

# TERMS AND CONDITIONS

The following terms and conditions apply to and govern the agreement between the Supplier and the Customer in relation to the supply of Goods and Services. These terms and conditions supersede and replace any previous terms and conditions.

## 1. DEFINITIONS AND INTERPRETATION

1.1 The meaning of the terms used in these terms and conditions are set out below:

Term	Meaning
<b>Australian Consumer Law</b>	refers to the consumer law contained in Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth)
<b>Claim</b>	a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent
<b>Customer</b>	a person whose order or request for the purchase of Goods or Services is accepted by the Supplier
<b>Excluded Loss</b>	means: <ol style="list-style-type: none"> <li>a) loss, or anticipated loss, of use, business, production, profit or revenue, loss of business reputation, business interruption of any nature or loss of opportunity;</li> <li>b) exemplary or punitive damages; or</li> <li>c) any loss or damage arising from special circumstances that are outside the ordinary course of things</li> </ol>
<b>Goods</b>	any goods which are requested by the Customer and agreed to be supplied by the Supplier
<b>GST</b>	the goods and services tax levied pursuant to the <i>A New Tax System, (Goods and Services Tax) Act 1999</i> (Cth)

Term	Meaning
<b>Implied Terms</b>	any term, condition, warranty, right or remedy applicable to these terms that is implied or imposed by any statute or regulation which cannot lawfully be excluded, restricted or modified, which may include the Australian Consumer Law and Australian state or territory legislation
<b>Intellectual Property Rights</b>	all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration
<b>Personnel</b>	any officer, director, employee, agent, consultants and representatives of a party
<b>PPSA</b>	the <i>Personal Property Securities Act 2009</i> (Cth)
<b>Pre-existing IP Rights</b>	Intellectual Property Rights in all materials owned by the Customer or Supplier independent of these terms and conditions
<b>Price</b>	the amount payable for the Goods or Services by the Customer
<b>Quote</b>	the quote provided to the Customer for the provision of the Goods or Services by the Supplier
<b>Related Body Corporate</b>	has the same meaning as in the <i>Corporations Act 2001</i> (Cth)
<b>Restraint Period</b>	has the meaning given to that term in clause 19.2
<b>Scope of Works</b>	has the meaning given to that term in clause 6.1
<b>Services</b>	any services which are requested by the Customer and agreed to be supplied by the Supplier

Term	Meaning
Supplier	EEHA Services T/A Mohr Power ABN 64152766053or (if applicable) such other Related Body Corporate specified in writing as the supplier of Goods and Services from time to time

1.2 In these terms and conditions:

- (a) words importing the singular include the plural and vice versa;
- (b) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (c) a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations; and
- (d) headings are included for convenience only and do not affect interpretation of these terms and conditions.

## 2. GENERAL

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- 2.1 By submitting a request for the Services, the Customer agrees to comply with these terms and conditions.
- 2.2 Unless otherwise agreed in writing by the Supplier, these terms and conditions apply to the supply of Goods and Services to the exclusion of all other terms proposed by the Customer. If the Supplier agrees (in its sole discretion) to incorporate any terms and conditions proposed by the Customer to the supply of Goods and Services (**Customer Terms**), these terms and conditions shall apply to the extent of any inconsistency with the Customer Terms. The Supplier will only be deemed to have accepted the Customer Terms where the Supplier has confirmed the acceptance in writing, signed by a director of the Supplier.
- 2.3 No contract for the supply of Goods and Services shall exist between the Supplier and the Customer until a Customer's order for Goods and Services has been accepted by the Supplier (such acceptance of Customer's orders may be made and communicated by the Supplier in writing or by overt act of acceptance on the part of the Supplier). The Supplier may accept or refuse any order for Goods and Services in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.
- 2.4 The Supplier may change these terms and conditions by notice in writing to the Customer. The Customer agrees that the purchase of any Goods and Services after the date of a notice of a change will be deemed to be an acceptance of such changed terms and conditions.

