

## Terms and Conditions

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### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

**Additional Charge** means:

- (a) fees or charges for Additional Services performed at your request or reasonably required as a result of your conduct, calculated in accordance with our then current prices; and
- (b) expenses incurred by us, at your request or reasonably required as a result of your conduct.

**Additional Services** means any Services that are not specified in the Order;

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Western Australia;

**Claims** means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise);

**Company** means Drillmech Pty Ltd (ACN 132 604 374);

**Confidential Information** has the meaning given to it in clause 9.1 and 9.2 and includes any information marked as confidential and any information received or developed by us during the term of this agreement, which is not publicly available and relates to processes, equipment and techniques used by us in the course of our business. This includes 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;

**Customer or you** means the person identified in the Order as the customer and includes your agents and permitted assigns;

**Goods** means any goods (including parts and accessories) supplied by us to you and referred to in the Order;

**Event of Insolvency** means:

- (a) a receiver, manager, receiver and manager, trustee, administrator, Controller or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraphs (a) or (b);

- (ii) winding up a corporation; or
- (iii) proposing or implementing a scheme of arrangement;
- (d) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate under any Insolvency Provision;
- (e) a moratorium of any debts of a person, or an official assignment, or a composition, or an arrangement (formal or informal) with a person's creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared, or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;
- (f) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts; or
- (g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person.

**Fee** means the Fee specified in the Order;

**Good Industry Practice** means the practices, methods and acts engaged in or approved by a person which, in the conduct of its undertaking, exercises that degree of due diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced persons;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended from time to time;

**Intellectual Property Rights** means rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs and includes our Software and the systems, procedures, processes, information and other intellectual property we create in connection with the provision of the Goods and Services and includes the know-how and other intellectual property in statistical and derivative data as processed by our systems, procedures and processes;

**Loss** includes, but is not limited to, costs (including party to party legal costs and our legal costs), expenses, lost profits, award of damages, personal injury and property damage;

**Order** means an order by you and as varied in writing from time to time by the parties

**PPSA** means the Personal Property Securities Act 2009 (Cth);

**PPS Security Interest** has same meaning as in the PPSA;

**PPSR** means the Personal Property Securities Register established under the PPSA;

**Security Interest** means:

- (a) A PPS Security Interest;
- (b) Any other mortgage, pledge, lien or charge; or
- (c) Any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

**Services** means the Services specified in the Order and where relevant includes the supply of Goods;

**State** means the state or territory where the Services are provided;

## 1.2 Interpretation

Unless the context otherwise requires:

- (a) a person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental department or agency;
- (b) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (c) a reference to an annexure, attachment or schedule is a reference to an annexure, attachment or schedule to this Agreement, and a reference to this Agreement includes an annexure, attachment or schedule;
- (d) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision; and
- (e) Time will be of the essence of this Agreement in all respects.

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## 2. GENERAL

- (a) This Agreement applies to all transactions between us for the supply of the Services. These terms take precedence over any terms of trade contained in any of your documents.
- (b) The Agreement comprises:
  - (i) the Order; and
  - (ii) these Terms and Conditions.
- (c) To the extent there is any inconsistency in the documents, the documents will be read in the order set in clause 2(b).

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### **3. QUOTES AND ORDERS**

#### **3.1 Quotes**

- (a) We may provide you with a Quote. Any Quote is valid for 30 days.
- (b) We reserve the right to amend any Quote before you accept it. Any amended Quote supersedes any relevant prior Quote or dealings between us.

#### **3.2 Orders**

- (a) Every Order must be in writing on our standard order form unless otherwise agreed, and identify any Quote to which the Order relates.
- (b) An Order is not a separate contract but forms part of these Terms and Conditions, with the most recent Quote provided by the Company relating to the Order.
- (c) You warrant that all information you provide to us is current and accurate and that we may rely on it.

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### **4. SERVICES**

#### **4.1 Supply of Services**

- (a) In consideration of you paying to us the Fee, we will supply the Services to you, subject to the terms of this Agreement.
- (b) We are not required to provide any services not set out in the Order unless you request in writing that we provide those services and we agree to that request.

#### **4.2 Standard**

We will use reasonable care and skill in providing the Services in accordance with Good Industry Practice, the Order and in accordance with all applicable legislation, laws or regulations.

