

## TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SERVICES

### 1. DEFINITIONS

Except where expressly indicated otherwise, the terms below have the following meaning in the context of these Terms and Conditions:

#### **Agreement**

The agreement for the provision of Goods and/or Services by the Seller to the Customer comprising of each Quotation, these Terms, the relevant Purchase Order accepted by the Seller and any other contractual document between the Customer and the Seller.

#### **Confidential Information**

Any information provided by a party to the other which is, or can be inferred to be, provided in commercial confidence or of a confidential nature, whether or not expressly marked "Confidential", including any information relating to the commercial activities, technologies, business processes, client relationships, strategic information, know-how and any other information regarding the business of that party which is not already in the public domain.

#### **Customer**

The person or entity who buys Goods and/or Services from the Seller as identified in the Quotation or any other contractual document between the Customer and the Seller.

#### **Customer Materials**

Any documents or materials, including specifications, which are provided by the Customer to the Seller.

#### **Delivery**

The time when delivery of the Goods to the Customer is taken to occur pursuant to clause 7.4 (Delivery).

#### **Delivery Place**

The place where the Goods will be delivered to as described in the Quotation or Purchase Order.

#### **Dispute**

Any dispute arising under or in connection with these Terms or the provision of Goods and Services under the Agreement.

#### **Dispute Notice**

A notice of Dispute given by a party to the other pursuant to clause 20.2 (Dispute).

#### **Force Majeure Event**

Any of the events referred to in clause 18.1 (Force Majeure).

#### **Goods**

The Goods in the applicable quantity to be provided to the Customer by the Seller as described in the Quotation and requested in the Purchase Order.

#### **Intellectual Property Rights**

Any intellectual and industrial property rights or entitlements throughout the world including those in connection with any confidential information, copyright (including rights analogous to copyright), moral rights, inventions (including patents), trademarks and designs, whether now existing, future, registered or registrable, as well as any right to apply for the registration, renewal and extension of those rights.

#### **Loss**

All actions, claims, costs (including legal costs on an indemnity basis), damages, expenses, interest, liabilities and losses (including any special, indirect, incidental, exemplary or consequential damages or losses of any kind such as loss of profit, loss of goodwill, loss of savings, loss of inventory, cost of capital, loss of revenue or loss of business opportunity).

### **Materials**

Any presentations, designs, drawings, which are created or developed by the Seller in relation to the Goods and Services, whether or not as part of the Services and jointly with the Customer, and includes the Goods, but excludes any Customer materials.

### **Personnel**

Any subcontractor, employee or agent involved or engaged in the performance of a party's obligations under the Agreement.

### **Price**

Any and all fees, rates and prices, including packing and delivery costs, set out in the Quotation as applicable to the Goods and Services requested in a Purchase Order.

### **Purchase Order**

Any document, including purchase orders, or act whereby the Customer accepts to purchase Goods and/or Services from the Seller on the terms of the Quotation, this Agreement or these Terms.

### **Quotation**

The document issued by the Seller setting out the Services and/ or Goods and applicable Price offered to the Customer, and includes any price list.

### **Seller**

Means OEM Group Pty Ltd (ACN 160 693 961) or its related body corporate, as defined in section 9 of the Corporations Act 2001, that is named in the Quotation or any other contractual document between the Customer and the Seller.

### **Services**

The services to be provided to the Customer by the Seller as described in the Quotation and requested in the Purchase Order.

### **Terms**

These Terms and Conditions.

## **2. APPLICABILITY AND COMPLETENESS OF TERMS**

21. These Terms apply to all Goods and Services supplied or to be supplied by the Seller to the Customer.
22. The Customer is deemed to have accepted and becomes bound by these Terms by placing a Purchase Order or otherwise instructing the Seller to provide Goods and/or Services.
23. Unless expressly agreed otherwise by the Seller in writing, these Terms override and supersede any agreement or understanding between the parties and any other documents, including any terms and conditions contained in a Purchase Order.
24. This Agreement, including any attachments, exhibits or other written documents that are explicitly incorporated by reference by the text of this Agreement, constitutes the entire agreement between Customer and Seller regarding the subject matter of this Agreement and may not be modified except in writing signed by a duly authorised employee of Customer and Seller.
25. This Agreement does not confer any rights or benefits upon any third parties and any such rights or benefits are excluded. To avoid doubt, this exclusion applies to rights or benefits of any kind, however arising, including under any form of third party beneficiary law.

