

# Terms and conditions Australia.

# Terms of trade

## 1. Definitions and interpretation

### 1.1 Definitions

**Additional Charge** means:

- (a) fees or charges for additional work performed at the Purchaser's request or reasonably required as a result of the Purchaser's conduct, calculated in accordance with the Supplier's then current prices; and
- (b) expenses incurred by the Supplier, at the Purchaser's request or reasonably required as a result of the Purchaser's 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 provided.

**Contract** means an Order which is accepted by the Supplier, by the earlier of the Supplier:

- (a) providing to the Purchaser an Order Confirmation; or
- (b) delivering the goods or providing the Services to the Purchaser.

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

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

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

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

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

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

**PPSA** means:

- (a) the Personal Property Security Act 2009 (Cth) (PPS Act) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPSA.

**Purchaser** means the person identified on a Quotation, Order or Order Confirmation as the Purchaser and includes the Purchaser's agents and permitted assigns.

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

**Services** means the services to be provided by the Supplier to the Purchaser in accordance with an Order Confirmation and these terms of trade.

**Supplier** means Sanwa Pty Limited ACN 000 904 987 and the entity specified as the supplier of Goods or Services on the Order Confirmation and includes the Supplier's agents and permitted assigns.

### 1.2 Interpretation

In these terms of trade, unless the context otherwise requires:

- (a) a reference to writing includes email, short messaging services (SMS) or instant messaging (IM) and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these terms of trade;
- (d) 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;

- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and
- (g) 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:
  - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
  - (ii) in all other cases, must be done on the next Business Day.

## 2. General

- (a) These terms of trade apply to all transactions between the Purchaser and the Supplier 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 the Purchaser or elsewhere.
- (b) 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.
- (c) The Supplier's Order Confirmation supersedes any relevant prior detail in dealings between the parties.

## 3. Binding terms and conditions

- (a) The Purchaser by placing an Order with the Supplier will be deemed to have accepted these terms of trade.
- (b) An Order is not binding on the Supplier until the Supplier has provided to the Purchaser an Order Confirmation.
- (c) The only terms which are binding on the Supplier are:
  - (i) those set out in these terms of trade and the Order Confirmation;
  - (ii) those if any, which are imposed by law which cannot be excluded; and
  - (iii) such further terms as may be agreed to in writing by the Supplier.
- (d) Any additional terms sought to be imposed by the Purchaser (whether part of the Order or otherwise) are not part of this Contract or otherwise binding on the Supplier unless specifically agreed to in writing by the Supplier.
- (e) The acceptance of goods delivered by the Supplier referring to these terms of trade shall be deemed to be the acceptance of these terms of trade (if not previously accepted by the Purchaser such as for example in 3(a) above).

## 4. Quotation

- (a) The Supplier may provide the Purchaser with a Quotation.
- (b) Any such Quotation is an invitation to treat only and does not constitute a contractual offer.
- (c) Following provision of a Quote to the Purchaser, the Supplier is not obliged to supply any Goods until the provision by the Supplier of an Order Confirmation.
- (d) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Competition and Consumer Act 2010 (Cth) (Australian Consumer Law), this estimate is not binding upon the Supplier.

## 5. Orders

- (a) Orders must be signed by a person purporting to have authority on behalf of the Purchaser and on the Purchaser's letterhead or contain the Purchaser's email signature. The Supplier is entitled to assume that this person has all necessary authority on behalf of the Purchaser to place such orders.
- (b) The Purchaser acknowledges that its acceptance of these terms of trade was a condition of the Supplier entering into each Contract with the Purchaser and agreeing to supply Goods or Services to the Purchaser.

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

## 6. Invoicing and payment

- (a) The amount payable by the Purchaser will be the amount set out in the invoice. This will be calculated as:
  - (i) the amount for the Goods or Services (or both) as set out in the Order Confirmation and any Additional Charges, or
  - (ii) where no Order Confirmation has been provided by the Supplier, the Supplier's usual charges for the goods or services (or both) as described in the Order.
- (b) The Purchaser must pay an invoice issued by the Supplier to the Supplier within the time prescribed in the Order Confirmation or if no time is prescribed within 30 days of a valid tax invoice being issued to the Purchaser.
- (c) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (d) The Supplier may in its complete discretion apply any payment received from the Purchaser to any amount owing by the Purchaser to the Supplier.
- (e) The Purchaser is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier 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 the Purchaser's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- (f) The Purchaser is to pay the Supplier on demand interest at the rate of 4% per year above the National Australia Bank Limited, Business Lending Base Rate (as current from time to time) on all overdue amounts owed by the Purchaser to the Supplier, calculated daily.
- (g) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Purchaser as a debt due and payable under these terms of trade.
- (h) The Purchaser and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