- 2.5 These terms and conditions shall be binding on the Customer's personal representatives, successors and permitted assigns and shall be for the benefit of the Supplier's successors and assigns.

## 3. PRICE

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- 3.1 Unless otherwise expressly stated, the Price payable by the Customer under the Quote or these terms and conditions is exclusive of GST.
- 3.2 Any variations in the Price as a consequence of currency fluctuations, taxes, customs duty or other imports shall be to the Customer's account.
- 3.3 The Supplier will be entitled to set off against any money owing to the Customer amounts owed to the Supplier by the Customer on any account whatsoever.

## 4. ACCOUNT TERMS

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- 4.1 The Customer shall pay for all Goods and Services without any offset or deduction whatsoever, unless agreed otherwise in writing, by the due date stated in each invoice issued by the Supplier.
- 4.2 If GST is imposed on any Goods or Services supplied by the Supplier, then the Customer must pay to the Supplier an additional amount equal to the GST payable on or for such taxable supply. Payment of the additional amount will be made at the same time as payment for the Goods and Services is required to be made in accordance with these terms and conditions, subject to the provision of a tax invoice.
- 4.3 If the Customer does not pay the Supplier by the due date, the Customer shall pay interest on monies due, charged on a daily rate at 2% per month from the due date of payment until actual date of payment. If the Customer has an account with the Supplier, the Supplier may debit the Customer's account monthly or at such times it chooses for such interest.
- 4.4 In the event the Customer defaults in making payment and recovery action is undertaken, the Customer will be responsible for all expenses incurred by the Supplier in relation to the collection of the outstanding amount including, but not limited to, all charges and fees, legal costs on an indemnity basis, and disbursements.

## 5. DEFAULT

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- 5.1 If:
  - (a) there is any default or failure by the Customer in making due and punctual payment to the Supplier of any moneys owing by the Customer;
  - (b) a liquidator or provisional liquidator is appointed in respect of the Customer;
  - (c) a receiver, receiver and manager or controller is appointed in respect of any assets or group of assets of the Customer;

- (d) the Customer goes into bankruptcy or is wound up;
- (e) the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due; or
- (f) there is a breach by the Customer of any of these terms and conditions that has not been remedied within 7 days of the Supplier notifying the Customer of the breach,

then all monies payable by the Customer to the Supplier shall at the Supplier's election become immediately due and payable notwithstanding the due date for payment shall not have expired, and the Supplier may without prejudice to any other rights they may have do any or all of the following:

- (g) withdraw any credit facilities which may have been extended to the Customer;
- (h) withhold any further deliveries of Goods or the provision of further Services;
- (i) in respect of Goods already delivered, enter onto the Customer's premises to recover and resell the Goods for its own benefit; or
- (j) recover from the Customer the cost of materials in connection with the Goods or Services; and
- (k) recover from the Customer all loss of profits arising from any breach of these terms and conditions.

## 6. DELIVERY OF SERVICES

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- 6.1 The Customer agrees to provide the Supplier with all necessary information and specifications relating to requirements of the Customer in respect of the Services ("**Scope of Works**").
- 6.2 The nature and extent of the Services will be determined on the basis of the Scope of Works. If the Scope of Works is amended, the Supplier will be entitled to review the Price and the Customer agrees to pay any additional costs associated with such amendments as is agreed in writing.
- 6.3 The Customer must provide the Supplier with unrestricted access to any relevant work-site in order for the Supplier to provide the Services. The Customer must ensure that the work-site in respect of the Services is:
  - (a) a safe working environment; and
  - (b) accessible and prepared for the provision of Services in accordance with the Scope of Works.
- 6.4 The Supplier will be entitled to charge a reasonable fee for any delays or rescheduling costs if for any reason access to site is restricted

