

TERMS AND CONDITIONS

1. Definitions:

1.1. Terms used in these general terms and conditions are defined as follows:

"Business Day" means any day which is not a Saturday, Sunday, or a bank or public holiday in Western Australia.

"Buyer" means the person, company, customer or body corporate to whom the Quotation is addressed and who has made the transaction with the Seller.

"Change in Control" means in respect of any entity, a change in the entity or entities who, directly or indirectly, ultimately Control that entity other than as a result of any dealing in securities listed on a stock exchange.

"Claim" means any action, suit, proceeding or demand of any kind.

"Contract" means the contract for provision of the Goods formed on the acceptance of the Seller of the Buyer's Purchase Order and include these General Terms and Conditions of Sale and the Quotation.

"Consequential Loss" means: any loss of profit, revenue, business, contracts or anticipated savings, loss of expectation, loss of recourse to finance, loss of or inability to use equipment, loss of data, down time costs, loss of goodwill, wasted overheads or punitive or exemplary damages; any special, indirect or consequential loss or damage of any nature whatsoever; or loss not arising naturally according to the usual course of things.

"Cooling-off period" means the period during which the Customer may exercise his/her cancellation right within ten (10) business days.

"Defective" means:

(a) In relation to Goods: Goods which are not in accordance with this Contract or Goods failing to perform at a satisfactory level for the Buyer's purposes or in accordance with the level of performance typically expected of goods of a similar specification.

(b) In relation to Services: Services which are not in accordance with this Contract, are not of the standard expected of a competent professional contractor/supplier experienced in providing the same or similar services or are not in accordance with any reasonable direction by the Buyer.

"Delivery Date" means the date(s) and/or time(s) on which the Goods are to be delivered to the Delivery Location.

"Delivery Location" means the location to which the Seller will deliver the Goods in accordance with clause 7.1.

"Goods" means the goods, materials, equipment, any other property or parts to be provided or products described and specified in the Contract and the Purchase Order.

"Insolvency Event" means in relation to a Party, an event where any one of the following occurs: the bankruptcy, winding up or insolvency of that Party; or that Party enters into any scheme of arrangement or composition; or a receiver or administrator is appointed to any property of that Party, but only to the extent that the Corporations Act 2001 (Cth) does not prevent a Party from terminating this Contract because of that Insolvency Event.

"Invoice" means a list of goods sent or services provided, with a statement of the sum due for these, a bill.

"Liabilities" means damages, Claims(s), losses, liabilities, costs, fees and expenses of any kind (including legal costs on a full recovery basis).

"Party" means the Seller or the Buyer and Parties is a reference to both.

"Personal Information" has the meaning given to it in section 6 of the Privacy Act;

"Premises" means the Seller's premises.

"Price" means the price as detailed in the Contract and the Purchase Order.

"Privacy Act" means the Privacy Act 1988 (Cth).

"Purchase Order" means a purchase order or other request issued by the Buyer to the Seller in writing for the provision of the Goods.

"Quotation" means the quotation document provided by the Seller to the Buyer for the sale of the Goods and / or provision of the Services together with any attachments.

"Seller" means the company named in the Quotation as the Seller which is to supply the Goods to the Buyer.

"Services" means the works and/or services described and specified in the Quotation including all necessary ancillary and associated consumables, items, things or works and/or services.

2. Interpretation

2.1. In this Contract unless context otherwise applies the following rules of interpretation apply:

- (a) headings in this Contract shall not be used in the interpretation of this Contract;
- (b) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any authority;

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- (c) a reference to the word "including" and similar expressions are not words of limitation;
- (d) a reference to a document includes all amendments, supplements to, replacements, or notations of that document;
- (e) a reference to a Party to a document includes that Party's executive, administrators, successors and permitted assigns;
- (f) if a party consists of more than one person this Contract binds them jointly and each of them severally
- (g) any Special Conditions forming part of this Contract will take precedence over these Terms and Conditions and these Terms and Conditions will take precedence over all annexures, schedules or appendices to this Contract;
- (h) references to parties, clauses, schedules or annexures are references to parties, clauses, schedules or annexures to, or of, this Contract and a reference to this Contract includes any schedule or annexure;
- (i) a reference to a clause or schedule or annexure is a reference to a clause or schedule or annexure to this Contract; and
- (j) no rule of construction applies to the disadvantage of a Party merely because that Party was responsible for the preparation of this Contract or any part of it.

