

BORDER REFRIGERATION & AIR CONDITIONING TERMS AND CONDITIONS

The Supplier: Jjatsday Services Pty Ltd ACN 615 758 462 trading as Border Refrigeration and Air Conditioning ABN 64 615 758 462
of PO BOX 309, Stanthorpe QLD 4380
(**"the Supplier", "us", "our", "we"**)

1. OVERVIEW

- 1.1 The Supplier has agreed to sell and the Customer has agreed to buy the Goods and Services on the terms and conditions set out in these Border Refrigeration & Air Conditioning Terms and Conditions (**"the Terms and Condition"**).
- 1.2 The Terms and Conditions apply to all contracts of sale, Quotes, Purchase Orders and Tax Invoices entered by the Supplier and supersede and prevail over all terms and conditions which may be contained in any Customer purchase order or in sales confirmation or otherwise provided.

2. DEFINITIONS

- 2.1 **Additional Charge** means:
 - (a) Fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's current prices; and
 - (b) Expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.
- 2.2 **Agreement** means these Terms and Conditions, and any other contract for sale, Quote or Order entered into by the Supplier and the Customer which these Terms and Conditions apply to.
- 2.3 **Background IP** means the Intellectual Property of a party which was in existence prior to the commencement of the Agreement or which is subsequently developed by that party independently of and for purposes unconnected with the Agreement.
- 2.4 **Business Day** means a day that is not a Saturday, Sunday or public holiday in Stanthorpe, Queensland.
- 2.5 **Confidential Information** includes any information marked as confidential and any information received or developed by the Supplier during the term of the Agreement, which is not publicly available and relates to processes, equipment and techniques used by the Company in the course of the Company's business including all information, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and

proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans.

- 2.6 **Consumer Guarantee** means a guarantee applicable to the supply of goods or services which is incorporated into the Agreement, pursuant to division 1 part 3-2 of the Australian Consumer Law.
- 2.7 **Contract IP** means Intellectual Property created by the Supplier in the course of performing its obligations under this proposal, but excludes Background IP.
- 2.8 **Customer** means the person, body, firm, business or company with whom the Supplier enters into a contract for the sale of Goods and includes the Customer's agents and permitted assigns.
- 2.9 **Force Majeure Event** means any occurrence or omission as a direct or indirect result of which the Party relying on it is prevented from or delayed in performing any of its obligations under this Contract and which is beyond the reasonable control of that Party and could not have been prevented or mitigated by reasonable diligence or precautionary measures, including forces of nature, natural disasters, acts of terrorism, riots, revolution, civil commotion, epidemic, industrial action and action or inaction by a government agency but does not include any act or omission of a subcontractor (except to the extent that act or omission is caused by a Force Majeure Event).
- 2.10 **Goods** means any goods supplied by the Supplier including those supplied in the course of providing Services.
- 2.11 **GST** means the goods and services tax payable pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 2.12 **Insurance** means:
- (a) a public liability insurance policy to the value of \$20 million for injury or damage caused to third parties by the Supplier, its employees or contractors during the provision of Services at the Premises; and
 - (b) any other insurance required to be effected by law including worker's compensation insurance as prescribed by law for the Supplier and its employees and contractors.
- 2.13 **Intellectual property** includes trademarks, patents, copyrights, processes know-how, registered designs or other like rights or any right to apply for registration of any of the former.
- 2.14 **Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.
- 2.15 **Loss** includes, but is not limited to, costs (including part to party legal costs and the Supplier's legal costs, expenses, lost profits, award of damages, personal injury and property damage).
- 2.16 **Order** means a purchase order for goods placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.
- 2.17 **Originating Party** means the party who created, developed or holds the Confidential Information.
- 2.18 **Parties** means the Supplier and the Customer, and Party means either one of them.
- 2.19 **PPS Law** means:
- (a) The *Personal Property Securities Act 2009* (Cth) (PPSA) and any regulation made at any time under the PPS Act (each as amended from time to time); and
 - (b) Any amendments made at any time to any other legislation as a consequence of a PPS Law.