## 7. DELIVERY OF GOODS

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- 7.1 Unless otherwise agreed in writing, the Goods will be delivered or deemed to be delivered at the time the Supplier provides notice to the Customer that the Goods are ready for collection at the Supplier's premises.
- 7.2 If the Goods are being delivered to a location nominated by the Customer, the Goods will be deemed to have been delivered automatically upon delivery of the Goods to the nominated delivery address.
- 7.3 Unless otherwise agreed, the Customer shall pay to the Supplier packing (other than the standard packing of the Supplier), crating and delivery charges in accordance with the Supplier's current rates, as at the date of dispatch. If there is no current rate then the Supplier may charge a reasonable amount to the Customer. The Supplier reserves the right to make a reasonable charge for storage if the Customer has not collected the Goods within one business day from the notice provided in accordance with clause 7.1.
- 7.4 The Supplier shall not be obliged to obtain a signed receipt or other acknowledgment from any person upon collection or delivery but if a signed receipt or other acknowledgment is obtained from someone believed by the Supplier to be authorised by the Customer to sign or otherwise collect the Goods on behalf of the Customer, then such signed receipt or other acknowledgment shall be conclusive evidence of the Customer's acceptance of the Goods.
- 7.5 Any times quoted for delivery are estimates only and the Supplier shall not be liable to the Customer for any failure to deliver or for delay in delivery of Goods whatsoever whether or not beyond the control of the Supplier.
- 7.6 The Customer shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.
- 7.7 The Supplier reserves the right to deliver Goods by instalments. Failure to deliver any instalment or deliver any instalment on time shall not entitle the Customer to repudiate or terminate the contract in whole or in part.

## 8. PROPERTY AND RISK

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- 8.1 Unless otherwise agreed in writing between the Supplier and the Customer, the Goods shall be at the sole risk of the Customer as soon as they are delivered or deemed to be delivered in accordance with clause 7.
- 8.2 Property in and title to the Goods will not pass to the Customer until:
  - (a) in respect of Goods listed on an invoice given to the Customer, the invoice has been paid for in full;
  - (b) the Goods and all other Goods supplied by the Supplier to the Customer have been paid for in full; and

- (c) any moneys owing to the Supplier by the Customer have been paid by the Customer and received by the Supplier in full (“**Debts**”).

8.3 Until the Debts have been paid in full:

- (a) the Customer will hold the Goods as fiduciary and bailee for the Supplier and the Customer must not charge or grant an encumbrance over the Goods or sell the Goods otherwise than in accordance with clause 8.3(c);
- (b) the Goods must be stored separately and in a manner enabling them to be identified as Goods of the Supplier and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix the Goods with other products or items such that the Goods are no longer separately identifiable then the Customer and the Supplier will be owners in common of the new product;
- (c) if the Customer sells the Goods in the ordinary course of its business as bailee for the Supplier:
- (i) it will hold the proceeds of sale in a separate account on trust for the Supplier and account to the Supplier for those proceeds; and
- (ii) assigns to the Supplier the benefit of any claim against such third party;
- (d) the Supplier may require the Customer to return the Goods to it on demand; and
- (e) the Customer grants the Supplier a licence to enter any premises of the Customer where the Goods are stored to inspect or repossess any Goods supplied to the Customer (whether paid for or not) without liability for trespass or any resulting damage.

8.4 The Customer shall insure the Goods against theft or any damage until such Goods have been paid for or until they are sold by the Customer (whichever occurs first) and the Supplier will be entitled to call for details of the insurance policy. If the Customer does not insure the Goods or fails to supply details of its insurance policy, the Customer will reimburse the Supplier for the cost of any insurance which the Supplier may reasonably arrange in respect of the Goods supplied to the Customer.

8.5 For the avoidance of doubt, the Customer agrees that until property in and title to the Goods passes to the Customer, the Supplier’s interest in the unpaid Goods supplied constitutes a Purchase Money Security Interest (**PMSI**). The PMSI will continue for any future Goods coming into existence or for the proceeds from the sale of the Goods. The Customer agrees to comply with all obligations set out in clause 20.