3. General Conditions of Sale

- 3.1. The supply of Goods by the Seller to the Buyer described in this Contract is made pursuant to, and subject to, these General Terms and Conditions of Sale.
- 3.2. By accepting any Quotation or supply of Goods from the Seller, you accept the terms and conditions described in these General Terms and Conditions of Sale.

4. Quotations

- 4.1. Any Quotation issued by the Seller is not an offer to sell or supply any Goods or Services and may be withdrawn or varied at any time prior to a related Quotation being accepted by the Seller in accordance with clause 5.
- 4.2. A Quotation will only be valid for 90 days from its date of issue unless extended in writing by the Seller.
- 4.3. All prices contained in a Quotation are subject to variation in accordance with clause 24.3 and relate to the sale or supply of any Goods and/or Storage Services, on these Terms or Conditions.
- 4.4. All prices contained in the Quotation do not include the cost of any freight, unless otherwise quoted.

5. Acceptance

- 5.1. Narrow row spacings, soil condition and selection of air cart can affect the performance of machine when tracking across hilly country. The client is responsible for selecting the appropriate direction of travel to provide the best opportunity for consistent row spacings. Direct Seeding accept no liability for inconsistent row spacings in hilly country.
- 5.2. The customer is responsible for learning how to operate their machine and associated attachments. Direct Seeding offer operator training and a manual but will not be responsible for customers who are unable to attend or learn the proper operation of the product or allow use of product by untrained operators.
- 5.3. Goods are supplied by the Seller subject to these General Terms and Conditions of Sale.
- 5.4. The Buyer may request the Seller to sell or supply Goods and/or Services to the Buyer in accordance with these General Terms and Conditions of Sale by providing to the Seller a written confirmation of a quotation.
- 5.5. Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 5.6. The issue by the Seller of a written acceptance of a Quotation or Purchase Order will not be, or simply, acceptance of any terms or conditions in the Quotation or Purchase Order which are inconsistent with these Terms and Conditions.
- 5.7. Where more than one Buyer has entered into this agreement, the Buyers shall be jointly liable for all payments of the Price.
- 5.8. Upon acceptance of Goods, the Buyer accepts to use the product under best practice guidelines from the Seller with regards to calibration settings and optimal speed.

6. Delivery of the Goods

- 6.1. The Seller will supply the Goods in accordance with the Contract and in consideration of the payment of the Contract Price by the Buyer.
- 6.2. The Buyer acknowledges that the time within which the Seller may advise the Buyer that it will make Delivery of Goods will be regarded as a best estimate but will not be guaranteed and may be subject to extension to cover delays caused by or contributed to by causes beyond the control of the Seller and no responsibility will be accepted by the Seller for the consequences of such delays.
- 6.3. Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
- 6.4. Neither the Seller nor the Buyer shall be held liable for any breach of this Contract where the breach arises from an act of God, war, natural disaster or terrorism, Public Health Act (2016) or Emergency Management Act (2005) WA.
- 6.5. If, as a result of cause beyond the Seller's reasonable control, the Seller determines that it will not be able to deliver all or part of the Goods the subject of this Contract within a reasonable timeframe, the Seller may terminate the purchase. On such termination, both parties release each other from any Claims in relation to the purchase and in respect of the termination.
- 6.6. The Seller may affect Delivery of the Goods the subject of this Contract as a whole or in separate parts. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions or as agreed between the Seller and Buyer. If the delivery is in instalments the Buyer shall not be entitled to terminate or cancel the agreement.
- 6.7. If the Buyer requests the Seller to delay Delivery of any or all the Goods, or does not accept delivery of the Goods, the Seller may, in its absolute discretion, agree to store the Goods with such storage to be at the Buyer's expense or negotiated between the Seller and Buyer in writing.