### 3. QUOTATION AND PURCHASE ORDERS

- 3.1. A quotation is an offer valid for 30 days, or such other period as stated in the Quotation.
- 3.2. Purchase Orders are subject to approval of the Seller's credit department. The Seller may at any time alter or suspend credit, refuse shipment or cancel unfilled Purchase Orders, when in the Seller's opinion, the Customer is not creditworthy.
- 3.3. Changes to or cancellations of Purchase Orders will not be effective unless accepted in writing by the Seller. The Customer is liable for any costs, expenses and liabilities incurred by the Seller in connection with any change to or cancellation of a Purchase Order by the Customer.

### 4. AGREEMENT

Notwithstanding the applicability of these Terms to the Customer pursuant to clause 2.2 (Applicability and Completeness of Terms) above, no agreement arises from, and the Seller has no obligation to provide Goods and Services to the Customer under a Quotation or Purchase Order unless and until the Seller expressly approves the Purchase Order pursuant to clause 3.2 (Quotation and Purchase Orders).

### 5. PERFORMANCE OF SERVICES

- 5.1. The Seller or its Personnel will provide the Services to the Customer in accordance with the Agreement and with due care and skill.
- 5.2. The Customer will provide such assistance and information to the Seller as reasonably required by the Seller from time to time to assist in the provision of the Goods and Services.
- 5.3. If the Seller fails to provide any Services, such as installation, maintenance or training, on any estimated date, the Seller will provide the Services within a reasonable time.
- 5.4. Where the Seller is to provide Services or any part of it at Customer's premises, the Customer must:
  - (a) provide proper and safe access to and at the place where the Services are to be provided;
  - (b) ensure the premises are clean, safe and properly prepared for the provision of Services; and
  - (c) comply with any occupational, health and safety laws.
- 5.5. The Seller may decide not to provide or suspend the Services at any time if the conditions are, in the Seller's opinion, not work safe.
- 5.6. While on the other party's premises, a party must comply, and require its Personnel to comply, with the other party's policies, procedures and other site instructions.
- 5.7. The Customer indemnifies the Seller against any Loss caused to the Seller and its Personnel, or their equipment, within the Seller's premises, except to the extent where the Loss was caused or contributed to by an act or omission of the Seller.

### 6. GOODS AND SPECIFICATIONS

- 6.1. It is the responsibility of the Customer to determine whether the Goods are consistent with and suitable for their intended purpose and use.
- 6.2. Although the Seller takes all reasonable steps to ensure that descriptions, specifications, drawings and other information regarding the Goods in catalogues and other promotional materials are correct and accurate, that information does not constitute representations or warranties by the Seller in respect of the Goods, and the Seller is not liable for any such error.

## 7. DELIVERY

- 7.1. Unless expressly stated otherwise, delivery dates set out in a Quotation or otherwise agreed in writing between the parties are calculated from the date of the Purchase Order as an estimate only. Although the Seller will use commercially reasonable efforts to keep the delivery date stated or agreed:
- (a) the Customer will take delivery of the Goods whenever they are tendered for Delivery;
  - (b) late delivery does not entitle the Customer to cancel a Purchase Order or any part of it; and
  - (c) the Seller will not be liable for any Loss resulting from a change of the delivery date(s) or late delivery.
- 7.2. Delivery is subject to confirmation by the Seller on receipt of Purchase Order.
- 7.3. The Seller determines the route and manner of delivery of the Goods.
- 7.4. Delivery of the Goods will occur at the Delivery Place, and Goods are taken to have been delivered at the time when:
- (a) In the case of collection by the Customer, when the Customer or Customer's carrier takes possession of the Goods; or
  - (b) In the case of delivery by the Seller, when the Goods are delivered to the Delivery Place, even if the premises are unattended by the Customer at the time of delivery.
- The Seller may render its invoice for the Goods when the Goods are ready for collection or earlier if otherwise agreed.
- 7.5. The Seller may deliver the Goods in instalments. Each instalment will be invoiced upon Delivery.
- 7.6. The Seller's delivery records will be prima facie proof of Delivery of the Goods to the Customer.
- 7.7. The Customer will inspect the Goods upon Delivery and notify the Seller within three (3) days of Delivery if the Customer alleges a defect or short delivery. Upon such notification, the Customer will allow the Seller to inspect the Goods.
- 7.8. Goods compliant with the applicable specifications are deemed fit for their purpose and accepted by the Customer upon Delivery.
- 7.9. If the Customer is unable to take Delivery for any reason within [30] days, the Seller will be entitled to charge a reasonable fee for the storage, insurance and redelivery of the Goods equal to \$[15 ] plus GST per day.
- 7.10. The provisions of the Disposal of Uncollected Goods Act 1970 and all regulations made under that Act are excluded from the provisions of and application to this Agreement. If goods delivered to the Seller for servicing remain uncollected after [90] days the Seller may dispose of the goods and retain the proceeds from the sale of the goods or charge a storage fee of \$[15] plus GST per day.