- 2.20 **Premises** means the locations in which the Services are to be completed as notified by the Customer in writing.
- 2.21 **Quote** means a description of the Goods to be provided by the Supplier, whether in writing or oral, an estimate of the Supplier's charges for the supply of the Goods and an estimate of the time frame for the delivery of the Goods.
- 2.22 **Services** means the services to be provided by the Supplier as set out in the Quote or otherwise under the Agreement.
- 2.23 **Supplier** means Jjatsday Services Pty Ltd ACN 615 758 462 trading as Border Refrigeration and Air Conditioning ABN 64 615 758 462 and includes the Supplier's agents and permitted assigns.
- 2.24 **Terms and Conditions** means these Border Refrigeration & Air Conditioning Terms and Conditions.

3. INTERPRETATION

3.1 In this document:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document includes any schedules or annexures;
- (d) a reference to a party to this document or any other document or deed includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a document or deed (including a reference to this document) is to that document or deed as amended, supplemented, varied or replaced;
- (g) a reference to this document includes the deed recorded by this document;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (j) a reference to 'month' means calendar month.

3.2 If the day on which any act, matter or thing is to be done under or pursuant to these Terms and Conditions or the Agreement is not a Business Day, that act, matter or thing:

- (a) if it involves a payment other than a payment which is due on demand, must be done on the preceding Business Day; and
- (b) in all other cases, must be done no later than the next Business Day.

4. QUOTE AND PURCHASE ORDER

- 4.1 The Supplier may provide the Customer with a Quote for the Goods or Services.
- 4.2 Any Quote issued by the Supplier is valid for 14 days from the date of issue.
- 4.3 Unless otherwise expressly agreed in writing, a Quote does not include delivery or installation of the Goods.
- 4.4 Following provision of a Quote to the Customer, the Supplier is not obliged to order the Goods or commence the Services until the Quote has been accepted by the Customer. This occurs by the Customer:
- (a) completing an Order form and returning the form to the Supplier;
 - (b) advising the Supplier in writing that they accept the Order and these Terms and Condition;
or
 - (c) paying the Deposit to the Supplier.
- 4.5 An indication in a Quote of the time frame for the provisions of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligation in respect of consumer guarantees under the Australian Consumer Law (ACL), this estimate is not binding upon the Supplier.
- 4.6 Provided that the Customer has received a copy of these Terms and Conditions, the placement of an Order by the Customer signifies the acceptance by the Customer of these Terms and Conditions and the most recent Quote provided by the Supplier relating to that Order.
- 4.7 Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.
- 4.8 The Supplier may in its absolute discretion refuse to provide Goods or Services where:
- (a) Goods are unavailable for any reason whatsoever;
 - (b) credit limits cannot be agreed upon or have been exceeded; or
 - (c) payment for Goods or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.
- 4.9 An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Supplier may retain the Deposit on account of 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.
- 4.10 Any Goods purchase by the Customer which are:
- (a) non-standard;
 - (b) custom; or
 - (c) Customer specific,
- cannot be cancelled or terminated after the placement of the Order and are non-returnable, non-refundable Goods.

5. VARIATIONS

- 5.1 The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier at the Supplier's absolute discretion in order to have effect.
- 5.2 If the Customer wishes to vary its requirements after a Quote has been prepared by the Supplier or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies the additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods.
- 5.3 The Supplier has an automatic extension of time for the provision of the Goods equal to the delay caused by the variation.

