

Terms and conditions of sale



These terms and conditions ("terms of trade") apply to all transactions between Comcater Pty Ltd (ABN 53 005 974 185) 191 Saiton Street, Port Melbourne, 3207 Victoria and the party to whom Goods or Services are supplied notwithstanding any statement to the contrary which may be contained in the Order.

1. DEFINITIONS

Additional Charge means fees or charges for additional work performed at your request or reasonably required as a result of your conduct, calculated in accordance with our then current prices; and expenses incurred by us, at your request or reasonably required as a result of your conduct.

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

Goods means any goods supplied by us including those supplied in the course of providing Services.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Loss includes, but is not limited to, costs (including party to party legal costs and our legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Non-stock items and Special Order items means Goods not normally stocked by us.

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

PPS Law means:

- the Personal Property Securities Act 2009 (Cth) (PPS Act) and any regulation made at any time under the PPS Law; and
- any amendment made at any time to any other legislation as a consequence of a PPS Law.

Quotation means a written description of the Goods or Services to be provided, an estimate of our charges for the performance of the required work and an estimate of the time frame for the performance of the work.

Services means the services to be provided by us to you in accordance with a Quotation and these terms of trade.

we/us means the entity specified as the supplier of Goods or Services on the Quotation and includes our agents and permitted assigns.

you means the person identified on a Quotation or Order as you and includes your agents and permitted assigns.

2. GENERAL

- These terms of trade apply to all transactions between you and us relating to the provision of Goods and Services. This includes all quotations, contracts and variations. These terms of trade take precedence over terms of trade contained in any document of You or elsewhere.
- The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- We may amend any details in a Quotation by notice in writing to you. Such amended details supersede any relevant prior detail in dealings between the parties.

3. QUOTATIONS

- We may provide you with a Quotation. Any Quotation issued by us is valid for 30 days from the date of issue.
- Unless otherwise expressly agreed in writing, a Quotation does not include insurance, delivery or installation of the Goods.
- Quotations are based upon the cost of materials available at the time of preparation of the Quotation, on delivery occurring within 90 days of the date of the Quotation and assume the timely supply by You of necessary material and instructions to us.
- Quotations are to be construed as an invitation to treat and not as an offer to sell the Goods and/or Services the subject of the Quotation and so not binding on us until acceptance by us of an Order.
- We reserve the right to amend any Quotation before the Order has been accepted by us to take into account any rise or fall in the cost of meeting the Quotation.
- An indication in a Quotation of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under chapter 3, part 3-2, division 1 of the Australian Consumer Law (ACL), this estimate is not binding upon us.
- All prices quoted and any other charges applicable are:
 - Australian currency;
 - exclusive of GST;
 - based upon the manufacturer's price for the Goods at the date of the Quotation and subject to change due to any change in the manufacturer's price between the date of the quotation and the date the order is confirmed by us; and
 - to the extent that they include Non-stock items or Special Order items, quoted on the basis that each item is available for sale in Australia and complies with all applicable Australian standards and regulatory requirements.
- based upon foreign exchange rates at the date of the Quotation and subject to change in accordance with any change in applicable foreign exchange rates between the date of the quotation and the date the order is accepted by us.
- Where a Quotation refers to a specific foreign currency rate, variations in that rate greater than +/- 3% in the value of the rate for the AUD\$ against the relevant foreign currency referred to in the Quotation between the date of the quotation and the date of order confirmation shall be applied to the price of the Goods, resulting in an extra cost to you in the event of a less favourable rate for the AUD\$, or a credit in the event of a more favourable rate for the AUD\$.
- The ANZ Bank sell exchange rate at noon on the relevant day shall apply as the exchange rate for these purposes.

