures, insofar as this is possible, specifically for the fulfilment of the Data Controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of GDPR;

(v) the type of personal data to be processed under this Agreement is:

A. an individual's contact or personal details, including name, honorific or title, email, Skype, social media identifiers, address of work place, date of birth, gender, place of domestic residence, and other personal identifiers;

B. individual's business or vocation status, including job role, job description, job title, employment status, and for students, status as a student, student identification, course, educational institute, enrolment status

C. personal data that is provided by an individual in connection with permitted purposes of processing;

(vi) the categories of data subjects to whom the personal data relates are:

A. employees;

best efforts to advise Customer in advance if it believes that any estimate will be exceeded. If Customer requires fixed price services, then the parties may agree to such arrangements using Supplier's contract for fixed price services. Customer must pay all Supplier's expenses incurred in providing the Services in accordance with Supplier's expenses policy, a copy of which is available upon request. Any work that is performed, outside of Supplier's normal working hours, including on evenings, weekends and public holidays, will be charged at Supplier's then current overtime rates.

(d) If required by Customer, Supplier will provide time sheets and any expense claims for Customer's approval. Customer must:

(i) provide Supplier with written notice of any issues with the information on a time sheet or expense claim; or

(ii) sign the time sheets and/or expense claim signifying Customer's approval of them, within 7 days of receipt.

(e) Where Customer purchases service credits or tokens, Customer must use these service credits in accordance with their terms and by any expiry date. All service credits or tokens that are not used by their expiry date will be forfeit with no recourse to Supplier.

#### Training

(f) Where the Services on an Order are training services then:

(i) Supplier grants Customer the right to use the training materials provided for training purposes of the attendee;

(ii) unless stated otherwise on the Order, Customer is not permitted to:

A. copy, adapt or translate, sub-license or make copies of any part of the training materials, including by adding parts of the training materials into any other materials; or

B. disclose the training materials to any other person;

(iii) Customer may substitute an alternative attendee onto a training course without any additional charge;

(iv) Customer may terminate an attendee's attendance at a course by giving Supplier more than 10 business days written notice, prior to the commencement of the training, or the full training price will be payable;

(v) Customer may terminate an attendee's attendance at a course by giving Supplier between 5 and 10 business days written notice, prior to the commencement of the training, and 20% of the full training price will be payable;

(vi) Supplier may cancel or re-arrange any training course by giving Customer at least 5 business days' notice prior to the commencement of the training. In this case the attendees will be transferred to a rescheduled course, or if that is not acceptable to Customer, Supplier will promptly refund any amounts paid for the course.

#### **6. CUSTOMER OBLIGATIONS**

(a) Customer must, at its own expense:

(i) provide access and security clearance to Supplier and its contractors to Customer's site at the agreed dates and times (to be no shorter than Supplier's normal business hours on each day);

(ii) provide remote access (subject to Customer's reasonable security requirements) to any Goods or other technology to enable Supplier to remotely diagnose and effect repairs to Goods or to provide the Services;

(iii) provide reasonable assistance to assist Supplier to diagnose and effect any repairs to Goods, including installing any 'user installable' parts Delivered to Customer and packing and returning Goods to Supplier at Supplier's request;

(iv) follow the Warranty, Returns and Refunds Policy procedures when dealing with any Goods where Customer believes there is a defect;

(v) provide Supplier with the necessary facilities, equipment and resources to enable Supplier to provide the Goods or perform the Services;

(vi) provide Supplier with complete and accurate information in a timely manner as may be needed to facilitate Supplier to perform its obligations under this Agreement;

(vii) promptly make any decisions needed by Supplier to perform its obligations under this Agreement;

(viii) to the extent technically possible, back up all application and data on any Goods prior to giving Supplier (or the manufacturer) access to the Goods and prior to sending the Goods to Supplier or (or the manufacturer) for any reason;

(ix) backup all Customer data that will be disclosed to Supplier prior to Supplier performing the Services.