6. DEPOSIT

- 6.1 The Supplier may require that a thirty per cent (30%) deposit of the quoted price is paid by the Customer on the placement of the Order.
- 6.2 The Supplier may provide an invoice for the deposit on the date the Customer places the Order requiring the deposit to be paid within seven (7) days of the invoice date.
- 6.3 If the Deposit is not paid within the seven (7) days of the invoice date, the Supplier, may, at their discretion, cancel the Order and will notify the Customer in writing of the cancellation.
- 6.4 The deposit paid by the Customer is non-returnable and non-refundable to the Customer and will form a part payment of the Purchase Price upon completion of the Order.

7. PAYMENT OF PRICE

- 7.1 The Supplier may invoice the Customer as follows:
 - (a) In one or more progress payments as the Order progresses;
 - (b) monthly for Services which are routinely provided;
 - (c) at the completion of the Services; or
 - (d) on the dispatch or installation of the Goods.
- 7.2 All invoices provided by the Supplier must be paid by the Customer within seven (7) days of the invoice date.
- 7.3 If payment is not made by a Customer within seven (7) days of the invoice date, the Supplier will not be obligated to proceed with the next stage of the Services or accept any other Orders from the Customer until all outstanding fees have been paid in full including any interest charged on the invoice or Additional Charges required to be paid in accordance with clause 8.
- 7.4 All amounts included in the invoice provided are in Australian Dollars (\$AUD)
- 7.5 Without prejudice to any other remedy, the Supplier reserves the right to charge interest on any invoice which has not been paid in full within seven (7) days of the invoice date at the rate of five per cent (5%) per calendar month, calculated daily and calculated from the due date for payment

until the date payment is received in full. Unpaid interest will be compounded at the end of each month.

- 7.6 Failure to pay any invoice by the due date may result in the account being referred to a debt collection agency for recovery and all Loss incurred by the Supplier will be payable by the Customer.
- 7.7 The Customer is not permitted to deduct, reduce, or set-off any amounts from the invoice charged by the Supplier at any time, for any reason.

8. ADDITIONAL CHARGES

- 8.1 The imposition of Additional Charges may occur as a result of:
- (a) Cancellation by the Customer of an Order where a cancellation results in Loss to the Supplier;
 - (b) Storage costs for Goods not collected from the Supplier within ten (10) Business Days from when the Supplier advises the Customer that the Goods are ready for collection;
 - (c) Courier, packing or handling charges not included in the Quote or Order;
 - (d) Government or council taxes or charges not included in the Quote; or
 - (e) Additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted costs.
- 8.2 The Supplier must notify the Customer in writing as soon as possible after becoming aware of the Additional Charge to the quoted costs.
- 8.3 The Customer is required to pay any Additional Charges to the Supplier in addition to the quoted price.

9. CHANGE OF BANK DETAILS

- 9.1 The Customer should contact the Supplier's accounts department by telephone directly, immediately on receipt of any communication relating to any change of Bank Account details by any means to verify the validity of such communication.
- 9.2 The Customer will bear responsibility for ensuring that payments are made to the Supplier's correct Bank Account as payment into the wrong Bank Account will not constitute a valid payment.

10. GOODS AND SERVICES TAX (GST)

- 10.1 The Supplier quoted prices are exclusive of GST.
- 10.2 If GST is or becomes payable on any supply made under or in connection with these Terms and Conditions or the Agreement, the Customers must pay, in addition to and at the same time as the payment is provided, pay an amount equal to the amount of GST on the supply.
- 10.3 Unless the Customer provides the Supplier with an authorised tax exempt certificate, GST of 10% will be added to all invoices.

11. PASSING OF RISK AND PROPERTY

11.1 Risk in Goods passes to the Customer immediately upon delivery.

11.2 Prior to title in the Goods passing to the Customer under the Terms and Conditions or the Agreement, the Customer agrees that:

- (a) the Customer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Supplier owes to the Customer;
- (b) the Customer cannot claim any lien over the Goods;
- (c) the Customer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Supplier; and
- (d) where the Customer is in actual or constructive possession of the Goods:
 - (i) the Customer will not deliver them or any document of title to the Goods to any person except as directed by the Supplier; and
 - (ii) it is in possession of the Goods as a bailee of those Goods and owes the Supplier the duties and liabilities of a bailee.