4. ORDERS

- Orders for the provision of Goods and/or Services may be submitted for approval by us by:
 - submitting in writing on our standard Order form signed by an authorised representative of you with the relevant Quotation (unless otherwise agreed);
 - supplying us with a Purchase Order relating to a Quotation signed by us on your company letterhead; or
 - placing an Order on our website portal in accordance with the portal's requirements; or
 - in the case of Services, by oral communication or email to us or our authorized Comcater representative.
- Acknowledgement of receipt of an Order or Quotation is not acceptance of an Order. Acceptance of an Order occurs when we communicate our acceptance of an Order received from you. An Order will only be deemed to be placed by you if the Order clearly identifies the Goods or Services ordered and our Quotation. Any costs incurred by us in reliance on incorrect or inadequate information provided by you in an Order may result in the imposition of an Additional Charge. Orders must specify the required date of delivery.
- Placement of an Order by you signifies acceptance by you of these terms of trade and the most recent Quotation provided by us relating to that Order.
- We may in our absolute discretion refuse to provide Goods or Services where:
 - Goods are unavailable for any reason whatsoever;
 - credit limits cannot be agreed upon or have been exceeded; or
 - payment for Goods or Services previously provided to you or

- any related corporation of you or to any other party who is, in our reasonable opinion, associated with you under the same or another supply contract, has not been received by us; or
 - the Goods do not comply with all applicable Australian standards and regulatory requirements.
- An Order cannot be cancelled without our prior written consent provided that if the delay in delivery is 12 weeks beyond any estimated date of delivery you will have the right to cancel the Order, subject to clause 4(i). Where an Order is cancelled, other than as provided in this clause, you indemnify us against any losses we incur as a result of the cancellation. This includes, but is not limited to, loss of profit from other Orders foregone as a result of the scheduling of the Order which is subsequently cancelled. Goods will be supplied in carton quantity only. Your Order quantity will be adjusted to nearest carton quantity. Orders will be adjusted to the nearest carton quantity unless stipulated otherwise.
 - Where you withdraw or cancel an Order following acceptance by us you must pay us as liquidated damages an amount equivalent to twenty percent (20%) of the agreed price of the Goods as compensation. Unless we are able to cancel Orders for Non-stock items or Special Order items you will be liable for the full value of the such Orders from the date of our acceptance of the Order

5. VARIATIONS

- You may request that your Order be varied by providing a request in writing to us. A request for a variation must be agreed to in writing by us in order to have effect.
- If you wish to vary your requirements after a Quotation has been prepared by us or after the placement of an Order, we reserve the right to vary the Quotation to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with then current charge rates. A revised Quotation issued by us in respect of the requested variation supersedes the original Quotation. If the revised Quotation only specifies additional work, the Quotation for that additional work will be in addition to the immediately preceding Quotation for the Goods or Services or both.
- We have an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

6. DELIVERY AND ACCEPTANCE

- Delivery shall occur on the later of the original "required-by" date specified by you in the Order and the actual date of delivery.
- Delivery of spare parts shall be effected FOB unless otherwise specified.
- Delivery of equipment and accessories other than spare parts will be effected FIS for orders with a net value greater than \$250 excluding GST. A freight charge will be applied to the supply in those cases unless otherwise agreed. Delivery is to the capital city in the State in which the Order is placed unless otherwise specified. Such delivery shall only be made to your ground floor or kerbside Goods-receiving areas unless otherwise agreed.
- Any availability time quoted for delivery of Goods is an estimate only. Subject to any obligations in respect of consumer guarantees under the ACL, in the event of a delay in delivery exceeds 12 weeks you will have the right to cancel the Order.
- If you fail to advise us in writing of any damage or fault in Goods or failure of Goods to accord with the Order within two (2) Business Days of delivery, you are deemed to have accepted the Goods, that they are not faulty and in accordance with your Order. We will not accept liability for loss or damage to Goods sustained in storage or transport after delivery to the agreed delivery location. Nothing in this clause affects your rights to any alleged failure of a guarantee under the ACL.
- You authorise us to store Goods which are unable to be delivered to you due to your failure or inability to accept delivery within 90 days of your original required-by date at your expense. You also undertake to indemnify us for all costs incurred due to such non-delivery including, but not limited to storage charges, freight charges and demurrage.
- Goods accepted by us as returned for credit may incur a restocking fee equal to a percentage of the value of the items returned as indicated on the invoice, but not less than 30% to a maximum of \$5,000, plus repacking costs if required. Non-stock Goods will not be accepted for return without our prior written approval.
- For the purpose of this clause FOB has the meaning given to it in the Incoterms and FIS means Free in Store and that the Seller is not responsible for unloading the Goods.