(b) Customer acknowledges that a failure to meet the obligations in the Order, including clause 6(a), may result in delays in the provision of the Goods or Services, an inability of Supplier to meet its obligations under this Agreement and/or additional costs. Supplier will not be responsible for any such consequences. Supplier is entitled to charge Customer for any time (at Supplier's then current rates) or expense incurred as a result of the failure of Customer to comply with its obligations under the Order.

B. agents, contractors and suppliers;

C. customers and prospects, including students;

(vii) personal data may only be processed by the Data Processor and its subprocessors for the period of this Agreement;

(l) The Data Controller must take reasonable steps to ensure the reliability of any employee, agent or contractor who may have access to the personal data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant personal data, as strictly necessary for the permitted purpose of the processing under this Agreement, and to comply with laws in the context of that individual's duties to the Data Controller, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

(m) The Data Controller must, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, in relation to the personal data implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32 of the GDPR. In assessing the appropriate level of security, the Data Controller must take account in particular of the risks that are presented by processing, in particular from a personal data breach.

(n) The Data Processor must keep all written records as are required by GDPR, including those set out in Article 30(2), and must make those records available to the Data Controller and any supervisory authority upon request.

(o) The Data Controller permits the Data Processor to use the following subprocessor for the processing personal data to the extent set out in the Table of Sub-processors

(p) If a Data Processor appoints any other subprocessors, wishes to add or delete Subprocessors or to change the use of any Subprocessor, the Data Processor must comply with Article 28(3)(d) of the GDPR and must first:

(i) inform the Data Controller of any intended addition, deletion or change concerning to subprocessors;

(ii) make any changes (including refusing to permit the addition, deletion or change) that the Data Controller requests in writing within 14 days of receipt of written notice, but if no changes are requested by the Data Controller, the Data Processor may make the addition, deletion or change notified to the Data Controller;

(iii) enter into a written contract incorporating terms which are substantially similar to those set out in clauses 11(h) to (v) and any other terms required by the Data Controller;

(iv) provide name and contact details of the subprocessor's data protection officer, representative or other authorised contact.

(q) The Data Processor must ensure that any subprocessor complies with all relevant laws, including the GDPR.

(r) The Data Processor must assist the Data Controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 of GDPR taking into account the nature of processing and the information available to the Data Processor.

(s) At the election of the Data Controller, the Data Processor must delete or return to the Data Controller all the personal data relating to processing, and delete existing copies unless an applicable Union or member state law requires storage of the personal data, on demand and no later than the last day of the period of this Agreement.

(t) The Data Processor must make available to the Data Controller all information necessary to demonstrate compliance with the obligations set out in clauses 11(h) to (x) and allow for and contribute to reasonable audits upon reasonable notice during working hours on normal business days, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller.

(u) The Data Processor must immediately inform the Data Controller if, in its opinion, any instruction for the Data Controller infringes GDPR or other privacy legislation.

(v) Where the Data Processor or its subprocessors suffer a data breach involving the personal data that has been provided by Data Controller, then the Data Processor must immediately, and in any event within 24 hours of the discovery of the data breach, notify the Data Controller of the data breach, together with all information that is required to be provided to the Supervisory Authority and/or data subjects, as required under GDPR.

(w) Where the Data Controller is liable for any loss, damage, expense or costs or any administrative fine as a result of the processing by the Data Processor or its subprocessors in breach of GDPR then the Data Processor must indemnify and hold harmless the Data Controller for any loss, damage, expense or cost that the Data Controller is liable as a result, except to the extent that the Data Processor proves that the loss, damage, expense or cost was caused by an event for which the Data Processor was not in any way responsible.

(x) Notwithstanding clause 14(m):

(i) the provisions of clauses 11(h) to (x) and any clause in this Agreement that is

(c) Customer warrants that it has the authority to allow Supplier and its contractors to use any facilities, equipment, resources and/or intellectual property rights that Customer provides to Supplier or its contractors for use in connection with performing its obligations under this Agreement.