7. Point of Delivery

- 7.1. The Goods will be delivered and made available to the Buyer "ex- works" at either the Seller's Premises and all costs of removing the Goods from the Delivery Location will be paid by the Buyer. Delivery will be deemed to occur when the Buyer is informed by the Seller that the Goods are ready for collection from the Delivery Location.
- 7.2. The Buyer must remove the Goods from the Delivery Location within 14 days of the Delivery Date.
- 7.3. If pre-arranged and the Seller agrees, following a request from the Seller, to arrange for the Goods to be freighted to or otherwise provided to the Buyer at a location other than the Delivery Location:
 - (a) the Buyer will be deemed to take Delivery of the Goods and the Goods will be at the Buyer's risk from earlier of the Delivery Date and the Goods leaving the Seller's Premises;
 - (b) the costs associated with packing, transporting and removing the Goods from the Seller's Premises and providing them to the Buyer other than the Delivery Location must be paid for by the Buyer;
 - (c) the Seller will not be liable for any delay or failure to supply the Goods to the Buyer at a location other than the Delivery Location;
 - (d) without limiting clause 16 the Buyer releases and discharges the Seller from all claims and demands on the Seller and any loss or damage whatsoever and whenever caused to the Buyer or any other person of any nature or kind arising from or associated with the Seller providing the Goods to the Buyer at the Buyer Delivery Location; and
 - (e) without limiting clause 16, the Buyer indemnifies and holds the Seller harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Seller and from and against all actions, proceedings, claims or demands made against the Seller arising from or associated with the Seller providing the Goods to the Buyer at the Buyer Delivery Location.

8. Access to Buyer Delivery Location

- 8.1. The Buyer must provide to the Seller, safe, efficient and appropriate access to a Buyer Delivery Location necessary to enable the Seller to properly supply and deliver the Goods without interference.
- 8.2. The Seller must obtain all necessary permits and approvals for the Goods to be supplied to a Buyer Delivery Location.
- 8.3. The Seller will ensure that its employees, representatives and agents act in a safe and lawful manner and that they comply with all relevant safety legislation, its own safety procedures and with any safety standards and

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policies provided by the Buyer to the Seller when the Seller's employees, representatives and agents are at Buyer Delivery Location.

9. Cancellation

- 9.1. The Seller may cancel any Contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any sums paid. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 9.2. In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation (non-refundable deposit).
- 9.3. Cancellation of orders for Goods made to the Buyer's specifications or non-stock list items will not be accepted once production has commenced.
- 9.4. The Buyer has a cooling-off period of at least five (5) business days in which he/she may cancel a contract for the sale of a product without specifying a reason. The Seller may enquire as to the reason for cancellation, but the Buyer is not required to reveal the reason(s).
- 9.5. Where the Buyer invokes his/her cancellation right, he/she must notify the Seller of this within the cooling-off period, in writing.

10. Inspection, Rejection and Acceptance of Goods

- 10.1. The Buyer shall inspect, test and accept the Goods immediately upon arrival and shall within five (5) Business Days give notice to the Seller of any matter or thing by reason thereof the Buyer alleges that the Goods are not in accordance with the specified requirement.
- 10.2. If the Buyer fails to give such notice, the goods shall be deemed to be in all respects in accordance with the specified requirement and the Buyer shall be bound to pay for the same accordingly.
- 10.3. If upon or after any such inspection or test pursuant to this clause 10 if any Goods, in the Buyer's reasonable opinion, do not conform with the Contract, the Buyer may provide a notice of rejection of the Goods within five (5) Business Days of delivery of the Goods notifying the Seller of the reason of rejection.
- 10.4. If any Goods are rejected by the Buyer pursuant to this clause 10, the Buyer must safely store the rejected Goods at the Delivery Location and allow the Seller to access the Delivery Location to collect the rejected Goods without interference.
- 10.5. If any Goods are rejected by the Buyer pursuant to this clause 10, the Seller will remove the rejected Goods within ten (10) Business Days of the notice of rejection.
- 10.6. The Buyer is deemed to have accepted the Goods if:
 - (a) the Buyer has provided a notice of acceptance to the Seller within five (5) Business Days of delivery;
 - (b) the Buyer has not issued a notice of rejection in accordance with this clause 10; or
 - (c) the Buyer has used the Goods.
- 10.7. No claim shall be recognised unless made in writing and received by the Seller within five (5) Business Days after receipt of the Goods by the Buyer has claimed are defective.