## 8. PASSING OF RISK AND TITLE

- 8.1. Risk of damage to and loss of the Goods passes to the Customer on Delivery. It is the responsibility of the Customer to insure the Goods on and from Delivery.
- 8.2. Title to the Goods passes to the Customer only if and when the Customer has paid the Seller all amounts owing to the Seller. Where Goods are delivered by instalments, title does not pass in any Goods until payment has been made to the Seller for all the Goods delivered under the relevant Purchase Order.

- 8.3. Until title passes to the Customer, the Customer:
- (a) is a bailee of the Goods;
  - (b) will not remove or change the manner in which the Goods have been labelled by the Seller;
  - (c) will store the Goods separately, and mark them clearly as the property of the Seller;
  - (d) holds the benefit of any insurance of the Goods on trust for the Seller and in the event the Goods are lost, damaged or destroyed, will pay the proceeds of such insurance to the Seller up to any outstanding amount owed by the Customer under the Agreement;
  - (e) will not sell, dispose or otherwise part with possession of the Goods;
  - (f) irrevocably authorises the Seller to enter any premises where the Goods are kept to inspect and/or recover possession of the Goods; and
  - (g) will not encumber or grant any interest in the Goods, by means of security or otherwise, in breach of this clause 8.3 and clause 11 (Personal Property Securities Act).
- 8.4. Subject to prior written consent of the Seller, the Customer may sell the Goods before title passes to the Customer, in which case any proceeds resulting from such sale will be held by the Customer in a separate account on trust for the Seller until any outstanding amount owed by the Customer under this Agreement has been fully paid to the Seller.
- 8.5. In the event of a default by the Customer, the Seller may without limiting any other rights of the Seller, demand the immediate return of the Goods to the Seller at the Customer's expense.

## 9. PRICE AND TAXES

- 9.1. In consideration for the provision of the Goods and/or Services under the Agreement, the Seller will invoice the Customer for the Price, which the Customer must pay.
- 9.2. At the Seller's discretion, a deposit of part or all of the Price may be required from the Customer before provision of Goods and/or Services commences. If a deposit is requested by the Seller, the amount of the deposit will become immediately due and payable by the Customer.
- 9.3. The Seller reserves the right to vary the Price if:
- (a) the Customer requests, and the parties agree to, any variation to the Goods and Services;
  - (b) the cost to the Seller is increased due to a request by the Customer that the Goods and/or Services be provided outside normal working hours or delivered to an address other than that originally specified by the Customer;
  - (c) in respect of imported goods, the XE.com exchange rate used in the Quotation shifts by more than 2.5% between the date of the Quotation and the date of the applicable invoice; and/or
  - (d) any additional charges, fees or taxes apply to the Goods and Services at Delivery.
- 9.4. Where special packing is required to deliver the Goods, it will be charged to the Customer. Some packing material is charged with a deposit, which is refundable on return of this material to the applicable supplier.
- 9.5. Unless otherwise stated in the Quotation, Prices are exclusive of GST. If a supply under the Agreement is a taxable supply, the Customer must pay the applicable amount of GST in addition to the Price. This clause is to be interpreted and applied in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

96. Any other tax, fee, levy or duty imposed by any competent authority on any of the Goods or Services supplied by the Seller, including withholding tax and stamp duty, will be to the Customer's account and calculated using the rates and methods of assessment in force at the time of Delivery.