(d) Customer must provide a safe environment for any of Supplier's personnel that are visiting or working at any site that Customer requires Supplier to attend.

## 7. PAYMENT

(a) Unless otherwise expressly stated on an Order, the price for any Goods or Services sold by Supplier to Customer (or any expense or charge) does not include any GST. Customer must pay Supplier the ex-GST amount for the Goods and/or Services and/or other charges set out on the Order, plus any applicable GST.

(b) Customer must pay Supplier the amounts due for any Goods on an Order:

(i) in full prior to the date of Delivery; unless

(ii) the Order states that the Goods must be paid for by way of an initial instalment prior to Delivery and the balance after Delivery, when Customer must pay the initial instalment prior to Delivery and the balance by the date(s) specified in the Order (or if no date(s) specified in the Order, an invoice will be issued at time of Delivery which will state the due date for the final payment); or

(iii) the Order states that the Goods must be paid for in full after Delivery, when Customer must pay the full amount by the date specified in the Order (or if no date is specified in the Order, an invoice will be issued at time of Delivery which will state the due date for payment).

(c) If Supplier is ready, willing and able to Deliver the Goods, but Customer (or in the case of a drop shipment, Customer's client) is unwilling or unable to accept Delivery (including by not collecting the Goods from the agreed collection point at the time notified by Supplier), Supplier is entitled to require immediate full payment for the Goods, despite them not being received.

(d) Customer must pay Supplier the amounts due for any Services, including any expenses, on an Order:

(i) prior to the date of Delivery; unless

(ii) the Order states that the Services are to be paid on a periodic basis in arrears, when Customer must pay the amounts due at the end of each period as stated on the Order; or

(iii) the Order states that the Services must be paid for in a different way; when Customer must pay the amounts due at the times and in the manner stated on the Order;

(e) Supplier will issue a tax invoice for any amount due under an Order prior to, or on, the date that payment must be paid. Unless stated otherwise in the Order, Customer must pay Supplier the amount on each tax invoice:

(i) prior to the supply of the Goods or Services, where payment is due in advance of the supply of the Goods or Services;

(ii) prior to the due date for payment, where payment is due in under clause 7(b)

(ii), 7(b)(iii), 7(d)(ii) or 7(d)(iii); or

(iii) in any other case, prior to the payment due date as stated on the tax invoice (where payment terms have been agreed by the parties) or if no payment terms are agreed by the parties, or the Customer is on credit hold, the tax invoice must be paid immediately.

(f) Time is of the essence for Customer's payment obligations. If Customer fails to make any payment when due, then without any liability to Customer and in addition to any other of Supplier's remedies or rights:

(i) Supplier may suspend Delivery of the Goods (or cease any work on the manufacture of any Goods) or suspend any Services under:

A. the Order under which the payment has not been made by the due date; and

B. any other Order (whether or not Customer is in default under that other Order), until Customer pays the outstanding amounts or provides Supplier with such other financial security that is acceptable to Supplier in its absolute discretion;

(ii) Supplier may charge Customer a late charge for any failure to make any payment by the date required under the Agreement calculated daily using a rate that is 4% over the Reserve Bank of Australia's Cash Rate, from the date that the payment first becomes overdue, to the date that the payment is received by Supplier, both dates inclusive.

(g) Supplier may set off any amount owing to Supplier from Customer under any Order or any other contract, against any amount owing to Customer from Supplier. Customer must pay Supplier all amounts due in connection with any Order without set off or deduction for any reason.

(h) Where the Order is for Services to be performed over a period of more than 6 months, Supplier may increase its time and materials rates every 6 months by giving Customer 14 days' notice of such increased rates.

(i) Money amounts in this Agreement are stated in Australian currency unless stated otherwise on an Order. All amounts must be paid in Australian currency unless stated otherwise on an Order.