#### **4.3 Site Access**

- (a) If we are required to access any site occupied by you to perform the Services, you agree to promptly provide us, our employees and sub-contractors, a non-exclusive and non-assignable licence to access to the Site and any facilities at the site as and when requested for the proper and efficient provision of the Services.
- (b) You are responsible for ensuring that we have the authority of any third party (such as any of your customers or tenants) to have the required access.

#### **4.4 Use of Subcontractors**

- (a) You agree that we may use subcontractors to provide some or all of the Services.
- (b) Any work undertaken by subcontractors will be undertaken to the same standard as stated in this Agreement.

#### **4.5 Movement of Equipment**

We may test drive, carry out tests on or move by driving your Equipment. We will not be liable for any damage which occurs to your Equipment or is caused by your Equipment except to the extent such loss or damage is caused by our negligence.

#### **4.6 Time for delivery**

We will use our best endeavours to meet any desired delivery dates specified in an Order, but our ability to do so is dependent upon our current work flow, the availability of goods and the prompt receipt of information from you. If we become aware of any matter that may change the timing of the delivery of any Services we will provide you notice of this.

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### **5. VARIATIONS**

#### **5.1 Variations at the request of the Customer**

- (a) You may request a variation to the Services at any time.
- (b) If we accept a variation, we may vary the Order to include any Additional Charges that arise due to the variation.
- (c) We have an automatic extension of time for any delays caused by or contributed by a variation.

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### **6. INVOICING AND PAYMENT**

#### **6.1 Invoicing and Payment**

- (a) Unless the Order states otherwise, all invoices must be paid within 30 days of the end of the month in which the invoice is issued, without deduction or set off.
- (b) All Fees are exclusive of GST.
- (c) Notwithstanding 6.1(a) we may, in our absolute discretion, issue an invoice to you in any one or more of the following ways:
  - (i) we may issue one or more invoices for a proportion or the whole of the Fee and require that proportion be paid in advance of any further Services are completed; or
  - (ii) when the Services are delivered or any time thereafter, for an amount equal to the Fee or the balance of the Fee outstanding, any Additional Charges and any amount not previously invoiced

#### **6.2 Travel and Accommodation**

Unless the Order states otherwise, the costs of travel and accommodation for Services provided outside the CBD are not included in the Fee, and all travel and accommodation costs incurred by us will be payable in addition to the Fee.

**6.3 Additional Services**

Fees for Additional Services will be charged on a time basis at the rates set out in the Order, or if no rates are specified, at our standard hourly rate.

**6.4 Extra Costs**

You agree to pay on demand any additional costs incurred by us in providing the Services so long as such additional costs were pre-approved by you.

**6.5 Interest**

You must pay interest on any outstanding invoices at the rate of 3% above the rate charged to us by our bank for any overdraft accommodation, calculated daily.

**6.6 No set off**

You are not entitled to retain any money owing to us notwithstanding any default or alleged default by us of this Agreement, including (but not limited to) the supply of allegedly faulty or defective Services, or a delay in the provision of any Services. Nothing in this paragraph affects your rights for any alleged failure of a guarantee under the Australian Consumer Law.

**6.7 Allocation of payments**

We may, in our complete discretion, apply any payment received from you to any amount owing by you, including for interests and costs.

**6.8 Suspension of Services**

In addition to any remedy we have at law, we may suspend the provision of Services until such time as all amounts owing by you have been paid.

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**7. ADDITIONAL CHARGES**

**7.1 Payment of Additional Charges**

We may require you pay the Additional Charges in respect of costs incurred by us as a result of:

- (a) reliance on inadequate or incorrect information or material provided by you; or
- (b) information or material supplied later than required by us in order for us to perform the Services within any specified time frame.

**7.2 Reasons for Additional Charges**

We may also impose additional charges as a result of any charges not included in the Order including couriers and government and council taxes and charges.

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## **8. ACCEPTANCE OF GOODS**

### **8.1 Acceptance**

- (a) Where the Services include the supply of Goods, you are deemed to have accepted the Goods and that the Goods are not faulty and accord with the order, unless within 7 days of delivery, you advise us to the contrary. Nothing in this paragraph affects your rights for any alleged failure of a guarantee under the Australian Consumer Law.
- (b) You must allow us to inspect any Goods that you say are faulty or not in accordance with the Order.

### **8.2 Returns**

- (a) We will not accept the return of any alleged faulty or defective Goods unless we have given prior written authorisation for the return.
- (b) Any returns of any alleged faulty or defective Goods is at our cost and must be by our approved carrier.

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## **9. TITLE AND RISK**

### **9.1 Risk**

Risk in the Goods passes to you immediately on delivery.