11.3 In connection with the Goods, the Supplier states to the Customer that:

- (a) the Supplier has the right to supply the Goods to the Customer;
- (b) the activities of the Supplier in supplying the Goods do not infringe the rights of the owner of the Goods (where the Supplier is not the owner of the Goods); and
- (c) if the Goods are not owned by the Supplier, the Supplier is authorised to supply the Goods to the Customer.

11.4 The Supplier and the Customer agree that:

- (a) the property of the Supplier in the Goods remains with the Supplier until the Supplier has been paid in full for the Goods under all individual contracts for the supply of the Goods between the Supplier and the Customer;
- (b) the Customer is a bailee of the Goods until such time as property in them passes to the Customer and that this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full; and
- (c) pending payment in full for the Goods, the Customer:
 - (i) 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;
 - (ii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier the Goods supplied by the Supplier from other goods which are held by the Customer;
 - (iii) must not allow any person to have or acquire any security interest in the Goods;
 - (iv) agrees that the Supplier may repossess the Goods if payment is not made within 30 days (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and

- (v) the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies the Supplier for any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises.

12. PERSONAL PROPERTY SECURITIES ACT

- 12.1 The Agreement between the Supplier and the Customer forms a security agreement.
- 12.2 The interest of the Supplier in the Goods and all proceeds from the sale of the Goods by the Customer to a third party is a security interest.
- 12.3 The Customer consents to the Supplier registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Supplier to facilitate registration, obtaining priority in registration required by the Supplier, ensuring that the registration is effective and enabling the Supplier to exercise rights in connection with the security interest.
- 12.4 Until title in the Goods has passed to the Customer as contemplated by clause 10, the Customer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create a security interest over the Goods in favour of the Customer or any third party. The parties agree that this clause will not prohibit the Customer from selling the Goods in the ordinary course of business.
- 12.5 The Customer waives its rights to receive any notice under the PPS Law (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.
- 12.6 The Supplier and Customer agree that these Terms and Conditions and all related information and documents forming the Agreement are confidential (Confidential Information) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by these Terms and Conditions or required by law. The Supplier and Customer agree that the Supplier will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.
- 12.7 Unless the Goods are used predominantly for personal, domestic or household purposes, the Supplier and the Customer agree that each of the following requirements or rights under the PPSA does not apply to the enforcement of the Supplier's security interest in the Goods of these Terms and Conditions:
 - (a) any requirement for the Supplier to give the Customer a notice of removal of accession;
 - (b) any requirement for the Supplier to give the Customer a notice of the Supplier's proposed disposal of the goods;
 - (c) any requirement for the Supplier to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
 - (d) any requirement for the Supplier to give the Customer a statement of account if the Supplier does not dispose of the Goods;
 - (e) any right the Customer has to redeem the Goods before the Supplier exercises a right of disposal; and
 - (f) any right the Customer has to reinstate the Agreement before the Supplier exercises a right of disposal of the Goods.

13. DELIVERY AND INSTALLATION

- 13.1 Where the Customer has indicated in the Order that they require delivery of the Goods, the Supplier may provide delivery of the Goods to the Customer at an Additional Charge to the Customer.
- 13.2 The Supplier is not responsible to the Customer or any person claiming through the Customer, for any loss or damage to Goods in transit caused by any event of any kind or by any person (whether or not the Supplier is legally responsible for the actions of that person).
- 13.3 All Goods provided by the Supplier must be installed and commissioned by and at the expense of the Customer and the Customer must ensure that a suitably qualified person with the required experience installs the Goods.
- 13.4 The Customer may request that the Supplier installs the Goods and the installation of the Goods will be subject to an Additional Charge for travelling to the Premises and Installation costs. The Supplier will advise the Customer of the Additional Charge involved in installing the Goods prior the Supplier completing the installation.
- 13.5 Where the Customer has engage a third party to complete the installation of the Goods, the Supplier does not accept responsibility or liability where the Goods have been installed incorrectly and will not be responsible for any Loss or damage suffered by the Customer as a result of incorrect installation.
- 13.6 It is the Customer's responsibility that all applicable health, safety and other regulations be observed and to take appropriate steps in relation to the storage, handling, and use of the Goods and where information is supplied on potential hazards relating to the Goods, to bring such information to the attention of its employees, agents, visitors and customers.