7. TITLE AND RISK

- Risk in Goods passes to you immediately upon delivery.
- Property and title in Goods supplied to you under these terms of trade do not pass to you until all money (including money owing outside our credit terms in respect of other transactions between us and you) due and payable to us by you have been fully paid.
- Where Goods are supplied by us to you without payment in full, you are a bailee of the Goods until property in them passes to you; irrevocably appoint us to be your attorney to do all acts and things necessary to ensure the retention of title to Goods including the registration of any security interest in favour of us with respect to the Goods under applicable law; must be able upon demand by us to separate and identify as belonging to us the Goods supplied by us from other Goods which are held by you; must not allow any person to have or acquire any security interest in the Goods; must insure the Goods for the full insurable or replacement value (whichever is the higher), with an insurer licensed or authorised to conduct the business of insurance in the place where you carry on business.
- must not supply any of the Goods to any person outside the ordinary or usual course of business;
- agree that we may repossess the Goods if payment is not made by the last day of the month following which the Goods were delivered (or such longer time as we may, in our complete discretion, approve in writing); and
- you grant us and our agent an irrevocable licence to enter your premises to recover possession of Goods pursuant to this clause. You indemnify us for any damage to property or personal injury which occurs as a result of such entry.
- Where Goods are supplied by us to you without payment in full of all moneys payable in respect of the Goods and any Services provided by us in respect of those Goods; and:
 - you make a new object from the Goods, whether finished or not;
 - the Goods are mixed with other Goods; or
 - the Goods become part of other Goods (New Goods),you agree that the ownership of the New Goods immediately passes to us. You will hold the New Goods on trust for us until payment of all sums owing to us whether under these terms of trade or any other contract have been made. We may require you to store the New Goods in a manner that clearly shows our ownership of them.
- For the avoidance of doubt, under sub-clause (d), the ownership of the New Goods passes to us at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other Goods.
- Despite sub-clause (d), you may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business provided that:
 - where you are paid by a third party in respect of Goods including New Goods, you hold the whole of the proceeds of sale, less any GST, on trust for us in a separate account, until all amounts owed by you to us have been paid; or
 - where you are not paid by a third party, you agree to assign all of your rights against the third party to us upon us giving you notice in writing to that effect and, for the purpose of giving effect to that assignment, you irrevocably appoint us as your attorney.
- Your right to sell the Goods under sub-clause (f)-
 - may be revoked at any time by us by giving notice to that effect if you are in default for longer than seven days in the payment of any sum whatsoever due to us;

- shall automatically cease if a receiver, controller, liquidator or administrator is appointed to any of your assets, undertaking or property, or a winding up application or order is made against you, or any petition or order in bankruptcy against you is presented or made, or you go into voluntary liquidation or call a meeting of or make arrangements or compositions with your creditors.
- Where Goods are supplied by us to you without payment in full of all moneys payable in respect of the Goods and any Services provided by us in respect of those Goods, you acknowledge that we have a right to register and perfect a personal property security interest. Goods supplied are not intended for personal, domestic or household use. Subject to our obligations under the ACL, we take no responsibility for any Loss which occurs by reason of the use of Goods for personal, domestic or household use, subject to the requirements of the ACL. You as beneficial owner and/or registered proprietor hereby charge in our favour all of your estate and interest in any real property (including but not limited to any applicable land ("Land") owned by you named or described as your street address in the Credit Application if applicable) to secure payment of accounts rendered by us to you for the delivery and/or supply of goods, including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by us and including the costs to prepare and lodge a Covenant against the Land and to remove the Covenant. You further agree to execute a mortgage or mortgages in registrable form promptly at our request. If, upon request, the mortgage(s) are not executed and returned within fourteen days, then you authorise any duly authorised officer of ours to sign as your attorney. A statement of certificate signed by our duly authorised officer as to the goods supplied and any indebtedness by you shall be prima facie evidence of the supply and indebtedness.
- If:
 - a PPS Law applies or commences to apply to these terms of trade or any transaction contemplated by them, or we determine (based on legal advice) that this is the case; and
 - in our opinion, the PPS Law:
 - does or will adversely affect our security position or obligations; or
 - enables or would enable our security position to be improved without adversely affecting you,we may give notice to you requiring you to do anything (including amending these terms of trade or execute any new terms and conditions) that in our opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph (k)(i)A or improve the security position as contemplated in paragraph (k)(i)B. You must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in our opinion our security position or obligations under or in connection with these terms of trade have been or will be materially adversely affected, we may by further notice to you cancel these terms of trade. If this occurs, you must pay us any money owed to us by you immediately.