11. Claims, Defects and Goods Return

- 11.1. Any claim for shortages or improper or defective Goods shall be made by the Buyer to the Seller in writing within five (5) Business Days of delivery of the Goods.
- 11.2. The Buyer acknowledges and accepts that, unless stated otherwise in the Quotation, the Goods purchased may be previously used and may not be new and, as such, the Goods may have a second-hand appearance, for example, if purchasing second hand frames or openers.
- 11.3. If the Goods are used/second-hand Goods, the Buyer acknowledges and agrees they are purchased on an "as is, where is" basis. The Buyer has a reasonable opportunity to inspect and/or test the Goods in accordance with clause 10 and has performed its own due diligence on the Goods.
- 11.4. The Buyer may not return Goods or otherwise fail to take delivery of the Goods without the Seller's prior written consent. The Seller may, in its absolute discretion, agree to accept the return of any Goods and credit the Buyer with the invoiced value of the Goods, provided the Goods are returned in the same condition and the Seller has given its written approval for the return of the Goods.

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- 11.5. The Buyer acknowledges that in placing any order for Goods, the Buyer has not solely relied upon the skill and judgement of the Seller to determine whether the Goods are reasonable fit for any particular purpose or relied upon or been induced by any statements, representations or inducements by the Seller which are not incorporated into the agreement.
- 11.6. Without prejudice to any other right or remedy, the Buyer shall indemnify the Seller against any costs, fees, charges or disbursements charged by any solicitor engaged for the purpose of the collection or recovery of moneys due and payable by the Buyer to the Seller on an indemnity basis and any fees, charges or commissions charged by any debt collecting firm.

12. Warranty

- 12.1. For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 12.2. Subject to any warranties implied by law and cannot otherwise be excluded and any other warranties given expressly in these Terms and Conditions, the Seller excludes all other warranties, conditions or liability in relation to the manufacture, sale or supply of the Goods and the Seller will not be liable for any Claim arising out of or contributed to by the manufacture, sale, use or supply of the Goods.
- 12.3. Subject to clause 12.2, to the extent that the Seller's liability cannot be excluded, the Seller's liability shall be limited to, in its sole discretion, either repairing the defective Goods or part of the Goods or replacing it with the same Goods (or part of the Goods) or a comparable product.
- 12.4. The Seller makes no representation or warranty in relation to the supply of spare parts or the availability of facilities for the repair of the Goods (or any part of the Goods).
- 12.5. The Buyer acknowledges and agrees that it has made its own enquiries as to the suitability of the Goods (or any part of the Goods) for the Buyer's intended use and the Buyer does not rely on any statement, representation or information provided by or on behalf of the Seller in relation to the Goods (including the use of the Goods) other than the statements, representations and information set out in writing in the Quotation.

13. Risk and Title

- 13.1. The Goods will remain the sole and absolute property of the Seller as legal and equitable owner, and property in and title to the Goods will not pass from the Seller to the Buyer, until the Buyer has paid the Seller for the Goods in full.
- 13.2. Where the Seller is acting as an agent for the owner of the Goods, the Goods will remain the sole and absolute property of the owner and property in and title to the Goods will not pass from the owner to the Buyer until the Buyer has paid the Seller for the Goods in full.
- 13.3. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 13.4. Where the Buyer expressly requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended or third-party location then such Goods shall be left at the Buyer's sole risk and it shall be the Buyer's responsibility to ensure the Goods are insured adequately or at all.
- 13.5. The Buyer must not sell, transfer, hire, lease, dispose of or part with possession of the Goods to any person without the Seller's prior written consent until all amounts owed to the Seller are paid in full. If the Buyer does anything which breaches this clause 13.5, the proceeds must be held by the Buyer on trust for the Seller irrespective of whether the proceeds are held in a separate account by the Buyer or otherwise.
- 13.6. Until title in the Goods has passed pursuant to clause 13.1, the Buyer holds the Goods as bailee in the capacity of a fiduciary for the Seller. The Buyer will keep the Goods supplied to it by the Seller in its possession and take good care of them and store them and mark them in a manner that identifies the Goods supplied and clearly shows that they belong to the Seller.
- 13.7. If the Contract relating to the Goods is terminated before title of the Goods has passed to the Buyer, the Seller may retake possession of the Goods and the Buyer must do everything in the Buyer's power and at the Buyer's own expense to ensure the Seller can lawfully enter any premises where the Goods are located and remove the Goods.