## 7. Additional Charges

The imposition of Additional Charges may also occur as a result of:

- (a) cancellation by the Purchaser of an Order where cancellation results in Loss to the Supplier;
- (b) additional storage costs for Goods not collected from the Supplier within the timeframe specified in the Order Confirmation;
- (c) packing or handling charges not included in the Order Confirmation;
- (d) Government or council duties taxes or charges not included in the Order Confirmation; or
- (e) any additional work required by the Purchaser or any other occurrence which causes the Supplier to incur additional costs to fulfil the Purchaser's Order additional to the cost quoted in the Order Confirmation which were not anticipated at the time the Order Confirmation was issued.

## 8. Acceptance of Goods

If the Purchaser fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Purchaser's Order within 30 days of delivery, the Purchaser is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Purchaser's Order. Nothing in this paragraph affects the Purchaser's rights for any alleged failure of a guarantee under the Australian Consumer Law.

## 9. Title and risk

- (a) Risk in Goods passes to the Purchaser in accordance with the terms of the Order Confirmation.
- (b) Property and title in Goods supplied to the Purchaser under these terms of trade does not pass to the Purchaser until all money (including money owing in respect of other transactions between the Supplier and the Purchaser) due and payable to the Supplier by the Purchaser have been fully paid.
- (c) Where Goods are supplied by the Supplier to the Purchaser without payment in full, the Purchaser:
  - (i) is a bailee of the Goods until property in them passes to the Purchaser;
  - (ii) irrevocably appoints the Supplier to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
  - (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier, Goods supplied by the Supplier from other goods which are held by the Purchaser;
  - (iv) must not allow any person to have or acquire any security interest in the Goods;
  - (v) agrees that the Supplier may repossess the Goods if payment is not immediately made (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and
  - (vi) the Purchaser grants an irrevocable licence to the Supplier or its agent to enter the Purchaser's premises in order to recover possession of Goods pursuant to this paragraph. The Purchaser indemnifies the Supplier for any damage to property or personal injury which occurs as a result of the Supplier entering the Purchaser's premises.
- (d) Where Goods are supplied by the Supplier to the Purchaser without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and:
  - (i) the Purchaser makes a new object from the Goods, whether finished or not;
  - (ii) the Purchaser mixes the Goods with other goods; or
  - (iii) the Goods become part of other goods (New Goods),

the Purchaser agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Purchaser will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these terms of trade or any other contract have been made. The Supplier may require the Purchaser to store the New Goods in a manner that clearly shows the ownership of the Supplier.

- (e) For the avoidance of doubt, under paragraph 9(d), the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Despite paragraph 9(c), the Purchaser may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business. This is provided that:
  - (i) where the Purchaser is paid by a third party in respect of Goods including New Goods, the Purchaser holds the whole of the proceeds of sale, less any GST, on trust for the Supplier in a separate account, until all amounts owned by the Purchaser to the Supplier have been paid; or
  - (ii) where the Purchaser is not paid by a third party, the Purchaser agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Purchaser notice in writing to that effect and for the purpose of giving effect to that assignment the Purchaser irrevocably appoints the Supplier as its attorney.
- (g) Where Goods are supplied by the Supplier to the Purchaser without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Purchaser acknowledges that the Supplier has a right to register and perfect a personal property security interest.
- (h) If:
  - (i) a PPSA law applies or commences to apply to these terms of trade or any transaction contemplated by them, or the Supplier determines (based on legal advice) that this is the case; and
  - (ii) in the Supplier's opinion, the PPSA law:
    - (A) does or will adversely affect the Supplier's security position or obligations; or
    - (B) enables or would enable the Supplier's security position to be improved without adversely affecting the Purchaser, the Supplier may give notice to the Purchaser requiring the Purchaser to do anything (including amending these terms of trade or execute any new terms and conditions) that in the Supplier's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph 9(h)(ii)(A) or improve the security position as contemplated in paragraph 9(h)(ii)(B). The Purchaser 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 the Supplier's opinion the Supplier's security position or obligations under or in connection with these terms of trade have been or will be materially adversely affected, the Supplier may by further notice to the Purchaser cancel these terms of trade. If this occurs, the Purchaser must pay to the Supplier any money owed to the Supplier by the Purchaser immediately.
- (i) As security for payment to the Supplier of all monies payable by the Purchaser and for the Purchaser's obligations generally under any credit terms, and these terms of trade, the Purchaser charges in favour of the Supplier the whole of the Purchaser's undertaking, property and assets (including without limitation or with the Purchaser's interest, both legal and beneficial, in freehold and leasehold land and personal property) both current and later acquired.
- (j) The Purchaser acknowledges and agrees that:
  - (i) the Supplier is a secured party in relation to the goods and any proceeds of the Goods, and may register its interest on the register established under the PPSA as a security interest

or a purchase money security interest, at the discretion of the Supplier;