8. INVOICING AND PAYMENT

- We may, in our absolute discretion, issue an invoice to you in any one or more of the following ways:
 - prior to commencing the provision of the Goods or Services, for an amount equal to the Quotation and Additional Charges where we have not previously carried out work for you or where we choose to do so;
 - if provided for in a Quotation, at any time before or after delivery we may issue one or more invoices for a proportion or the whole of the amount of the Quotation (the proportion to be calculated at our discretion either for work done to that point or for work to be done in the future, or both, and require that proportion of the Quotation be paid in advance of any further Goods or Services being provided; or
 - upon completion of the provision of the Goods or Services or any time after such completion, for an amount equal to the Quotation or the balance of the Quotation outstanding, any Additional Charges and any amount not previously invoiced, or if no Quotation was provided, for an amount representing our charge for the work performed in completing the Order and for any Additional Charges.
- The amount payable by you will be the amount set out in the invoice calculated as:
 - the amount for the Goods or Services (or both) as set out in the Quotation and any Additional Charges; or
 - where no Quotation has been provided by us, our usual charges for the Goods or Services (or both) as described in the Order.
- You must pay an invoice issued by us by the last day of the month following the month in which the valid tax invoice is first issued to you unless otherwise agreed. Payment can be made by either EFT or by credit card (American Express, Mastercard or Visa). Made credit card charges will be payable by you.
- If any invoice is due but unpaid, we may withhold delivery and the provision of any further Goods or Services notwithstanding the acceptance of an Order until overdue amounts are paid in full.
- We may in our complete discretion apply any payment received from you to any amount owing by you to us.
- You are not entitled to retain any money owing to us regardless of any default or alleged default by us of these terms of trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects your rights for any alleged failure of a consumer guarantee under the ACL.
- You are to pay us on demand interest at the rate of 3% per annum over and above the rate being charged to us on our overdraft account with our bank, calculated daily in respect of any unpaid account.
- All interest, costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses we incur, are to be paid by you as a debt due and payable under these terms of trade.
- You and we agree to comply with our respective obligations in relation to Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other applicable legislation governing GST.
- For the purpose of assessing your credit worthiness, you authorise us to:
 - obtain credit reports from credit reporting agencies and other credit providers concerning your credit worthiness, credit standing, credit history and credit capacity; and
 - discuss reports and other information to other credit and insurance providers about your credit worthiness, credit standing, credit history and credit capacity.

9. ADDITIONAL CHARGES

- We may require you to pay Additional Charges in respect of Costs we incur as a result of reliance on inadequate or incorrect information or material provided by you or information or material supplied later than required by us in order to provide the Goods or Services within the specified time frame (if any).
- The imposition of Additional Charges may also occur as a result of:
 - cancellation by you of an Order where cancellation results in loss to us;
 - storage costs for Goods not collected from us within 7 days of the agreed if it has been agreed that you will collect the Goods; photocopying, courier, packing or handling charges not included in the Quotation;
 - Government or council taxes or charges not included in the Quotation; or
 - additional work required by you or any other occurrence which causes us to incur costs in respect of your Order additional to the quoted cost.