### **9.2 Title**

- (a) Title to the Goods does not pass to you until all money (including money owing in respect of other transactions between us and you) due and payable to us by you has been fully paid.
- (b) Where Goods are supplied by us without payment in full, you:
  - (i) are bailee of the Goods until title passes to you;
  - (ii) irrevocably appoint us to be your attorney to do all acts and things necessary to ensure the retention of title to the Goods including the registration of any security interest in favour of us with respect to the Goods under the PPS Law;
  - (iii) must be able upon demand by us to separate and identify as belonging to the us Goods supplied by us from other goods which are held by you;
  - (iv) must not allow any person to have or acquire any security interest in the Goods;

- (v) agree that we may repossess the Goods if payment is not made within 30 days (or such longer time as we may, in our complete discretion, approve in writing) of the supply of the Goods; and
  - (vi) grant us and our agents an irrevocable licence to enter your premises in order to recover possession of the Goods pursuant to this paragraph. You indemnify us for any damage to property or personal injury which occurs as a result of us entering your premises.
- (c) Where Goods is supplied by us to you without payment in full of all monies payable in respect of the Goods and:
- (i) you make a new object from the Goods, whether finished or not;
  - (ii) you mix the Goods with other goods;
  - (iii) the Goods becomes part of the other goods (New Goods),
- you agree with us that the ownership of the New Goods immediately passes to us. You will hold the New Goods on trust for us until payment of all sums owing to us whether under this Agreement or any other contract have been made. We may require you to store the New Goods in a manner that clearly shows our ownership.
- (d) Notwithstanding clause 8.2(c), you may transfer, sell or dispose of the Goods, including New Goods, to a third party in the ordinary course of business. This is provided that:
- (i) where you are paid by a third party in respect of Goods including New Goods, you hold the whole of the proceeds of sale, less any GST, on trust for us in a separate account, until all amounts owed by you to us have been paid; or
  - (ii) where you are not paid by a third party, you agree to assign all of its rights against the third party to us upon us giving you notice in writing to that effect and for the purpose of giving effect to that assignment you irrevocably appoint us as your attorney.

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## **10. STORAGE**

### **10.1 Storage at our Premises**

- (a) Where any of your Equipment is being stored at our Premises:
- (i) the Equipment is stored solely at your own risk;
  - (ii) you must fully insure your Equipment against loss, destruction and damage by fire, water, tempest, storm, accident, malicious damage, vandalism, act of God and other or usual and normal risks or hazards in the storage and/or warehouse industry;



- (iii) we are not liable for, and you indemnify us in respect of any liability to any you or any other person, in tort (including negligence) contract, bailment or otherwise for any loss of or damage to your Equipment, except to the extent that such loss or damage was caused by or contributed to by our negligence.
- (b) You agree that we may move your Equipment as and when we need to.

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## **11. CONFIDENTIAL INFORMATION**

### **11.1 Our Confidential Information**

- (a) You acknowledge that any information we give you about our method of doing business, the terms of the Order and the Fee are part of our confidential information, together with any other ideas, concepts and information, whether or not in material form, that are designated by us as confidential (Our Confidential Information). You acknowledge that disclosure of our Confidential Information may prejudice our business.
- (b) You must:
  - (i) keep the Confidential Information confidential and not disclose or communicate it to any person without our prior consent or as required by law; and
  - (ii) not make or assist any unauthorised use or disclosure of our Confidential Information.
- (c) The obligations of confidentiality survive the termination of this Agreement, except where the Confidential Information is in the public domain other than as a result of a breach by you of your obligations.

### **11.2 Your Confidential Information**

- (a) We acknowledge that any information you provide us about you or your business is your Confidential Information.
- (b) Despite the provisions of (a), you acknowledge that we own the copyright in any report prepared by us in connection with the provision of the Services, and that you may not reproduce any part of it without our prior consent (which we shall not unreasonably withhold).
- (c) We shall:
  - (i) only use Confidential Information for the purpose of providing the Services to you;
  - (ii) keep the Confidential Information strictly confidential and not disclose or communicate it to any person, without your prior consent or as required by law; and

- (iii) not make or assist any unauthorised use or disclosure of our Confidential Information.
- (d) The obligations of confidentiality survive the termination of this Agreement, except where the Confidential Information is in the public domain other than as a result of a breach by us of our obligations.