- (ii) the Supplier may, by notice to the Purchaser, require the Purchaser to take all steps that the Supplier considers necessary or desirable to ensure its security interest in the goods is enforceable and to perfect or better secure the position of the Supplier under these terms of trade as a first ranking security;
- (iii) the Purchaser comply with a notice from the Supplier under this provision at the cost of the Purchaser;
- (iv) the Purchaser must promptly inform the Supplier of any change to information that it provides to the Supplier under this provision;
- (v) the Supplier is not required to give any notice or provide reports of any documents under the PPSA (including notice of a verification statement) unless the notice is required by law and cannot be excluded; and
- (vi) the Purchaser waives its rights pursuant to section 95, 118, 121, 129, 130, 132(3)(d), 132(4), 135, 137(2), 142, 143 and 157 of the PPSA and those sections will not apply to the enforcement of any security interest given by the Purchaser to the Supplier;
- (vii) a term used in *italics* in this provision has the same meaning as in the PPSA.
- (k) All payments received by the Supplier from the Purchaser will be applied in accordance with section 14(6)(c) of the PPSA, or in any other manner as the Supplier sees fit.
- (l) The Supplier may, at the Purchaser's request or otherwise, account payments as having been applied towards specific invoices, however, unless the Supplier expressly states in writing to the contrary, any such application is for accounting purposes only and the actual application is to be in accordance with section 14(6)(c) of the PPSA.
- (m) A certificate signed by any manager or officer of the Supplier stating that any amount is the amount owed by the Purchaser to the Supplier shall be conclusive evidence of the truth of its contents and binding upon the Purchaser unless there is a manifest error on the face of the certificate. If in any circumstances the preceding provisions of this clause shall be ineffective at law, the certificate shall be prima facie evidence of the matters contained therein.
- (n) If it is necessary to determine at any point in time whether any Goods supplied to the Purchaser have or have not been paid for by the Purchaser, the onus will be on the Purchaser to establish and prove that payment has been made for the Goods. If the Purchaser is unable to establish that the Goods supplied by the Supplier have been paid for, the Supplier and the Purchaser agree and acknowledge that such Goods have not been paid for.
- (o) If the Purchaser takes no steps to take delivery of the Goods within 14 days, or where delivery is restricted because the available trade credit limit is not sufficient to cover the anticipated future delivery and additional security or prepayment has not been offered and this continues for 14 days or more following the first day of possible delivery had adequate trade credit been available, then Sanwa may at its option and without notice resell those Goods. The Purchaser must pay to Sanwa any difference between the original sale price of the Goods and the resale price of the Goods.

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

Unless otherwise specified or agreed in writing by the Supplier, any agreements concerning the sale or delivery of Goods from, or to, outside of Australia shall incorporate Incoterms and the Purchaser acknowledges and agrees that, despite any other paragraph to the contrary in these terms of trade:

- (a) delivery of the Goods will be deemed to have occurred immediately when the Supplier has fulfilled its obligations as to delivery pursuant to Incoterms;

- (b) the risk of loss or damage to Goods shall pass to the Purchaser in accordance with Incoterms;
- (c) the Supplier will not and will not be responsible for obtaining any insurance in respect of a Contract and any Goods the subject of such Contract unless required to do so pursuant to Incoterms or otherwise as expressly agreed in writing by the Supplier;
- (d) in the event of any inconsistency between these terms of trade and Incoterms then these terms of trade shall prevail.

## 11. Intellectual Property Rights

- (a) The Purchaser warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise the Supplier to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Purchaser to the Supplier for the purposes of the Order. Further, the Purchaser indemnifies and agrees to keep indemnified the Supplier against all Losses incurred by the Supplier 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 the Purchaser.
- (b) Unless specifically agreed in writing between the Supplier and the Purchaser, all Intellectual Property Rights in any works created by the Supplier on behalf of the Purchaser vest in and remain the property of the Supplier.
- (c) Subject to payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Purchaser a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods or Services under these terms of trade for the purposes contemplated by the Order.

## 12. Agency and assignment

- (a) The Purchaser agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these terms of trade.
- (b) The Supplier has the right to assign and transfer to any person all or any of its 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 the Supplier owed to the Purchaser under these terms of trade.