Terms and conditions of sale



10. PERSONAL PROPERTY SECURITIES LAW

- (a) For the purposes of this clause "PPSA" means the Personal Property Securities Act 2009 (Cth) and words and phrases used that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context indicates otherwise.
- (b) You grant us a Security Interest in the Goods supplied as Commercial Property, more particularly described as other Goods and their Proceeds to secure your obligation to pay the purchase price of the Goods and any other obligations of you to us under this agreement (together the "Indebtedness") and, where the Goods and/or Proceeds are not readily identifiable and/or traceable, or their recoverable value is insufficient to pay the Indebtedness, the Security Interest shall also extend to all your present and after acquired property, of which the Goods form part, to the extent required to secure the Indebtedness.
- (c) As and when required by us you will, at your own expense, provide all reasonable assistance and relevant information and do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which we ask and consider necessary for the purposes of ensuring that the Security Interest is enforceable, perfected and otherwise effective including, but not limited to, registration of a Financing Statement or a Financing Change Statement under the PPSA, and enabling us to exercise rights in connection with the Security Interest.
- (d) You waive each right to receive any notice under the PPSA (including notice of a verification statement) that can be waived.
- (e) You shall not change your company, business or trading name without first notifying us of the new name not less than 7 days before the change takes effect.
- (f) Notwithstanding any reference to a particular invoice or Order, where any sum remains outstanding by you on more than one invoice or Order, any payments received from you shall be deemed to be made by you and applied by us in the following Order:
- to any obligation owed by you to us which is unsecured, in the Order in which the obligations were incurred;
 - to any obligations that are secured, but not by a Purchase Money Security Interest ("PMSI"), in the Order in which those obligations were incurred;
 - to obligations that are secured by a PMSI, in the Order in which those obligations were incurred.
- (g) You and we agree to contract out of the PPSA in accordance with Section 115 of the PPSA to the extent that Section 115 applies for the benefit of us to the extent it does not impose a burden on us. You waive your right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of us in respect of the Security Interest created by these terms and conditions.
- (h) You must promptly notify us if you know or become aware (whether by receipt of a notice under the PPSA or otherwise) that a third party has or claims a security interest in any Goods delivered to you.
- (i) In relation to any claim referred to in sub-clause (h) you must give to us any information reasonably required by us in relation to any such security interest or claim.
- (j) In relation to any claim referred to in sub-clause (h) you must on request by us use your best endeavours to ensure that the third party,
- discharges any such security interest, and does not register or otherwise perfect or seek to perfect, or remove any registration, in respect of any such security interest; or
 - subordinates any such security interest to our interest by an agreement in form and substance satisfactory to us.
- (k) Without limiting anything in this clause, neither we nor you will disclose information of the kind mentioned in section 275(1) of the PPSA and you will not authorise, and will ensure that no other party authorises, the disclosure of such information. However, this does not prevent disclosure where required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

11. WARRANTIES

- (a) The warranties (and exclusions) on all goods are referred to in the "Warranty for Comcater Distributed Brands" as displayed on our website www.comcater.com.au. Warranty terms vary from brand to brand but the provisions set out below apply to the warranties for all brands.
- (b) A limited warranty only will attach to demonstration and clearance items as stated in the relevant quotation or stipulated on the purchase invoice.
- (c) We warrant spare parts we supply against defects in material and workmanship for a period of 3 months from the date of purchase.
- (d) We are not required to perform work or provide parts pursuant to the warranties in sub-clause (a) (b) or (c) until such time as we have been paid for all Goods and Services we have provided to you in accordance with our credit terms.
- (e) To obtain the benefit of the warranties in this clause, you must report the issue to us as soon as practicable after you notice a problem. Small, portable equipment (Carry-In Items) must be delivered to us or our Authorised Service Agent promptly after you have been given a Work Order number and instructions regarding delivery.
- (f) To honour the warranty in sub-clause (a) or (b), we (or our Authorised Service Agent) will arrange the following at no cost to you:
- in the case of Goods that are not Carry-In Items, we or our Authorised Service Agent will attend your premises between the hours of 8 am and 4 pm on Business Days to repair the Goods and replace defective parts;
 - in the case of Carry-In Items, we will arrange for the repair of the Goods and notify you when they are to be collected.
- (g) We will charge you the following for work done pursuant to the warranty in sub-clause (a) or (b):
- where you require the work to be performed outside Business Hours at your premises - at penalty rates; and
 - where you require repairs to Carry-In Items to be undertaken at your premises - for call-out and travelling time, but not labour costs, (which we will bear).
- (h) The warranty in sub-clause (a) or (b) will be void if:
- you or a third party has installed or operated the Goods otherwise than in accordance with the manufacturer's instructions and recommendations;
 - the Goods have been repaired, serviced, modified or tampered with in any way by a service technician who has not been approved by us and in any manner not complying with the manufacturer's specifications; or
 - we have not authorised warranty work by issuing a work Order number.
- (i) Where Goods we supply come with guarantees that cannot be excluded under the ACL you are entitled to:
- a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage;
 - have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (j) Warranties will not apply where we determine at our sole discretion that:
- installed Goods have been abused, misused, installed or used in environmental conditions outside their intended purpose;
 - the Goods have been improperly installed or commissioned;
 - services supplied to the Goods or associated equipment other than by us do not meet manufacturers' specifications, including but not limited to, incorrect or unstable electrical voltage or current, incorrect or unstable gas pressure or volume supply or substandard water, temperature, volume, pressure or qualities including hardness, TDS (Total Dissolved Solids), chlorides or calcium;
 - the manufacturer's maintenance and cleaning requirements (including use of chemicals other than those recommended by the manufacturer) have not been strictly or regularly complied with;
 - the damage sustained has been caused by blocked drains or the clearance of blockages including blockages to pilots, injectors or burners;
 - non-authorised third parties have attempted to repair the Goods;
 - faults or the damage is attributable to the negligence of yourself,