14. Other Services

- 14.1. If the Seller agrees to provide any other services to the Buyer other than the supply of the Goods, including but not limited to the assembly, disassembly or installation of the Goods, instructing the Buyer, its personnel or any other person in the use or operation of the Goods or operating or supplying an operator for the Goods ("Other Services"):
- (a) the Seller will provide the Other Services on the terms nominated by the Seller in its absolute discretion;
 - (b) all costs, expenses and liabilities to be incurred by the Seller or associated with providing the Other Services must be paid by the Buyer to the Seller on demand, unless otherwise agreed to in writing; and
 - (c) the Seller will not be liable for any delay or failure to supply the Other Services within any time period nominated or requested by the Buyer.
- 14.2. Without limiting clause 16, the Buyer:
- (a) releases and discharges the Seller from all Claims and demands on the Seller and any loss or damage whatsoever and whenever caused to the Buyer or any other person of any nature or kind; and
 - (b) indemnifies and holds the Seller harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Seller and from and against all actions, proceedings, claims or demands made against the Seller, arising from the provision of the Other Services.

15. Delays

- 15.1. The Buyer acknowledges and agrees that the Seller will not be liable for and the Buyer releases the Seller from any liability in respect of any loss, damage or expense that the Buyer may suffer or incur arising out of or contributed to by any delays in obtaining the Goods.
- 15.2. The Buyer shall reimburse the Seller for the reasonable costs of all committed resources plus an overhead cost of 10%, incurred by the Seller for all delays, except to the extent that the delays were solely caused by the Seller.

16. Release and Indemnity

- 16.1. The Buyer releases and discharges the Seller from all claims and demands on the Seller and any loss or damage whatsoever and whenever caused to the Buyer or any other person or any nature or kind and indemnifies and holds the Seller harmless from and against all liabilities, losses and damages, costs or expenses incurred or suffered by the Seller and from all actions, proceedings, claims or demands made against the Seller, arising in either case as a result of, or which has been contributed to by:
- (a) the Buyer's failure to comply with any laws, rules, standards, or regulations applicable to the Goods or use of the Goods;
 - (b) any use of the Goods contrary to any instructions or warnings given by the Seller or the manufacturer of the Goods;
 - (c) any other negligence or any breach of duty by the Buyer;
 - (d) any compliance or adherence by the Seller with any instruction by the Buyer; and
 - (e) any reliance by the Seller on any representation by the Buyer.
- 16.2. The Parties agree and acknowledge that, for the purposes of clause 16.1, a reference to the Buyer includes the Buyer's agents, employees, directors, representatives and contractors and any person or party who uses the Goods or claims an interest in the Goods as a result of a transaction with, or otherwise with the permission of, the Buyer.

17. Price and Payment

- 17.1. At the Seller's sole discretion, the Price shall be either:
- (a) as indicated on invoices or Quotations provided by the Seller to the Buyer in respect of Goods supplied; or
 - (b) the Seller's quoted price which shall be binding upon the Seller, provided that the Buyer shall accept the Seller's quotation in writing within ninety (90) days.
- 17.2. An agreed Deposit will be due thirty (30) days from issue of invoice and/or quotation. The full deposit needs to be paid within thirty (30) days of the invoice before commencement of works (unless agreed otherwise between Seller and Buyer, in writing).

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- 17.3. The Seller reserves the right to change the Price in the event of a variation to the Seller's Quotation within ninety (90) days.
- 17.4. Payment for approved Buyers shall be due in line with the credit account terms offered by the Seller and as outlined on issued invoices and statements to the Buyer's address or addresses for notices.
- 17.5. Time for payment of the Goods shall be stated on the invoice or any other forms of communication from the Seller. If no time is stated, then payment shall be due in thirty (30) days following the date of the invoice.
- 17.6. Payment can be made by cash, bank transfer or by credit card or by any other method as agreed to between the Buyer and the Seller.
- 17.7. GST and other taxes and duties that may be applicable shall be added to the Price, except when they are expressly included in the Price. This will be visible on the Quotation and/or invoice.
- 17.8. Credit is provided at the sole discretion of the Seller and can be withdrawn at any time without notice.
- 17.9. If the Buyer has not made a payment by the due date, the Seller may immediately and without notice suspend and/or cease the supply of the Goods and/or Storage Services. The Buyer will be liable to pay the Seller interest on the sum outstanding at the rate of 10% per annum, accruing daily.