#### 10. PAYMENT

- 10.1. Where the Customer has a credit account with the Seller, each invoice must be paid in full within thirty (30) days of the date of the invoice, or within other agreed written credit terms. In all other cases, payment must be made on or before Delivery. Time for payment is of the essence.
- 10.2. Payment will be deemed made when any form of payment, other than cash, is received by the Seller in cleared funds.
- 10.3. The Customer is not entitled to set-off against, deduct from, or withhold any amounts owed to the Seller under the Agreement.
- 10.4. If Customer fails to pay any amounts in accordance with this clause 10:
- (a) the Seller may, in its discretion and without prejudice to any other remedy it may have, postpone the fulfilment of the relevant, or any other, Purchase Order until payment is made;
  - (b) interest accrues daily on any outstanding amount, compounding monthly, at a rate of two percent (2%) per annum above the cash rate last published by the Reserve Bank of Australia, from the date payment becomes due until the date of payment;
  - (c) any outstanding amount and interest applicable pursuant to this clause 10 become a debt immediately owed and due; and
  - (d) the Customer indemnifies the Seller for any costs, fees or expenses (including legal costs on an indemnity basis) incurred by the Seller as a result of a failure to pay an invoice by the due date and in the recovery of the debt.
- 10.5. The Seller has the right to set-off amounts owing by the Customer to the Seller against amounts owed by any related or associated entity of the Customer.
- 10.6. Payments of the Price made by Mastercard and Visa shall attract an additional [1.5]% surcharge fee on the Price.

#### 11. PERSONAL PROPERTY SECURITIES ACT

- 11.1. This clause applies only to the extent that these Terms provide for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA"), as amended.
- 11.2. The Seller may register any actual or impending security interest in any manner it considers appropriate.
- 11.3. The Customer must do anything (such as obtaining consents and signing documents) which the Seller requires for the purposes of:
- (a) Ensuring that the Seller's security interest is registered, enforceable, perfected and otherwise effective under the PPSA;
  - (b) Enabling the Seller to gain first priority (or any other priority agreed to by the Seller in writing) for its security interest; and
  - (c) Enabling the Seller to exercise rights in connection with the security interest.
- 11.4. The Seller may recover from the Customer the cost of doing anything under this clause, including but not limited to registration fees.

- 11.5. The rights of the Seller under these Terms are in addition to and not in substitution for the Seller's rights under other law (including the PPSA) and the Seller may choose whether to exercise rights under these Terms, and/or under any other law, as it sees fit.
- 11.6. To the extent that Chapter 4 of the PPSA applies to the security interest under these Terms, the following provisions of the PPSA do not apply and, for the purposes of section 115 of the PPSA are contracted out of these Terms in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the Seller to give notice to the Customer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 129(2) and 129(3); section 130 (notice of disposal to the extent it requires the Seller to give notice to the Customer); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 11.7. The following provisions of the PPSA confer rights on the Seller: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral). The Customer agrees that in addition to those rights, the Seller shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that the Seller may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 11.8. The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPSA.
- 11.9. The Seller shall have the right to apply payments received from the Customer as it sees fit and in such order and amounts as the Seller, in its sole discretion, may elect. The provisions of this clause shall apply irrespective of the Customer's designation of such payments and any prior application of payments made by the Seller and / or the Customer.

## 12. INTELLECTUAL PROPERTY

- 12.1. The Seller acknowledges that nothing in these Terms or the Agreement transfers any ownership in any Customer Materials to the Seller.
- 12.2. The Customer acknowledges that: all Intellectual Property Rights in the Seller Materials vest automatically in the Seller; the Seller owns all Intellectual Property Rights in the Seller Materials; and nothing in this Agreement transfers any ownership in Seller Materials to the Customer.
- 12.3. To the extent specifications or other information provided by the Customer are embedded into Seller Materials, the Customer grants the Seller a perpetual, royalty-free and irrevocable licence to use that part of the Customer Materials and waives, and will procure that its relevant Personnel waive, any moral rights (including attribution of authorship and integrity).

## 13. PRIVACY

- 13.1. The Seller will comply with the Australian Privacy Principles in all dealings with the Customer.
- 13.2. The Seller may obtain from and exchange with a credit reporting body information of the Customer, which may include personal and credit information (such as name, address, date of birth, credit applications and history) to assess the Customer's creditworthiness and ensuring compliance with the Agreement.

- 13.3. The Customer authorises the Seller to use the personal information of the Customer for purposes of direct marketing until such time as the Customer revokes that authorisation by notice to the Seller.
- 13.4. The Customer will have the right to request from the Seller a copy of any personal or credit information that the Seller retains. The Seller will comply with any request to destroy information of the Customer except if retention of that information is required by law or otherwise.