- your employees or third parties in the fitting of non genuine parts, or otherwise
- (k) Our warranties do not cover:
- the cost of travel in excess of 200 kilometres round trip from a Comcater Service Centre or Comcater Service Provider.
 - costs which require exceptional and additional expense such as accommodation, transport, such as flights and ferries, site inductions and freight.
 - the cost of labour or other services required to be performed outside the hours of 8AM and 4PM, Monday to Friday for which premium charges will apply;
 - normal maintenance, or items that are reasonably considered a maintenance function. Should you require a regular Maintenance Plan you should contact your local Comcater Australia representative;
 - replacement items that would normally be considered a consumable or subject to wear and tear such as light bulbs, fuses, resetting circuit breakers, indicating lights, door seals, and combi oven inner glass doors; and consequential damage or loss as a result of the failure of the Goods.
 - Warranty services will not be provided in the event that payment due to us for any Goods or Services is outstanding.

12. EXCLUSIONS AND LIMITATION OF LIABILITY

- (a) The Australian Consumer Law ("ACL") may give you certain consumer guarantees (if you are defined as a consumer in section 3 of the ACL), which cannot be restricted, limited or varied.
- (b) You expressly agree that use of the Goods and Services is at your risk. To the full extent allowed by law, our liability for breach of any term implied into these terms of trade by any law is excluded.
- (c) All information, specifications and samples provided by us in relation to the Goods or Services are approximations only and, subject to any consumer guarantees under the ACL, small deviations or slight variations from them which do not substantially affect your use of the Goods or Services will not entitle you to reject the Goods upon delivery or to make any claim in respect of them.
- (d) Except as otherwise provided herein or by law, we give no warranty in relation to the Services provided or supplied. Save and except for the express warranty set out herein, to the maximum extent permitted by law, all guarantees, conditions and warranties which may at any time be implied by the common law, the Australian Consumer Law, the Fair Trading Act, the Goods Act or any other State or Federal Act or legislation are excluded. To the extent that these cannot be excluded and where the law permits, our liability in respect of any such condition or warranty shall be limited to our option to the repair or replacement of the Goods or the supply of equivalent Goods or the payment of the costs of replacing or repairing the Goods or having them replaced or repaired.
- (e) Under no circumstances are we or any of our suppliers liable or responsible in any way to you or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services except as otherwise provided in these terms. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
- any Goods or Services supplied to you;
 - any delay in supply of the Goods or Services; or
 - any failure to supply the Goods or Services.
- (f) Any advice, recommendation, information, assistance or service given by us in relation to Goods or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. We do not accept any liability or responsibility for any Loss suffered as a result of your reliance on such advice, recommendation, information, assistance or service.
- (g) To the fullest extent permissible at law, we are not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on terms of trade, negligence, strict liability or otherwise, even if We has been advised of the possibility of damages.

13. INTELLECTUAL PROPERTY RIGHTS

- (a) You warrant that you own all Intellectual Property Rights pertaining to any Order for Goods or Services or have a licence to authorise us to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by you to us for the purposes of the Order. Further, you indemnify and agree to keep us indemnified against all losses incurred by us in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by you.
- (b) Unless specifically agreed in writing between you and us, all Intellectual Property Rights in any works created by us on behalf of you vest in us and remain our property.
- (c) Subject to payment of all invoices due in respect of the Goods or Services, we grant you a perpetual, non-exclusive licence to use the works created or produced by us in connection with the provision of Goods or Services under these terms of trade for the purposes contemplated by the Order.