14. DELIVERY TIME

- 14.1 Delivery date for the provisions of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligation in respect of consumer guarantees under the Australian Consumer Law (ACL), this estimate is not binding upon the Supplier.
- 14.2 Under no circumstances will the Supplier be liable for any Loss or damages of any kind (including consequential, special or incidental damages including loss of profits) arising from late or non-delivery on the estimated date or late installation of the Goods.
- 14.3 The Customer is not relieved from accepting delivery at the agreed price when the causes delaying delivery are removed.
- 14.4 If the Supplier delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
 - (a) this does not constitute a repudiation of the contract of sale formed by these conditions; and
 - (b) the defective instalment is a severable breach that gives rise only to a claim for compensation up to the value of the Goods provided.
- 14.5 If delivery is in instalments, delay in delivery of any instalment shall not relieve the Customer of its obligation to accept the remaining instalments.
- 14.6 If an event occurs beyond the Supplier's reasonable control which results in the Supplier being unable to effect delivery by the time or times quoted or specified in the Order, the Supplier must notify the Customer immediately in writing upon becoming aware of the delay. The Supplier may in their discretion, deliver only part of an Order, suspend delivery or extend time for delivery for the

delay period. In the event of such suspension or extension the Supplier shall not be liable for damages of any kind including damages of the kind referred to in clause 14.2.

15. SERVICES

- 15.1 The Supplier will provide the Services as specified in the Order or Agreement and will notify the Customer of the time for the performance of the Services.
- 15.2 The Supplier warrants that it will complete the Services:
- (a) Using a reasonable and professional level of care and skill in performing the Services;
 - (b) Ensure that all of the Supplier's employees and contractors are appropriately trained, qualified, licensed, experienced and instructed to complete the Services; and
 - (c) Using suitable equipment, materials, tools and products to complete and provide the Services.
- 15.3 If the Supplier requires access to the Premises to complete the Services, the Customer will:
- (a) Ensure that the Premises is available to the Supplier and the Supplier's employees and contractors at the times notified by the Supplier;
 - (b) Provide access to the Premises at the times notified by the Supplier for the Supplier to complete the Services; and
 - (c) Allow the Supplier and the Supplier's employees and contractors to operate and work in a safe work environment at the Premises.
- 15.4 The Supplier may refuse to permit its employees or contractors to complete the Services at the Premises or any part of the Services if the Supplier reasonably considered that they may be exposed to an undue risk or danger and the Customer will be required to pay an Additional Charge for any Loss or expense incurred by the Supplier in attending the Premises.

16. WORK HEALTH AND SAFETY AND COMPLIANCE WITH LEGISLATION

- 16.1 The Supplier will ensure that at all times:
- (a) it has the required licenses and permits and will complete the Services in accordance with any applicable laws, legislation, industry regulation or authority;
 - (b) all employees and contractors of the Supplier who complete the Services have the required qualifications, training, licenses, certificates, supervision and information; and
 - (c) it will accord with safeguards to the health, safety and welfare of its employees and contractors in performing the Services.