18. Insurance

- 18.1. All Goods (and any part of the Goods) will be at the Buyer's risk from the Delivery Date. The Seller will not be responsible for any loss or damage to the Goods occurring after such time and no such loss or damage will affect the obligation of the Buyer to pay any amount relating to the supply of the Goods in accordance with the Contract.
- 18.2. The Buyer must take out and maintain an insurance policy to cover any insurable loss in respect of the Goods howsoever caused between the Delivery Date and the earlier of:
 - (a) The Seller receiving full payment of the invoice relating to the Goods; and
 - (b) The Buyer returning the Goods to the Seller and the Seller accepting the return of the Goods in accordance with these Terms and Conditions.
- 18.3. The insurance policy must:
 - (a) note the Seller's interest in the Goods;
 - (b) be on the the terms and for the amount satisfactory to the Seller; and
 - (c) be with an insurer approved by the Seller.
- 18.4. Unless the Seller otherwise agrees in writing, the Seller will not insure the Goods after the Delivery Date. If the Seller does agree to insure the Goods after the Delivery Date, such insurance will be at the Buyer's expense.
- 18.5. Notwithstanding any provision contrary in clause 18, both the Seller and the Buyer will maintain public liability insurance with a minimum limit of \$20,000,000 to cover their own liability for any personal injury, death or property damage caused or contributed to.

19. Liability

- 19.1. Notwithstanding any provision to the contrary and to the full extent permitted by law, neither Party shall be liable to the other Party (including in respect of any indemnity), on any basis (including negligence, tort, Contract, statute or otherwise), for any Consequential Loss suffered or incurred by that Party, or suffered or incurred by a third party, directly or indirectly arising out of or in connection with the performance or non-performance of the supply of the Goods or this Contract.
- 19.2. Notwithstanding any provision to the contrary and to the full extent permitted by law, the Seller's maximum aggregate liability to the Buyer for all Liabilities arising under or in respect of this Contract is limited to and will not exceed \$10,000.
- 19.3. The Buyer indemnifies the Seller and its officers, employees, agents and contractors against any Liabilities which the Seller suffers or incurs in respect of any breach by the Buyer of this Contract.
- 19.4. Nothing in this Contract excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains protections for the purchasers of goods. Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this Contract and the Seller is not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation ('non-excludable term'), and the Seller is able to limit the Buyer's remedy for a breach of the non- excludable term, then the Seller's liability

for breach of the non-excludable term is limited to (at the Seller's election), the repair or replacement of the Goods or the supply of substitute goods (or the cost of doing so).

20. Default and Termination

- 20.1. Subject to other clauses of this Contract, if the Seller is of the opinion that Buyer has breached any of its obligations under this Contract and the breach is, in the opinion of the Seller, capable of remedy, the Seller may give to the Buyer a written notice of default which will stipulate a period of time within which the Buyer must remedy the breach. The Seller may suspend or cease the supply of the Goods immediately after giving the written notice of default and is entitled to claim, and be paid, reasonable damages resulting from the suspension and/or ceasing and the possible breach of this Contract by the Buyer. The Seller may immediately terminate this Contract by written notice of termination to the Buyer if the Buyer does not comply with written notice of default within the time prescribed in the notice of default or if the breach of this Contract by the Buyer is, in the opinion of the Seller, not capable of remedy. If this Contract is terminated in accordance with this clause by the Seller, the Buyer must pay to the Seller for all Goods and Services supplied as at the date of termination, plus any costs that the Seller has incurred up to the date of termination, plus any Liabilities the Seller has to its suppliers or contractors which it cannot unwind, plus 15% of the value of any Goods and/or Services not supplied as at the date of termination but estimated to be supplied under the Contract.
- 20.2. If the Seller commits a breach of this Contract, the Buyer may give the Seller a written notice of default stating the Seller's breach and giving the Seller not less than fourteen (14) days to remedy the breach or advise why the Seller does not consider that it has breached this Contract. If the Seller has committed a breach of this Contract and the Seller fails to remedy the breach within the time set out in the Buyer's written notice, the Buyer may terminate this Contract by written notice of termination effective immediately. If this Contract is terminated in accordance with this clause by the Buyer, the Buyer must pay to the Seller, without right of set-off or making any deduction, for all Goods and/or Services supplied as at the date of termination, plus any costs that the Seller has incurred up to the date of termination, plus all costs of demobilising the Seller's plant, equipment and personnel, plus any Liabilities the Seller has to its suppliers or contractors which it cannot unwind. If the Buyer has incurred Liabilities as a result of the Seller's breach of this Contract, the Buyer will be required to prove its actual Liabilities and Claim those from the Seller but the Buyer is not permitted to Claim any Liabilities of having to have the remainder of the Goods and/or Storage Services supplied by itself or another contractor.
- 20.3. To the extent permitted by law, either Party may terminate this Contract by notice in writing to the other Party if an Insolvency Event occurs in respect of either Party.