## 8. WARRANTIES AND STATUTORY GUARANTEES

required for the proper interpretation of those clauses, is subject to the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the courts in London, England in respect of any matter that arises out of clauses 11(h) to (x) and any clause in this Agreement that is required for the proper interpretation of those clauses; or

(ii) if England and Wales ceases to be an EU Member State, the provisions of clauses 11(h) to (x) and any clause in this Agreement that is required for the proper interpretation of those clauses, is subject to the laws of Ireland, and the parties agree to submit to the exclusive jurisdiction of the courts in Dublin, Ireland in respect of any matter that arises out of clauses 11(h) to (x) and any clause in this Agreement that is required for the proper interpretation of those clauses.

## 12. CONFIDENTIALITY

(a) The Recipient must not use any of the Discloser's Confidential Information except in connection with the performance of its obligations specified in this Agreement.

(b) The Recipient must not disclose the Discloser's Confidential Information to any third party without obtaining the Discloser's prior written consent, provided that the Recipient may disclose the Discloser's Confidential Information to:

(i) its employees, agents and contractors, and those of any of its related bodies corporate, who have entered into a written agreement with the Recipient that is no less protective of the Discloser's Confidential Information than this Agreement, provided those persons have a need to know such information for the purposes of this Agreement;

(ii) its lawyers, bankers, auditors, accountants and insurers, who have a need to know the information in order to provide professional advice to the Discloser relating to this Agreement.

(c) The Recipient must use, and must ensure that any person to whom it is permitted by this Agreement to disclose the Discloser's Confidential Information to uses, the same measures to protect the Discloser's Confidential Information as it uses to protect its own confidential information, but in no event less than reasonable measures.

(d) The restrictions of this clause 12 shall not apply to information that:

(i) is independently developed by the Recipient without any access to the Confidential Information of the Discloser;

(ii) becomes known to the Recipient without restriction, from a third party who, to the Recipient's knowledge, was not bound by a confidentiality agreement with the Discloser, or otherwise prohibited from disclosing the information to the Recipient, or had the right to disclose it;

(iii) was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser;

(iv) was lawfully in the possession of the Recipient before the information was disclosed to it by the Discloser;

(v) is or becomes in the public domain through no act or omission of the Recipient;

(vi) the parties agree in writing is not confidential or may be disclosed; or

(vii) is required to be disclosed under an order or requirement of a court, administrative agency, or other governmental body (but only to the minimum extent required to comply), provided however, that Recipient shall provide prompt notice to Discloser of any potential disclosure and shall use its reasonable efforts to prevent disclosure of such information.

## 13. TERMINATION

(a) Supplier may, by written notice, immediately terminate or suspend performing its obligations in connection with one or more Orders if:

(i) Customer has not paid any amount due by the due date;

(ii) Customer commits any breach of any provision of any Order and has failed to remedy such breach within 7 days of receipt of written notice requiring it to do so.

(b) Customer may, by written notice, immediately terminate the relevant Order if Supplier commits any material breach of any provision of the Order and has failed to remedy such breach within 30 days of receipt of written notice requiring it to do so.

## 14. GENERAL

(a) Customer may not assign, transfer or novate any Order in whole or in part without first obtaining Supplier's written consent.

(b) To the extent permitted by law:

(i) the Agreement (including the Order) records the entire agreement between the parties in relation to its subject matter. The Agreement (including the Order) supersedes all previous negotiations, understandings or agreements in relation to the subject matter and expressly excludes the pre-printed terms and conditions of Customer purchase order (if any);

(ii) all conditions, warranties, guarantees or rights, including any implied by

#### All Customers and Orders

(a) Clauses 8(a) to 8(h) apply to all Customers, including consumers who are not reselling the Goods and have the benefit of statutory guarantees, resellers of Goods and other customers.

(b) Supplier warrants to Customer that the Goods that are used and maintained in accordance with Supplier's (or the manufacturer's) documentation and instructions, will meet their specifications in all material respects for a period of 90 days from the date of Delivery (Warranty Period), provided that the defect is not caused by:

- (i) fair wear and tear;
- (ii) misuse, incorrect use of, or damage to, the Good from whatever cause (other than any act or omission by Supplier);
- (iii) failure to maintain the necessary environmental conditions for use of the Good;
- (iv) any failure of any technology that is connected to any of the technology that is the subject of the Order;
- (v) data that is entered into the technology that is the subject of the Order;
- (vi) any breach of Customer's obligations under the Order;
- (vii) having the Good maintained by you or a third party; or
- (viii) any use that is contrary to the instructions provided by the manufacturer or Supplier.