## 13. Default and Termination

- (a) Each of the following occurrences constitutes an event of default:
  - (i) the Purchaser breaches or is 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);
  - (ii) the Purchaser, being a natural person, commits an act of bankruptcy;
  - (iii) the Purchaser, being a corporation, is subject to:
    - A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Purchaser to be wound up, deregistered or dissolved;
    - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Purchaser's property and undertaking;
    - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring); and
    - (D) any assignment for the benefit of creditors;
  - (iv) the Purchaser purports to assign its rights under these terms of trade without the Supplier's prior written consent; or
  - (v) the Purchaser ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, the Supplier may:
  - (i) terminate these terms of trade;
  - (ii) terminate any or all Orders and credit arrangements (if any) with the Purchaser;
  - (iii) refuse to deliver Goods or provide further Services;

- (iv) pursuant to clause 9(c), repossess and re-sell any Goods delivered to the Purchaser, the payment for which has not been received; or
- (v) retain (where applicable) all money paid by the Purchaser on account of Goods or Services or otherwise.
- (c) In addition to any action permitted to be taken by the Supplier under clause 13(b), on the occurrence of an event of default all invoices will become immediately due and payable.

## 14. Exclusions and limitation of liability

- (a) The Purchaser expressly agrees that use of the Goods and Services is at the Purchaser's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these terms of trade by any law is excluded.
- (b) All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Purchaser's use of the Goods or Services will not entitle the Purchaser to reject the Goods upon delivery, or to make any claim in respect of them.
- (c) The Supplier gives no warranty in relation to the Good or Services provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Purchaser 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. 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:
  - (i) any Goods or Services supplied to the Purchaser;
  - (ii) any delay in supply of the Goods or Services; or
  - (iii) any failure to supply the Goods or Services.
- (d) Any advice, recommendation, information, assistance or service given by the Supplier 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 of accuracy, appropriateness or reliability.
- (e) The Purchaser warrants that it has not relied on any such advice, recommendation, information, assistance or service made by or on behalf of the Supplier other than as expressly set out in these terms of trade and the Order Confirmation.
- (f) The only conditions and warranties which are binding on the Supplier in relation to:
  - (i) the state, quality or condition of the Goods; or
  - (ii) advice recommendations, information or services supplied by its employees, servants or agents to the Purchaser regarding the goods their use and application; are those imposed and required to be binding by Australian Consumer Law that cannot be waived.
- (g) To the extent permitted by law, the liability (if any) of the Supplier arising from the breach of the conditions or warranties referred to in this clause is, at the election of the Supplier, limited to and completely discharged:
  - (i) in the case of the supply of Goods, by either:
    - (A) the supply by the Supplier of the equivalent Goods; or
    - (B) the replacement by the Supplier of the Goods supplied to the Purchaser; and
  - (ii) in the case of advice, recommendations, information or services, by supplying the advice, recommendations, information or services again.



- (h) To the fullest extent permissible at law, the Supplier is 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 the Supplier has been advised of the possibility of damages.
- (i) The Purchaser acknowledges that the Goods or Services are not for personal, domestic or household purposes.

## 15. Indemnity

- (a) The Purchaser indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Purchaser) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these terms of trade.
- (b) This includes, but is not limited to, any legal costs incurred by the Supplier in relation to meeting any claim or demand or any legal costs for which the Supplier is liable in connection with any such claim or demand (including arbitration, mediation, compromise, out of court settlement or appeal).
- (c) This provision remains in force after the termination of these terms of trade.

## 16. Force majeure

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

## 17. Dispute resolution

- (a) If a dispute arises between the Purchaser and the Supplier, 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 paragraph.
  - 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 paragraph.
- (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 days (or other period as agreed). (c) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian

Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation (the Guidelines) which operate at the time the matter is referred to ACDC.

- (d) The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these terms of trade. This paragraph survives termination of these terms of trade.
- (e) Notwithstanding 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.
- (f) 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.

## 18. Miscellaneous

- (a) These terms of trade are governed by and interpreted in accordance with the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.
- (b) These terms of trade and any Order Confirmation and written variations agreed to in writing by the Supplier 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, the Purchaser has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these terms of trade.
- (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 the Order and Order Confirmation (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Order and Order Confirmation; sent by fax to the fax number of the addressee specified in the relevant Order and Order Confirmation, with acknowledgment of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee specified in the relevant Order and Order Confirmation with acknowledgement of delivery.
- (h) A notice or other communication is taken to have been given (unless otherwise proven) if mailed, on the second Business Day after posting; or if sent by 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.