#### 14. CONFIDENTIALITY

- 14.1. Without limiting clause 13 (Privacy), neither party will use or disclose the Confidential Information of the other party other than as expressly permitted in this clause 14.
- 14.2. A party may disclose the Confidential Information of the other party:
  - (a) with the prior written consent of the other party;
  - (b) on a need to know basis to its Personnel for the performance of this Agreement; or
  - (c) as required by law, a court order or any stock exchange, provided the other party is given notice and opportunity to prevent the disclosure.
- 14.3. A party disclosing Confidential Information to its Personnel must ensure the recipient is made aware of the nature of that information and agrees to abide by the terms of this clause.
- 14.4. Each party will protect and appropriately secure the Confidential Information of the other party in a manner consistent with the first party's methods of protecting its own Confidential Information.
- 14.5. The Confidential Information of a party is the property of that party. A party obtains no right, title, interest or licence in or to the Confidential Information of the other party.

#### 15. WARRANTY

- 15.1. The Seller makes no express warranties under this Agreement.
- 15.2. Subject to clause 16 (Consumer Guarantees), where the Seller is a distributor of Goods which are manufactured by others, the Goods are sold only with such warranties as may be given by their manufacturer.
- 15.3. To the extent that Goods supplied are covered by a manufacturer's warranty, the Seller passes on to the Customer the benefit of the manufacturer's warranty, subject to the manufacturer's terms. The Customer must address issues relating to a manufacturer's warranty with the manufacturer on those terms.
- 15.4. The Customer is responsible for installation and use of the Goods in accordance with manufacturer's instructions as necessary to ensure those warranties will remain valid and applicable.
- 15.5. To the extent permitted by law, all warranties, conditions and guarantees, whether given by the Seller, manufacturer or a third party, and any obligation of the Seller to repair or replace any Goods, are void in respect of any Goods which the Customer tampers with or alters.

#### 16. CONSUMER GUARANTEES

- 16.1. The Competition and Consumer Act 2010 and similar state laws establish consumer guarantees which cannot be excluded. Nothing in this Agreement operates to exclude those guarantees or warranties, but all other warranties, express or implied, are excluded to the maximum extent permitted by



16.2. Except in respect of Goods which are for personal, domestic or household use and the Warranties of Title, Seller's liability for any breach of consumer guarantees or warranties is limited, at Seller's option:

- (a) in case of Goods, to re-supply the Goods, or pay the cost to repair or re-supply the Goods; and
- (b) in case of Services, to re-supply the Services, or pay the cost to re-supply the Services.

## 17. LIMITATION OF LIABILITY

Subject and except to the extent clause 16 (Consumer Guarantees) applies:

- (a) Seller's total aggregate liability for claims relating to the provision of the Services or Goods, whether based on contract, statute, tort (including negligence) or otherwise, will not exceed the amount paid by the Customer for the Services and/or Goods in relation to which liability arose.
- (b) Seller's liability is reduced to the extent that the Customer or its Personnel causes or contributes to the loss or damage.
- (c) Despite any other provision of this Agreement, the Seller will not be liable, in any circumstance, for:
  - (i) any Loss arising from or in connection with any service or advice (including without limitation any technical advice or professional opinions) which may be offered by the Seller or its Personnel to the Customer regarding the supply and/or installation of the Goods and Services; and
  - (ii) any indirect, special, exemplary, incidental, exemplary or consequential loss or damages of any kind, including loss of profit or revenue (whether direct or indirect), loss of business opportunity, loss of savings, loss of inventory.
- (d) Seller accepts no liability for any alterations or modifications made to the Goods by the Customer or a third party after Delivery.

## 18. FORCE MAJEURE

18.1. Despite any other provision of these Terms, if and to the extent Seller's performance of any obligations under the Agreement is prevented or affected due to any act of God, pandemics, strikes, lockouts, trade or workplace relations disputes, fire, breakdown, interruption of transport, governmental action or any other event or cause beyond the Seller's reasonable control, the Seller will be under no liability for non-performance of those obligations or any Loss to the Customer.

18.2. If a Force Majeure Event continues for more than 14 days, the Seller will be entitled, at its option, to terminate the Agreement upon notice to the Customer.

## 19. TERM AND TERMINATION

19.1. The Agreement is formed and becomes effective in accordance with clause 4 (Agreement) and remains so until all Goods and Services have been provided and paid for in full, or until all obligations under the Agreement have been complied with, unless terminated earlier in accordance with this clause 19 (Term and Termination).