(c) If Customer believes that there is a defect in the Goods during the Warranty Period Customer must promptly notify Supplier in writing at the address set out in the Order setting out the details of the defect during the Warranty Period and in this case Supplier may at its option and cost, either replace or repair the Goods or provide a refund, within a reasonable period. Any replaced Goods or parts become the property of Supplier.

(d) When making any claim under this warranty Customer must comply with any requirements set out in the Warranty, Returns and Refunds Policy relating to the return of the Goods.

(e) Supplier will provide Customer with the benefit of any manufacturer's warranty that accompanies the Goods.

(f) Supplier will take reasonable action to ensure that there are facilities available for the repair of Goods and that spares are reasonably available for the Goods for a minimum period of 12 months from date of Delivery. Customer must order and pay separately for all repairs and spares ordered from Supplier (other than where the repair is covered by a manufacturer's warranty or a statutory guarantee under the Australian Consumer Law).

(g) To the extent permitted by law, Supplier expressly excludes any warranty that:

- (i) the Goods can be used, or have particular characteristics when combined with, or attached to, other products, in a particular way, unless it is stated on the Order;
- (ii) the Goods comply with any particular law or standard, or have any particular certification, permit or approval, unless it is stated on the Order.

(h) The Customer acknowledges and agrees that:

- (i) it has not relied on any oral representation that is not reduced to writing and included on the Order, or any written representation (including any representation on a website or in a brochure) that is not stated on the Order;
- (ii) it is not reasonable for Customer to rely on Supplier's skill and judgment to guarantee that any Goods or Services are fit for a particular purpose or that any particular outcome will be achieved as a result of any Services, or any product that results from any Services, unless that particular purpose or outcome has been stated on the Order;
- (iii) to the extent permitted by law, all illustrations, drawings, advertisements, catalogues that provide colours, measurements, weights, operational characteristics, tolerances or capabilities are approximations only, and if Customer needs a particular colour, measurement, weight, operational characteristics, tolerance or capability this must be set out on the Order;
- (iv) it has used its own skill and judgment and relied on its own expertise in making the final selection and purchase of the Goods and Services, and has not made any particular use, requirement or outcome known to Supplier other than that stated on the Order;
- (v) it will comply with all applicable Federal, State and local laws, ordinances, regulations, rules and orders in performing its obligations under the Order.

#### Orders from consumers who are not reselling Goods that are subject to the statutory guarantees under the Australian Consumer Law

(i) Clauses 8(i) to (l) apply to any Order where the Customer is a consumer in respect of that Order and Customer is not re-selling the Goods and has the benefit of statutory guarantees, as defined by the Australian Consumer Law.

(j) Supplier's Warranty Against Defects Service is set out in the Warranty, Returns and Refunds Policy. The benefits of that service are in addition to any other rights or remedies the consumer may have in respect of these goods or services under the Australian Consumer Law.

(k) If Customer is entitled to a statutory guarantee under sections 54 to 59 of the Australian Consumer Law then to the extent that Supplier fails to comply with the

custom or other circumstance, that are not expressly specified in the Agreement (including the Order), are excluded.

(c) Any Order may only be modified by a written agreement signed by the parties. The Terms and Conditions may only be varied by an Order, if the Order specifically states that the relevant clause in the Terms and Conditions is being modified, and a director of Supplier initials the specific change and signs the Order.

(d) To the extent of any inconsistency between:

- (i) the details on any Order;
  - (ii) the Terms and Conditions;
  - (iii) the Delivery and Freight Terms; and
  - (iv) the Warranty, Returns and Refunds Policy,
- then the first mentioned shall prevail.