17. COMPLAINTS AND SUPPLIER'S WARRANTY

- 17.1 Any complaint about the performance of the Services or fault in the Goods must be made in writing by the Customer to the Supplier within 30 days of the occurrence.
- 17.2 In the absence of a Complaint, the Customer is deemed to:

- (a) have accepted the Goods received and to have accepted that the Goods are not faulty and accord with the Customer's Order; or
 - (b) be satisfied with the Supplier's performance of the Services
- 17.3 Upon receiving a complaint, the Supplier will take reasonable action, without cost to the Customer, to investigate and (unless it reasonably considers that the complaint was not justified) take reasonable remedial action in relation to the fault in the Goods or performance of the Services.
- 17.4 The Supplier's liability for Goods and Services is limited to making good any defects in the Goods or Services provided by the Supplier. This must be done by repairing the defects, or at the Supplier's discretion, by replacement. This applies so long as:
- (a) The defect or failure is in the Goods or Services provided by the Supplier;
 - (b) The Goods or Services provided have not received maltreatment, inattention, interference or tampering or been installed by a third party; and
 - (c) Accessories or other products of any kind used by the Customer are provided by or approved by the Supplier for the purpose used.
- 17.5 Goods cannot in any circumstances be returned to the Supplier without the prior written consent of an authorised employee of the Supplier.
- 17.6 Nothing in this paragraph affects the Customer's right for any alleged failure of a guarantee under the ACL.

18. STATUTORY WARRANTY

- 18.1 Goods are sold subject only to statutory warranties. Nothing in these Terms and Conditions excludes the application of statutory conditions, warranties and guarantees. The Supplier agrees to assign to the Customer on request made by the Customer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Supplier under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- 18.2 The Supplier's liability for a breach of a condition or warranty implied by part 3-2, division 1 of the Australian Consumer Law (ACL) is limited to:
- (a) in the case of Goods, any one or more of:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; and
 - (iv) the payment of the cost of having the Goods repaired; or
 - (b) in the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 18.3 The Supplier will carry spare parts for each Product for a reasonable period, which is the length of the Statutory Warranty period. The Supplier reserves the right to refuse to supply spare parts

where it considers the request to be outside a reasonable period, limited stock is available or the Supplier no longer stocks the spare parts.

19. LIABILITY AND INDEMNITY

- 19.1 To the fullest extent permitted by law, the Supplier will not be liable to the Customer for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including in relation to loss of income, loss of profits, loss of use, loss of contracts, loss of data or for any indirect or consequential loss or damage of any kind howsoever arising out of or in connection with the provision or of a failure to provide the Goods or Services, or otherwise arising out of the provision of Goods, Services or these Terms and Conditions, whether based on terms of trade, by tort (including negligence), breach of contract, strict liability or otherwise. The Supplier's maximum aggregate liability for any Services performed or Goods supplied to the Customer whether in contract, tort (including negligence), strict liability or otherwise shall in no circumstances exceed the amount payable by the Customer to the Supplier in respect of the Goods or Services in question.
- 19.2 For the avoidance of doubt, nothing in this clause limits or restricts the Customer's ability to make a claim that may be available to the Customer for the Supplier's failure to comply with a consumer guarantee under the Australian Consumer Law.
- 19.3 The Customer 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 Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods, Services, any Order or the subject matter that these Terms and Conditions apply to. This includes, but is not limited to, any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party or party legal costs for which the Supplier is liable in connection with any such claim or demand. This clause 19.3 remains in force after the termination of the Agreement.

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 The Customer and the Supplier agree that, other than as expressly provided in this clause, nothing in these Terms or Condition or the Agreement transfers or grants the other party any right, title or interest in or to any Intellectual Property in any Background IP of a party.
- 20.2 The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods 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 Customer to the Supplier for the purposes of the Order. Further, the Customer 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 Customer.
- 20.3 Unless specifically agreed in writing between the Supplier and the Customer, all Intellectual Property and Intellectual Property Rights in any works created by the Supplier on behalf of the Customer vest in and remain the property of the Supplier.
- 20.4 Subject to payment of all invoices due in respect of the Goods, the Supplier grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods under these Terms and Conditions for the purposes contemplated by the Order.