14. DEFAULT AND TERMINATION

- (a) Each of the following occurrences constitutes an event of default:
- you breach or are alleged to have breached these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fail to remedy that breach within 14 days of being given notice by us to do so, you being a corporation, cease or threaten to cease conducting your business or are subject to:
 - a winding up application or an Order made against you or a meeting being called to consider a resolution for you to be wound up, deregistered or dissolved;
 - a receiver, receiver and manager or administrator being appointed under part 5.3A of the Corporations Act 2001 to all or any part of your property or undertaking;
 - your entering into a scheme of arrangement (other than for the purpose of restructuring);
 - any assignment by you for the benefit of creditors;
 - any purported assignment by you of your rights under these terms of trade without our prior written consent;
 - In the event of any default, except where payment in full has been received by us, we may:
 - terminate these terms of trade;
 - terminate any or all Orders and credit arrangements (if any) with you;
 - refuse to deliver Goods or provide further services;
 - possess and resell any Goods delivered to you, the payment for which has not been received; or
 - retain (where applicable) all money paid on account of Goods or services or otherwise.
 - In addition to any action permitted to be taken by us under this clause, on the occurrence of an event of default all invoices will become immediately due and payable.

15. INDEMNITY

- (a) You indemnify and keep us, our servants and agents indemnified in respect of any claim or demand made or action commenced by any person (including, but not limited to, you) against us or, for which we are liable, in connection with any Loss arising from:
- a breach of these terms and conditions, including any ancillary agreement between us;
 - any breach of our Intellectual Property rights,

- any breach of confidentiality, or
 - any unlawful or negligent act or omission by you, your officers, employees, agents or contractors incidental to the provision of the Goods or Services.
- (b) This provision remains in force after the termination of these terms of trade.

16. FORCE MAJEURE

- (a) If circumstances beyond our control prevent or hinder its provision of the Goods or Services, we are free from any obligation to provide the Goods or Services while those circumstances continue. We may elect to terminate our agreements or keep an agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond our control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, epidemic or pandemic, fire, war, acts of God, government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

17. AGENCY AND ASSIGNMENT

- (a) You agree that we may at any time appoint or engage an agent to perform an obligation of ours arising out of or pursuant to these terms of trade.
- (b) We have the right to assign and transfer to any person all or any of our title, estate, interest, benefit, rights, duties and obligations arising in, under or from these terms of trade provided that the assignee agrees to assume any duties and obligations of us owed to you under these terms of trade.
- (c) You are not to assign, or purport to assign, any of your obligations or rights under these terms of trade without our prior written consent.

18. DISPUTE RESOLUTION

- (a) If a dispute arises between you and us, the following procedure applies:
- A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
 - A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this clause.
 - A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this clause.
- (b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 14 Business Days (or other period as agreed).
- (c) Any dispute that cannot be settled by negotiation between the parties or their representatives, may be referred to a reputable mediator for mediation.
- (d) Despite the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms of trade.
- (e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

19. MISCELLANEOUS

- (a) These terms of trade are governed by the laws of Victoria and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state or territory.
- (b) These terms of trade and any Quotations and written variations agreed to in writing by us represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these terms of trade, you have not relied on any warranty, representation or statement, whether oral or written, made by us or any of our employees or agents relating to or in connection with the subject matter of these terms of trade.
- (e) If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quotation (or as varied pursuant to this clause) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quotation; or sent by email to the email address of the addressee specified in the relevant Quotation with acknowledgement of delivery.
- (h) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting, or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (i) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.

20. INTERPRETATIONS

- In these terms of trade, unless the context otherwise requires:
- a reference to writing includes email and other communication established through We's website (if any);
 - the singular includes the plural and vice versa;
 - a reference to a clause or paragraph is a reference to a clause or paragraph of these terms of trade;
 - a reference to a party to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
 - where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
 - headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and
 - if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day;
 - in all other cases, must be done on the next Business Day; andand these terms of trade are not to be interpreted against the interests of a party merely because that party proposed them or some provision in them or because that party relies on a provision of these terms to protect itself.