21. Change in Control

- 21.1. The Buyer must not at any time, without the prior written approval of the Seller permit a Change in Control of the Buyer (which approval shall be at the Seller's sole and absolute discretion), and then only on such terms as the Purchaser in its discretion will approve (acting reasonably) and if required, the Supplier, the Purchaser and other Party will promptly execute a deed in the form provided by the Purchaser.
- 21.2. The Buyer shall give the Seller not less than ten (10) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, phone number, business practice or legal entity). The Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.
- 21.3. In the event of a Change in Control of ownership of the Buyer all funds owing must be paid in full before any account can be closed.

22. Intellectual Property

- 22.1. The Seller retains all intellectual or industrial property rights whether registered or unregistered, which are provided by, created or modified by the Seller in the supply of the Goods during this Contract, including without limitation:
- (a) all patents, trademarks, copyright, designs, trade secrets, know-how and other rights in any design, materials, processes, documents and methods of working;

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- (b) text, graphics, logos, icons, sound recordings, documentation and software that is owned and/or licensed by the Seller; and
- (c) all licences and services and other rights to use or to grant the use of any of the foregoing.

22.2. The Seller shall indemnify the purchaser for any and all claims, causes of action, suits, damages or demands, arising out of any infringement of intellectual property rights. To the fullest extent permitted by law, the Seller shall defend, indemnify, and hold any Purchaser responsible for any and all Claims resulting from allegations of infringement of any patents, copyrights, trade secret, or similar intellectual property rights, covering the Goods or Services provided, or the use of the Goods or Services under this contract. If Purchaser's use of Goods or Services provided by Seller is enjoined based on an intellectual property infringement Claim, purchaser shall, at its own expense, either

- (a) procure from Seller, the right to continue using the Goods or Services or,
- (b) after consulting with and obtaining Seller's consent,
- (c) replace or modify the Goods or Services with substantially similar and functionally equivalent non-infringing Goods or Services.

23. Confidentiality and Privacy

- 23.1. The Buyer acknowledges and agrees that any information submitted by the Seller in its Quotation which includes but is not limited to pricing, technical specifications and other information is commercial in confidence and submitted solely for evaluation by the Buyer. Such information must at all times remain confidential and shall not be disclosed to any third party without the Seller's prior written consent.
- 23.2. Each Party agrees to comply with their obligations under the Privacy Act in respect of Personal Information obtained or disclosed to them pursuant to this Contract.
- 23.3. Each Party warrants to the other Party that it has complied with the Privacy Act in obtaining Personal Information disclosed pursuant to this Contract.
- 23.4. If the Seller fails to comply with any aspect of this clause 22 then, without limiting any of the Buyer's other rights under the Contract or at law the Seller must indemnify the Buyer against any loss arising out of or in connection with such failure.