8.6 For the purpose of securing payment of the Price and the performance of the Customer’s obligations under these terms and conditions, the Customer agrees that all property of the Customer bailed to or made available to the Supplier is subject to a general lien

for all charges now due or that may become due to the Supplier by the Customer on any account whatsoever.

## **9. DRAWINGS AND SPECIFICATIONS**

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- 9.1 The Customer warrants to the Supplier that all drawings and specifications and other design information provided to the Supplier are accurate and correct in all respects and do not infringe upon the Intellectual Property Rights of any third party including any copyright, patents, designs or trademarks of a third party.
- 9.2 If the Customer provides any drawings, designs or specifications in relation to the provision of the Goods or Services, the Customer:
- (a) indemnifies the Supplier against all Claims associated with any infringement of the Intellectual Property Rights of third any person; and
- (b) grants the Supplier a non-exclusive, irrevocable, perpetual, royalty free and worldwide licence to any Intellectual Property Rights associated with the provided drawings, designs or specifications for the purpose of the supply of the Goods or Services in connection with these terms and conditions.

## **10. WARRANTY**

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- 10.1 Subject to clause 10.2 the Supplier warrants that all Goods supplied to the Customer are in accordance with any relevant specifications contained in the Quote or otherwise communicated to the Customer by the Supplier in writing, and all Services are provided in accordance with the Scope of Works.
- 10.2 The Customer acknowledges and agrees that it does not rely on the skill or judgment of the Supplier in relation to the suitability of any Goods or Services for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever.
- 10.3 If the Customer is a consumer within the meaning of that term in the Australian Consumer Law, the Supplier makes each guarantee required as a provider to a consumer under Part 3-2 of the Australian Consumer Law but only to the extent required by the nature of the Goods and Services and the nature of the Customer.

## **11. RETURN OF GOODS**

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- 11.1 Subject to clause 12 and unless agreed in writing by the Supplier, the Supplier will not accept the return of Goods. If the Supplier agrees to accept Goods (at its absolute discretion) the Customer may be charged to recover restocking and repackaging costs. The amount of this charge will be determined by the Supplier and shall be deducted from the amount of the credit allowed for the return.

11.2 All claims for the Supplier's failure to comply with the Customer's order (whether due to shortfall, defect, incorrect delivery or otherwise) must be made by giving written notice to the Supplier within fourteen (14) days from the date of delivery. If the Customer fails to provide such notice, then the Customer shall be deemed to have accepted the Goods.

## **12. CLAIMS UPON SUPPLIER**

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12.1 Subject to clause 10, all conditions, warranties and undertakings other than Implied Terms are expressly excluded to the maximum extent permitted by law.

12.2 The Supplier's liability for breach of clause 10.1 or an Implied Term is limited at the Supplier's option in the event of a minor failure of the Goods or Services, or the Customer's option in the event of a major failure of the Goods or Services, to any one of the following:

- (a) the replacement of the Goods or the supply of equivalent Goods;
- (b) the repair of the Goods;
- (c) the payment of the cost of providing replacement Goods or of acquiring equivalent Goods; or
- (d) the payment of the cost of having the Goods repaired;
- (e) the supplying of the Services again; or
- (f) the payment of the cost of having the Services supplied again.

12.3 To the maximum extent permitted by law, the Supplier will not be liable in any circumstances for:

- (a) defects or damage caused in whole or in part by misuse, abuse, neglect, unsuitable material with, improper installation, repair or alteration (other than by the Supplier) or accident of the Supplier, the Customer or any third party;
- (b) any delay, transport, installation, removal, labour insurance, packing, storage, handling, demurrage or other charges relating to the supply of the Goods or Services to the Customer; or
- (c) Excluded Loss.