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## **12. INTELLECTUAL PROPERTY**

### **12.1 Our Intellectual Property**

- (a) You acknowledge that the systems, procedures, processes, information and other intellectual property we create in connection with the provision of the Services are and remain our property (Our IP). For the avoidance of doubt, we own the know-how and other intellectual property in the data as processed by our systems, procedures and processes, provided it is de-identified from the raw source material from which it is generated.
- (b) Provided that you (nor any third party for whom you act) are not identifiable, you agree (for yourself and as the agent and representative for each third party for whom you act) that we may use or create statistical and derivative data from raw data that we obtain in providing the Services for commercial purposes including statistical, comparative, benchmarking, research and development and/or business development purposes. Neither you nor anyone else shall be entitled to any form of compensation whatsoever for our use of such data.
- (c) During the Term, we grant you a personal, revocable and royalty-free licence to use Our IP strictly in connection with your business. The licence granted by this clause is not capable of assignment or sub-licensing.
- (d) Despite anything to the contrary in this Agreement, you indemnify us and agree to keep us indemnified from and against all costs, claims, actions, proceedings, demands, expenses (including legal costs on a full indemnity basis), judgments, damages and loss suffered or incurred attributable to or arising out of any infringement or alleged infringement of Our IP. At our request, you shall (at your costs in all respects) defend any action against us for any infringement or alleged infringement of Our IP. This survives termination of this Agreement.

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## **13. AGENCY AND ASSIGNMENT**

- (a) You agree that we may at any time appoint or engage an agent to perform any of our obligations arising out of or pursuant to this Agreement.
- (b) We have the right to assign and transfer to any person all or any of our title, estate, interest, benefit, rights, duties and obligations arising in, under or from this Agreement provided that the assignee agrees to assume our duties and obligations owed to you.
- (c) You must not assign, or purport to assign, any of your obligations or rights under this Agreement without our prior written consent.

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## **14. DEFAULT**

### **14.1 Event of default**

Each of the following constitutes an Event of Default:

- (a) either party breaches this Agreement (including, but not limited to, defaulting on any payment due) and where the breach is capable of being remedied fail to remedy that breach within 14 days of being given notice to do so; or
- (b) a party suffers an Event of Insolvency;

### **14.2 Our rights on Event of Default**

Where an Event of Default occurs in relation to you, except where payment in full has been received by us, we may:

- (a) terminate this Agreement;
- (b) refuse to perform the Services;
- (c) pursuant to clause 9(c), repossess and re-sell any Goods delivered to you, the payment for which has not been received; or
- (d) retain (where applicable) all money paid by you on account or otherwise.

### **14.3 Invoices due and payable**

Upon an Event of Default all outstanding invoices will become immediately due and payable.

### **14.4 Your Rights on Event of Default**

Where an Event of Default occurs to us, you may terminate the Agreement.

### **14.5 Effect of Termination**

Termination of this Agreement is without prejudice to each party's either right and remedies at law or in equity.

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## **15. WARRANTIES AND LIMITATION OF LIABILITY**

### **15.1 No consequential loss**

We are not liable to you or anyone else in connection with the Services or this Agreement (including any changes to the Agreement), including without limitation for:

- (a) any direct, indirect or consequential loss, any loss of actual or anticipated savings, opportunity, revenue, profit or goodwill, or other economic loss; and
- (b) any claim by a third party against you (or any loss damages or liability incurred or suffered by you as a result of any such claim),

and you release and indemnify us, our officers, employees, agents and subcontractors to the fullest extent permitted by law in respect of matters set out in this clause 15.

## **15.2 Limited Liability**

- (a) Subject to clauses 15.3 and 15.4 our maximum liability for all Loss, including but not limited to liability for breach of contract, negligence or tort or any other common law or statutory claim is limited to the amounts paid by you to us in the immediately 12 month period preceding any claim.
- (b) Subject to clause 15.3, we will not be liable to you or any the person for:
  - (i) Any Loss or damage of any kind that is directly or indirectly caused or results from any wrongful, willful or negligent act or omission of you or any of your employees, officers, agents or other contractors;
  - (ii) Any Loss or damage of any kind suffered or incurred by you or any third party to the extent that such Loss or damage is a direct or indirect result of errors in or omissions from any orders submitted by you or any other information provided by you, whether arising out of negligence or otherwise; or
  - (iii) Any indirect, incidental, special or consequential losses or damages irrespective of whether:
    - (A) The loss or damage is caused by or relates to a breach of contract, statute, tort (including negligence) or otherwise; or
    - (B) You or any person previously notified us of the possibility of such loss or damage.
- (c) For the purposes of these terms, indirect, incidental, special or consequential losses or damage includes loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time.