21. PRIVACY

- 21.1 The Supplier will take reasonable steps to protect the Customers personal information from misuse, interference and loss and from unauthorised access, modification or disclosure but provides no guarantee that your personal information will remain secure.
- 21.2 During the conduct of the Supplier's business, the Supplier may use and disclose the Customers personal information to the Supplier's affiliates, related entities, contractors, agents, supplier, payment of debit service providers and processors, third party e-commerce platform service providers, software providers, professional advisors or other companies or individuals as necessary to enable the Supplier provide the Customer with any warranties, payment options, information or other services necessary to provide the Goods or Services.
- 21.3 The Supplier will ensure that its dealings with Personal Information acquired from the Customer will confirm to the Australian Privacy Principles (APPs) established under the Privacy Act 1988 (Cth) (Privacy Act) and in accordance with other applicable privacy laws.

22. TIME

- 22.1 All times which are provided by the Supplier to the Customer in relation to the Quote, Order, Goods or Services including delivery or installation are estimates only and are subject to reasonable change by the Supplier providing written notice to the Customer.
- 22.2 The Supplier will not be liable for any Loss or damage resulting from failure to meet such lead times or from changes to delivery schedules due to a Force Majeure Event outside the control of the Supplier.

23. TERMINATION

- 23.1 A party (Terminating Party) may terminate this Contract, on the occurrence of any of the matters detailed in clause 23.2 below.
- 23.2 The Terminating Party may terminate the Agreement by seven (7) days notice to the other Party (Other Party) if:
- (a) The Other Party is in breach of its obligations under the Agreement and is not capable of remedy;
 - (b) The Other Party is in breach of its agreement which is capable of remedy but the Other Party has not remedied the breach within 14 days or receiving written notice which specified the breach and required the breach to be remedied;
 - (c) The Other Party enters into a deed of arrangement or an order is made for it to be wound up;
 - (d) Where the Other Party is a company, an administrator, receiver or receiver/manager or liquidator is appointed to the Other Party pursuant to the *Corporations Act 2001* (Cth) ('**Corporations Act**');
 - (e) Where the Other Party is an individual, it has filed for bankruptcy or been declared a bankrupt;
 - (f) The Other Party would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act.

- 23.3 On termination of this Contract, the Customer will pay for all Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by the Supplier for the performance of the Services prior to the date of termination.
- 23.4 The Supplier may terminate this Contract immediately if the Customer fails to pay invoiced fees within seven (7) days after the due date, or if the Customer fails to remedy any other breach capable of being remedied within 14 days' notice from the Supplier to the Customer notifying of the breach.

24. DISPUTE RESOLUTION

- 24.1 A Party claiming that a dispute has arisen out of or in relation to these Terms and Conditions or the Agreement must give written notice to the other parties to the dispute specifying the nature of the dispute. On receipt of this notice, the parties to the dispute must within five (5) business days of receipt of that notice seek to resolve the dispute in good faith with the Party claiming that a dispute has arisen.
- 24.2 If the dispute is not resolved within five (5) business days or within such further period as the parties agree then the dispute must be referred to Australian Disputes Centre (ADC) for mediation.
- 24.3 If the dispute is referred to ADC for mediation then mediation of the dispute will be conducted in accordance with ADC Mediation Guidelines, which set out the procedures to be adopted, the process of the selection of the mediator and the costs involved.
- 24.4 If the dispute is referred to ADC, the parties expressly agree to attend the ADC mediation in good faith to settle the dispute by mediation administered by ADC before having recourse to other dispute resolution proceedings or legal proceedings.