19.2. The Seller may terminate the Agreement and cancel performance of Services or delivery of Goods at any time by giving written notice to the Customer. On giving such notice, the Seller will refund to the Customer any amounts paid by the Customer in respect of undelivered Goods or Services.

19.3. Either party may terminate the Agreement:

- (a) for a breach which is not capable of being remedied, immediately upon notice to the other party;

- (b) for a breach which is capable of being remedied and which the other party fails to remedy within 14 days (or such longer period as specified in the termination notice) after notice to do so; or
  - (c) if the other party becomes insolvent, undergoes receivership, administration or liquidation, or if an individual, becomes bankrupt.
- 19.4. Unless the Seller terminates the Agreement under clause 19.2, the Customer will pay the Seller for all Goods and Services which have been provided up to the effective date of termination.
- 19.5. Termination does not affect a party's rights and liabilities accrued up to and including the effective date of termination.
- 19.6. Any indemnity is a continuing obligation, independent from the other obligations of the parties under the Agreement and survives termination of the Agreement. It is not necessary for a party to incur expense or to make payment before enforcing a right of indemnity.
- 19.7. Clauses 7 (Delivery), 8 (Passing of Risk and Title), 10 (Payment), 11 (Personal Property Securities Act), 12 (Intellectual Property), 13 (Privacy), 14 (Confidentiality), 16 (Consumer Guarantees), 17 (Limitation of Liability), and 19.4 to 19.7 (Term and Termination) survive termination of the Agreement.

## 20. DISPUTE RESOLUTION

- 20.1. Each party will use their reasonable endeavours to co-operatively resolve a Dispute.
- 20.2. If a Dispute arises, then either party may give notice to the other party specifying the Dispute, and referring it for resolution under this clause.
- 20.3. Within 10 days after a Dispute Notice is given, each party must nominate in writing to the other party a representative authorised to settle the Dispute on its behalf.
- 20.4. During the 20 day period after a Dispute Notice is given (or such longer period as agreed between the parties), each party's nominee must use best efforts to resolve the Dispute.
- 20.5. Neither party may start legal proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has first complied with this clause, and the Dispute has not been resolved.

## 21. NOTICE

- 21.1. Any notice must be:
- (a) in writing; and
  - (b) left at or sent by post to the other party's address or addresses as specified in the Quotation, or notified by a party to the other from time to time.
- 21.2. A notice may be sent via email to an electronic address notified by the parties.
- 21.3. A notice will be deemed received:
- (a) if delivered by hand to the recipient's address, on the date of delivery;
  - (b) if sent by post within Australia, 3 days after the posting;
  - (c) if sent by post outside Australia, 7 days after posting; and
  - (d) if sent by email on a working day at the recipient's address, on the date of transmission, or if sent on a non-working day at the recipient's address, on the next working day (in both cases as long as the sender's email system records a successful transmission and/or receipt of delivery).

**22. VARIATION**

- 22.1. The Seller may vary these Terms from time to time upon notice to the Customer, and such variations will apply to the Customer, and any Purchase Order or Agreement between the parties, after the date of the notice.
- 22.2. Otherwise, an Agreement may only be varied by agreement in writing signed by both parties.

**23. ASSIGNMENT**

The Customer will not assign, transfer or novate the Agreement, or any of its rights or obligations under the Agreement, without the prior written consent of the Seller.

**24. SUBCONTRACTING**

The Seller may license or subcontract all or any part of its rights and obligations under the Agreement.

**25. NO WAIVER**

A failure or an omission by either party to exercise any of its rights under these Terms or the Agreement is not a waiver of that right.

**26. SEVERANCE**

If any provision of these Terms or the Agreement becomes illegal, invalid or unenforceable, then such provision will be read down or severed as necessary for the other provisions to remain valid and enforceable.

**27. RELATIONSHIP**

Nothing in these Terms or the Agreement is intended to constitute a fiduciary relationship, an agency, a partnership, a franchise or a trust, and no party has authority to bind any other party.

**28. GOVERNING LAW**

These Terms and the Agreement are governed by the laws of the State or Territory in which the Goods and Services are supplied to the Customer, and the parties submit to the exclusive jurisdiction of the courts of that State or Territory and any court hearing appeals from those courts.