## **15.3 Exclusion of implied warranties**

Any representation, warranty, condition or undertaking that would be implied into these terms and conditions by law or otherwise re excluded to the maximum extent permitted by law.

## **15.4 Non excludable rights implied by the Australian Consumer Law**

Nothing in these terms and conditions excludes, restricts or modifies any condition, warranty, guarantee, right or remedy conferred on you by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified by agreement.

## **15.5 Liability**

To the fullest extent permitted by law, our liability for a breach of a non-excludable condition, warranty or guarantee referred to in clause 15.3 and as otherwise provided for in these terms is limited, at our option to:

- (a) In the case of Goods, any one or more of the following:
  - (i) The repair of the Goods;
  - (ii) The replacement of the Goods or the supplying of equivalent Goods;
  - (iii) paying for the cost of repair of the Goods; or
  - (iv) the payment of the cost of replacement of the Goods or the supplying of equivalent Goods; and
- (b) In the case of Services:
  - (i) The supplying of the Services again; or
  - (ii) The payment of the cost of supplying of the Services again.

## **15.6 No representation**

- (a) You acknowledge and agree that any information we provide to you in connection with the Goods or Services is based on information you have provided to us and such information should not be relied upon as accurate and conclusive. Subject to clause 15.3, we assume no responsibility or liability in respect of the provision of such information.
- (b) Subject to clause 15.3 and 14, we make no warranty as to the overall performance of any Goods.

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## **16. EXCLUSIONS AND INDEMNITY**

- (a) Unless the Service is the provision of advice, recommendations or consultation (in which case clause 15(c) applies), you acknowledge that any suggestions that we may offer in connection with the provision or supply of the Services, are given in good faith and without acceptance of any liability in relation thereto. It is your responsibility to ensure, by the engagement of your own qualified personnel and their review of the same, that the Services the subject of Order are suitable for your purposes.
- (b) If the Service is the provision of advice, recommendations or consultation, our liability will (to the maximum extent permitted by law) be limited to us providing a standard of care commensurate with that to be provided by a service provider/consultant providing similar services in the circumstances that apply at the time of the giving of the advice, recommendation and consultation. In no event will we be liable for any indirect or consequential loss or damage of any

kind (including loss of profits, business or anticipated savings) arising from any breach of our obligations under the contract.

- (c) You release us and our officers, employees, agents and contractors to the full extent permitted by law from all costs, claims actions, proceedings, demands, expenses, judgments, damages or losses of any kind whatever resulting from or attributable to any accident, damage, loss, death or injury occurring as a result of the provision of the Services or otherwise pursuant to this contract.
- (d) Without limitation to clause 15(c):
  - (i) You indemnify us and agree to keep us indemnified from and against all costs, claims, actions, proceedings, demands, expenses, judgments, damages and loss suffered or incurred attributable to personal injury to, or death of, any person or damage to any property wherever occurring arising from or out of or attributable to the provision of the Services (whether or not occasioned wholly or in part by any act, neglect, default or omission by you or anyone on your behalf); and
  - (ii) so far as the law permits, we will not be liable for any indirect damages (including without limitation), consequential, special, punitive or incidental damages, damages for loss of profits or revenue, loss of privacy, business interruption, or loss of business or any other loss, relating to or arising out of, whether directly or indirectly, the supply or provision of the Services.
- (e) We indemnify you and agree to keep you indemnified from and against all costs, claims, actions, proceedings, demands, expenses, judgments, damages and loss suffered or incurred attributable to personal injury to, or death of, any person or damage to any property wherever occurring arising from or out of or attributable to the provision of the Services (whether or not occasioned wholly or in part by any act, neglect, default or omission by us or anyone on our behalf) but only to the extent caused or contributed to by us or by anyone on our behalf.
- (f) We carry insurance in connection with the operation of our business, being the following levels of cover:
  - (i) Public Liability: \$20,000,000 per claim and in the aggregate;
  - (ii) Professional Indemnity: \$10,000,000 per claim and in the aggregate;
  - (iii) Worker Compensation: Full Cover as required by law, up to \$50,000,000 per claim.

Copies of Our indemnity insurance policies can be provided on request.