25. FORCE MAJEURE

- 25.1 If a Force Majeure Event occurs, which prevents or hinders Supplier from providing the Goods or Services to the Customer within the estimate timeframe, the Supplier must:
- (a) advise the Customer in writing as soon as possible when a Force Majeure Event occurs including:
 - (i) the Force Majeure Event;
 - (ii) the likely extent of the delay as a result of the event; and
 - (iii) The variation of the estimated time that the Goods or Services will be able to be provided by the Supplier (if known);
 - (b) The estimate time for the provision of the Goods or Services is automatically extended to the extent of the delay as a result of the Force Majeure Event.
- 25.2 Neither Party has any liability under, or be deemed to be in breach of, the Agreement for any delays or failures in performance of the Agreement which result from a Force Majeure Event.

26. NOTICES

26.1 Form of Notices

Notices given under these Terms and Conditions or the Agreement must be:

- (a) in writing;
- (b) signed by the Party giving the Notice or its Authorised Representative; and
- (c) addressed to the Notice Address of the person to whom it is to be given.

26.2 Method and address for giving Notices

Notices must be either:

- (a) delivered by hand;
- (b) posted by pre-paid security or certified mail; or
- (c) sent by email transmission to the email address specified in the Agreement or last notified to the sender,

to the Notice Address of the person receiving the Notice.

26.3 Time of receipt

A Notice given to a person in accordance with these Terms and Conditions or the Agreement is deemed to have been given and received if:

- (a) delivered, on the day of delivery if delivered before 5:00pm on a Business Day, otherwise on the next Business Day; or
- (b) posted by pre-paid security mail or certified mail, on the second day after the day on which the Notice was accepted by the post office from the Party sending the Notice; or
- (c) if sent by email, on the sender's receipt of an email acknowledgement from the recipient's information system showing that the notice has been delivered to the email address specified in the Agreement or last notified to the sender for the giving of notices, provided that if a notice is delivered, or received by email, on a day that is not a Business Day or after 5:00pm on a Business Day, the notice will be considered delivered or received on the next Business Day.

27. GENERAL PROVISIONS

27.1 Entire Agreement

- (a) These Terms and Conditions and any Quotes or Orders supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference to these Terms and Conditions.

27.2 Amendments

No variation of the Terms and Conditions or the Agreement, nor the consent to a departure by a Party from a provision, will be of effect unless it is in writing, signed, sealed and delivered by the parties or (in the case of a waiver) by the Party giving it. Any such variation or consent will be effective only to the extent to or for which it may be made or given.

27.3 Assignment

Any rights arising out of, or under, the Terms and Conditions or the Agreement are not assignable by one Party without the prior written consent of the other Party. However a Party must not unreasonably withhold its consent to assignment. A purported assignment without written consent will be deemed to be void and convey no rights.

27.4 Further assurances

Each Party to this Agreement must do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it by Notice from another Party to carry out and give effect to the Terms and Conditions and Agreement and to perfect, protect and preserve the rights of the other parties to the Agreement.

27.5 Survival

- (a) These Terms and Conditions survive termination of the Agreement to the extent permitted by law.
- (b) These Term and Conditions and the Agreement is binding upon the heirs, executors, administrators and successors in title of the parties.

27.6 Governing law and jurisdiction

- (a) The Agreement is governed by and construed in accordance with the laws of Queensland and the Commonwealth of Australia.
- (b) Actions, suits or proceedings relating in any way to these Terms and Condition or the Agreement or dealings contemplated by it, must be instituted, heard and determined in a court of competent jurisdiction in Queensland.
- (c) Each Party irrevocably submits to the non-exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.
- (d) A Party may, by Notice, appoint another person at a specified address in Queensland to receive service of process in connection with proceedings and process served on that person is taken to be served on the Party making the appointment.

27.7 No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by these Terms and Conditions.

27.8 No waiver

- (a) The failure of a Party to require full or partial performance of a provision of this document does not affect the right of that Party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

- (c) A right under this document may only be waived in writing signed by the Party granting the waiver and is effective only to the extent specifically set out in that waiver.

27.9 Severability

The Agreement will, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision will, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of the Agreement will not in any way be affected or impaired and will continue notwithstanding that illegality, invalidity or unenforceability.