(e) No waiver by either party of any breach of any of the terms and conditions shall be construed as a waiver of any succeeding breach of the same or any other term or condition. Any waiver must be in writing and signed by the party exercising the waiver.

(f) If any provision of the Agreement, including any Order, offends any law applicable to it and as a consequence is illegal, invalid or unenforceable then:

- (i) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
- (ii) in any other case, the offending provision must be severed from the Agreement in which event the remaining provisions of the Agreement operate as if the severed provision had not been included.

(g) Nothing in this Agreement, including any Order, may be construed as creating a relationship of partnership, of trustee and beneficiary or employer and employee. Except as expressly stated in this Agreement neither party is authorised to act as lawful agent of the other party.

(h) The Agreement and any Order may be signed in any number of counterparts, each of which shall be an original, and any one of which shall be deemed to be validly executed if evidenced by a facsimile copy of the executing party's signature with the same effect as if the signatures were on the same document. The parties consent to the use of electronic means to communicate and otherwise deal under this Agreement, including any Order.

(i) The parties' rights and remedies under the Agreement, including any Order are cumulative and there is no obligation to exercise a particular remedy. If a party is in breach of any Agreement, the non-breaching party may avail itself of all other rights, remedies and causes of action available at law, in equity or otherwise.

(j) Any notice that is to be given under this Agreement, including any Order must be dated, in writing and signed by the person giving the notice. Any notice must be hand delivered to the address, sent by prepaid post to the address or sent to the facsimile number of the recipient as set out in Order. Each party must promptly notify the other of any change of address or contact details, and such details shall be incorporated into the Order from the date following the date of receipt.

(k) Any notice sent in accordance with this Agreement, including any Order is deemed to have been received:

- (i) if hand delivered; on the date of delivery;
- (ii) if posted within Australia; 3 business days after the date of posting;
- (iii) if sent by facsimile; at the time set out on a transmission report from the machine from which the facsimile was sent which states that the facsimile was sent in its entirety to the facsimile number of the recipient, provided that that time is before 4.00 pm on a business day in the place of receipt, if the time is later than that the facsimile will be deemed received on the next business day in the place of receipt.

(l) If any dispute arises under this Agreement, including any Order (other than where You are making a claim under a statutory guarantee under the Australian Consumer Law):

- (i) the party raising the dispute must provide the other written notice of the nature of the dispute (Dispute Notice), the issues involved and the remedy sought. The other party must provide a written response to the notice addressing the issues in the Dispute Notice and providing details of its own position within 10 days of receipt of the Dispute Notice;
- (ii) persons with authority to resolve the dispute from each party must meet and attempt to resolve the dispute through good faith negotiations within 25 days of the issue of the Dispute Notice;
- (iii) if, for any reason, the parties have not resolved the dispute within 40 days of the issue of the Dispute Notice (or such longer period as is agreed by the parties) then unless the parties agree otherwise in writing, the dispute must be referred to The Resolution Institute (ACN 008 651 232, Level 1, 13-15 Bridge Street Sydney NSW 2000) for mediation by a person who is independent of the parties and who is appointed by agreement by the parties, or in absence of agreement within 7 days of the referral to The Resolution Institute, a person who is appointed by the Chair of The Resolution Institute or his/her representative. Any mediation will be

statutory guarantee, Supplier's liability is limited to one or more of the following, at Supplier's option:

- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
- (iv) the payment of the cost of having the goods repaired,

unless it is not fair or reasonable for Supplier to rely on this term of the agreement.

conducted in accordance with The Resolution Institute Mediation Rules;

- (iv) if, for any reason, the parties have not resolved the dispute within 60 days of the issue of the Dispute Notice (or such longer period as is agreed by the parties) then, either party may commence legal proceedings;
- (v) neither party is required to follow the process under sub-clauses (i) to (ii) if it is seeking urgent equitable relief.

(m) This Agreement and all Orders are governed by the laws of New South Wales, Australia. The parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia and any courts competent to hear appeals from those courts.

Last Update: February 2021