24. Taxes and GST

- 24.1. Prices quoted to the Buyer or set out in the Quotation or invoice do not include the taxes, imports and duties described in clause 23.2.
- 24.2. The acceptance by the Seller of the Buyer's sales tax certificate or other documents claiming exemption from any taxes, imposts or duties is at the Seller's absolute discretion and any such acceptance does not exempt Buyer from paying any taxes, imposts or duties (including any interest and penalties) subsequently imposed.
- 24.3. The Contract Price detailed in any Quotation and/or invoice is net of any Goods and Services Tax (GST).
- 24.4. In this clause:
- (a) GST means GST within the meaning of the GST Act and includes penalties and interest; and
 - (b) GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).
- 24.5. Except where this Contract specifies otherwise, an amount payable by a party under this Contract in respect of a taxable supply by the other party represents the value of the supply or the net amount under this clause.
- 24.6. If this Contract requires a party to pay for, reimburse or compensate against any expense or liability (reimbursable expense) incurred by the other party to a third party, the amount to be paid, reimbursed or compensated is the amount of the reimbursable expense net of any input tax credit to which the payee is entitled in respect of the reimbursable expense (net amount).

25. PPSA

- 25.1. In this clause:
- (a) "PPSA" means the Personal Properties Securities Act 2009 (Cth);
 - (b) "PPSA Law" means the PPSA together with any subsidiary legislation or regulations made under the PPSA and any amendment to a PPS Law from time to time;
 - (c) "PPS Register" means the register established under the PPS Law; and

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- (d) "Security Interest" has the same meaning as in section 12 of the PPSA.
- 25.2. The Seller and the Buyer acknowledge that the Buyer consents to the Seller registering its Security Interest under the PPSA and will do all things reasonably necessary to assist the Seller to register its Security Interest.
- 25.3. The Buyer waives the right to receive from the Seller verification of the registration pursuant to section 157(3)(b) of the PPSA.
- 25.4. The Buyer must not, without first giving the Seller 14 days' prior written notice, change its name, ABN or any other identifiers which are required to be recorded on the PPS Register in connection with any Security Interest.
- 25.5. The Seller and the Buyer agree that the following provisions of the PPSA do not apply to this Contract or Credit Agreement: section 95 (notice of removal of accession), to the extent that it requires the secured Party to give a notice to the grantor; section 96 (when a grantor may retain an accession); section 125 (obligation to dispose of or retain collateral); section 126 (apparent possession); section 128 (secured Party may dispose collateral); section 129 (disposal by purchase); section 130 (notice of disposal), to the extent that it requires the secured Party to give a notice to the grantor; section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

26. Notices

- 26.1. A notice, demand, certification, process or other communication relating to this Contract must be in writing in English and may be given by an agent of the sender. In addition to any other lawful means, a communication may be given by being:
- (a) personally delivered;
 - (b) left at a Party's current address for notices;
 - (c) sent to the Party's current address for notices by pre-paid ordinary mail;
 - (d) sent by email to the Party's current email address for notices;
 - (e) sent by email to the email address specified in this Contract. Where no email address is specified then notice shall be deemed to have been effectively given if it is sent to an email address which can be demonstrated by the sending Party to be an email address in use by the receiving Party; or
 - (f) sent by fax to the Party's current fax number for notices.
- 26.2. A communication is given if posted:
- (a) within Australia to an Australian address, four (4) days after posting; or
 - (b) in any other case, fourteen (14) days after posting.
- 26.3. If a communication is given after 5.00 pm in the place of receipt it is taken as having been given on the next Business Day.

27. Waiver

- 27.1. No waiver of any term of any Contract will be valid unless such waiver is in writing and signed by the Seller. If the Seller does not enforce any right or delays in enforcing any right under any Contract, Credit Agreement or these Terms and Conditions, this must not be construed as a waiver of such right.

28. General

- 28.1. This Contract is governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.
- 28.2. None of the Terms and Conditions of this Contract will be varied, waived, discharged or released either at law or equity, except with prior consent, in writing by both Parties.
- 28.3. Every provision of this Contract shall be deemed to be severable and if any provision of this Contract shall be void or illegal or unenforceable for any reason then the same shall be deemed to be severed and omitted here from and this Contract with such provision thus severed and omitted and with such consequent amendment as may be necessary shall otherwise remain in full force and effect.
- 28.4. This Contract constitutes the entire, final and concluded agreement between the Parties in respect of the Goods and/or Services. Subject to the other express terms of this Contract, no prior or subsequent representation or agreement (whether verbal or in writing) by the Buyer or the Seller, or any of their respective employees or agents, will bind the Parties.