12.4 Where, in connection with the supply of Goods or Services, the Supplier's Personnel are located on the Customer's site or another nominated site, the Customer shall indemnify and keep indemnified the Supplier from and against all Claims arising out of or in connection with:

- (a) loss of or damage to property of the Customer;
- (b) personal injury including death or disease to any third party (including the Customer's Personnel); and

(c) loss of or damage to property of any third party (including the Customer's Personnel).

12.5 Without limiting any other provisions of this clause 12, the maximum aggregate liability of the Supplier to the Customer for any Claim (or series of connected Claims) under or in connection with these terms and conditions howsoever arising shall be limited to the Price received by the Supplier from the Customer in the 12 month period immediately preceding the date of the relevant Claim (or series of connected Claims).

## **13. INSURANCE**

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Despite any terms and conditions or any other requirements or directions of the Customer, the Supplier is not required to hold:

- (a) a professional indemnity insurance policy with a cap exceeding \$1.;
- (b) a public liability, product liability or pollution liability insurance policy with a cap exceeding \$20 million; or
- (c) any other kind of insurance policy not referred to in this clause 13.

## **14. TRUST AND TRUSTEES**

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Where the Customer acquires the Goods or Services as a trustee, the Customer warrants that it has the full power and authority to enter into these terms and conditions on behalf of the trust and that it shall be bound by these terms and conditions both personally and as trustee, irrespective of whether or not it discloses to the Supplier that it is a trustee.

## **15. MINIMUM ORDER PRICE**

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The Supplier may set a minimum Price for any one order at its absolute discretion.

## **16. NOTICE**

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16.1 All notices given under these terms and conditions must be in writing and may be delivered in person or by mail or by the medium specified in the address for service stated on the order.

16.2 A party may change its particulars for service by notice in writing to the other parties.

16.3 A notice sent by post will be deemed:

- (a) given on the day it is posted; and
- (b) received six days after posting.

16.4 A notice sent by email will be deemed received at the time and on the date that it is sent, unless the sender receives notification that the delivery of the email was unsuccessful, in which case the email will not be deemed to have been received.

16.5 For the purposes of clause 16.4, 'delivery' of an email means the time that an email reaches the recipient's server.

## **17. CERTIFICATE**

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A statement in writing signed by the Supplier's credit manager stating monies payable by the Customer to the Supplier shall be prima facie evidence of the amounts so payable.

## **18. INTELLECTUAL PROPERTY**

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18.1 The sale to and purchase by the Customer of any Goods or Services does not confer on the Customer any licence to the Intellectual Property Rights of the Supplier.

18.2 All Pre-existing IP Rights remain the sole property of the owner.

18.3 The Customer grants the Supplier a non-exclusive, royalty-free, non-transferable licence to use the Pre-existing IP Rights owned by it for the sole purpose of providing the Goods and Services.

## **19. NON SOLICITATION**

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19.1 For the maximum enforceable Restraint Period, the Customer will not (and will procure that its Related Bodies Corporate and Personnel will not) directly or indirectly solicit, employ or entice away:

- (a) any of the Supplier's Personnel; or
- (b) any person who is first introduced to the Customer by the Supplier.

19.2 Restraint Period means a period of:

- (a) two years, or if that is not enforceable then;
- (b) one year, or if that is not enforceable then;
- (c) six months,

from the date that the Services under these terms and conditions were last supplied to the Customer.

19.3 If any period included in the Restraint Period, or any restriction referred to in this clause or any combination of these periods and restrictions is held to be invalid for any reason by a court of competent jurisdiction:

- (a) that invalidity will not prejudice or in any way affect the validity of any lesser period or restriction specified or any lesser restraint imposed by a combination of any of those periods and restrictions; and
- (b) all of those periods, and restrictions and combinations will bind the Customer to the extent that no finding of invalidity is so made.

## **20. PPSA**

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20.1 All terms defined in the PPSA have the same meaning where capitalised in these terms and conditions.