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## **17. FORCE MAJEURE**

- (a) If circumstances beyond our control prevent or hinder the delivery of the Services, we are free from any obligation to provide the Services while those circumstances continue. We may elect to terminate this Agreement or keep the Agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond our control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

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## **18. DISPUTE RESOLUTION**

### **18.1 Notice of Dispute**

If a dispute arises between you and us, the following procedure applies:

- (a) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause;
- (b) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this clause;
- (c) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this clause.

### **18.2 Dispute to be referred**

If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 10 Business Days (or other period as agreed).

### **18.3 Mediation**

Unless otherwise agreed, the parties agree to endeavour to resolve any dispute that cannot be settled by negotiation between the parties or their representatives by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these Terms of Trade. This clause survives termination of these Terms of Trade.

#### **18.4 Performance**

Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these Terms of Trade.

#### **18.5 Confidentiality**

The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

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### **19. PPSA**

#### **19.1 Security Interest**

You acknowledge that this Agreement may give rise to a Security Interest under the PPSA and that we may, at your cost register our interest on the PPSR. You hereby waive your rights under section 157 of the PPSA to receive notice of any verification statement relating to such registration.

#### **19.2 Further Assurance**

You must do anything we require including signing documents to ensure we have a perfected first ranking Security Interest.

#### **19.3 No dealing**

Until title in any Goods has passed to you, you agree 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 your favour or any third party. This clause will not prohibit you from selling the goods in the ordinary course of business.

#### **19.4 Indemnity**

You indemnify us for any costs we incur in registering or maintaining any Security Interest and or exercising any rights under Chapter 4 of the PPSA.

#### **19.5 Contracting Out**

- (a) If Chapter 4 of the PPSA would otherwise apply to the enforcement of any Security Interest provided by this Agreement, the following provisions of the PPSA do not apply:
  - (i) To the extent that section 115(1) allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143; and



- (ii) To the extent that section 115(7) allows them to be excluded: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137.
- (b) To the extent permitted by law:
  - (i) Where we have the right in addition to or existing separately from those in Chapter 4 of the PPSA, those rights will continue and apply and in particular, will not be limited by section 123; and
  - (ii) You waive any rights you may have now or in the future under sections 92, 95, 96 and 142.

## **19.6 Confidentiality**

- (a) Neither party may disclose information of the kind referred to in section 275(1) of the PPSA, except where any one of paragraphs (h) to (e) of section 275(7) apply. You agree you will only authorise disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if we consent. Nothing in this clause prevents disclosure by us if we believe it is necessary to comply with any obligations under the PPSA.
- (b) You agree that we may disclose information of a kind referred to in section 275(1) to the extent we are not doing so in response to a request by an interested person as defined in section 275(a) pursuant to section 275(1).

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## **20. GST**

### **20.1 Expressions Used**

Expressions used in this clause 19 and which are not otherwise defined have the same meaning as in the GST Act.

### **20.2 Payments exclusive of GST**

Except where otherwise stated, and subject to this clause 17, any amount payable under this Agreement is exclusive of any GST.

### **20.3 Payment of GST**

If a party makes a Taxable Supply in connection with this Agreement for a Consideration which represents its value, then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply.

### **20.4 Tax Invoice**

A party's right to payment under this clause 17 is subject to a valid Tax Invoice being delivered to the Recipient of the Taxable Supply.

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**21. MISCELLANEOUS**

**21.1 Jurisdiction**

This Agreement is governed by the laws of Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia.

**21.2 Whole Agreement**

(a) This Agreement represents the whole agreement between us relating to the subject matter of these terms.

(b) This Agreement supersedes all oral and written negotiations and communications by and on behalf of either of the parties.

**21.3 Further Assurance**

Each party must do all things reasonably necessary to carry out the provisions of this Agreement.

**21.4 No reliance**

In entering into This Agreement, you have not relied on any warranty, representation or statement, whether oral or written, made by us or any of our employees or agents relating to or in connection with the subject matter of this Agreement.

**21.5 Severance**

If any provision of this Agreement at any time is or becomes void, voidable or unenforceable, that provision will, to the extent required by severed from this Agreement the remaining provisions will continue to have full force and effect.

**21.6 Waiver**

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

**21.7 Notices**

(a) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on the Order (or as varied pursuant to this paragraph) and:

(i) delivered personally,

(ii) sent by pre-paid mail to the address of the addressee specified in the Order;

(iii) sent by fax to the fax number of the addressee specified in the Order, with acknowledgment of receipt from the facsimile machine of the addressee; or

- (iv) sent by email to the email address of the addressee specified in the Order with acknowledgement of delivery.
- (h) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (i) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.