20.2 The Customer agrees to do anything that the Supplier requires for the purposes of:

- (a) ensuring that any Security Interest granted to the Supplier is enforceable under the PPSA;
- (b) enabling the Supplier to gain highest possible priority for all Security Interests granted by the Customer; and
- (c) enabling the Supplier to exercise rights in connection with any Security Interest.

20.3 The Customer agrees and acknowledges that:

- (a) anything that is required by the Customer to be done under this clause 20 will be done by the Customer at its own expense. The Customer agrees to reimburse the costs of the Supplier in connection with any action taken by the Supplier under or in connection with this clause.
- (b) these terms and conditions constitute a security agreement for the purposes of the PPSA and that a Security Interest exists in all Goods previously supplied by the Supplier to the Customer and their proceeds (if any); in all future Goods that may be supplied by the Supplier (and their proceeds) and in all products into which the Goods are incorporated, processed or comingled (and their proceeds);
- (c) where the Customer is paid in respect of the Goods so delivered, the Customer must, as the Supplier's fiduciary, keep any such proceeds in a separate account and account to the Supplier in respect of those proceeds;
- (d) the Customer contracts out of and waives its rights under the following provisions of the PPSA, to the extent permitted, sections 95, 96, 117, 118, 121(4), 129, 130, 132(2), 132(3)(d), 132(4), 134(2), 135, 136(3)-(5), 137(2), 138, 142, 143 and the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded;
- (e) until ownership of the Goods passes, the Customer must not give the Supplier a written demand or allow any other person to give the Supplier a written demand requiring the Supplier to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA;
- (f) it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the

Security Interest to the Supplier under these terms and conditions;

21.4 even though the Court would not otherwise have such jurisdiction without this consent.

- (g) the Customer irrevocably grants to the Supplier the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if the Supplier has cause to exercise any of the Supplier's rights under sections 123 and/or 128 of the PPSA, and the Customer agrees to indemnify the Supplier from any claims made by any third party as a result of the Supplier exercising such right;
- (h) pursuant to section 275(6) of the PPSA, the Customer agrees it will not disclose to an interested person any of the matters described in section 275(1) of the PPSA without prior approval of the Supplier; and
- (i) if the Customer defaults in the performance of any obligation owed to the Supplier, the Supplier may enforce its Security Interest in any Goods by exercising all and/or any of its right under these terms and conditions, or the PPSA.

#### **Waiver**

- 21.6 Any failure by the Supplier to insist upon strict performance of any terms and/or conditions herein shall not be deemed a waiver thereof of any right that the Supplier may have and shall not be deemed to be a waiver of any subsequent breach of any terms and/or conditions.

#### **Severance**

- 21.7 In the event that the whole or any part or parts of any provisions in these terms and conditions should be held to be void or unenforceable in whole or in part such provision or part thereof shall to that extent be severed from these terms and conditions but the validity and enforceability of the remainder of these terms and conditions shall not be affected.

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- 20.4 The Customer agrees that where the Supplier has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

## **21. GENERAL**

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### **Variation**

- 21.1 No amendment or variation to these terms and conditions has force unless it is in writing and signed by the parties.

### **Joint and Several**

- 21.2 An obligation of two or more persons under these terms and conditions binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in terms of these terms and conditions will take effect for the benefit of those persons jointly and severally.

### **Entire Agreement**

- 21.3 These terms and conditions govern the entire agreement between the parties and supersede all prior representations, agreements, statements and understandings between the Customer and the Supplier.

### **Governing Laws**

- 21.4 Unless varied by notice in writing by the Supplier, these terms and conditions shall be governed by and construed in accordance with the laws of Queensland and the parties submit to the exclusive jurisdiction of the courts in Queensland.
- 21.5 The parties agree that proceedings may be commenced in any Court in Queensland and consent to that Court having jurisdiction by virtue of clause