

CREDIT ACCOUNT APPLICATION (AUSTRALIAN CUSTOMERS)

Company Name: _____ (“Customer”)		A.B.N.: _____	
Trading Name: _____		A.C.N.: _____	
Physical Address of Business: _____		State: _____	Postcode: _____
Registered Address: _____		State: _____	Postcode: _____
Business Website: _____		Tel No: _____	
Directors / Owners / Trustee (if more than two, please attach a separate sheet)			
(1) Full Name: _____		D.O.B. _____	
Private Address: _____		State: _____	Postcode: _____
Driver’s Licence No: _____	Tel No: _____		Mobile: _____
(2) Full Name: _____		D.O.B. _____	
Private Address: _____		State: _____	Postcode: _____
Driver’s Licence No: _____	Tel No: _____		Mobile: _____
Date Business / Company Established: _____		Approx. annual tech spend: AUD\$ _____	
Type of Business: _____		Number of Staff: _____	
PO’s required for orders placed with PB ? <input type="checkbox"/> YES <input type="checkbox"/> NO Sample PO number:..... <small>(Note: Even if no PO required we will still require to have an email confirmation before releasing any goods. This is also to protect your interest)</small>			
Purchasers Email Address: _____			
Accounts Payable (A/P) Email Address: _____			
Accounts Payable (A/P) Contact: _____		Tel No: _____	Mobile: _____
Bank and Branch: _____		Account No: _____	
Contact for credit insurance inquiries: (If different from A/P): _____		Tel No: _____	Mobile: _____
<small>(This is allow our credit insurer to contact you for information)</small>		Email: address: _____	
Trade References	1) Supplier Name: _____		Tel No: _____
	2) Supplier Name: _____		Tel No: _____
	3) Supplier Name: _____		Tel No: _____

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understood the TERMS AND CONDITIONS (overleaf or attached) of PB Technologies Ltd (“PB”) which form part of, and are intended to be read in conjunction with this Credit Account Application and I agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owing at least 15% of shares) of the Customer I shall be personally liable for the performance of the Customer’s obligation under this contract.**

I understand that the application process can take up to 10 working days and I/we may be granted a temporary credit limit during this time while waiting PB Technologies to assess my application. By signing this application, I authorise the details provided above to be passed onto the designated insurance provider who may contact us for more information.

SIGNED (CUSTOMER): _____ **Witness:** _____
Name: _____ Name: _____
Position: _____ Address: _____
Date: _____

OFFICE USE ONLY				
Account / Ref. No	ACCOUNT TERM	CREDIT LIMIT	APPROVED BY	DATE
		\$		/ /

Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of PB Technologies Ltd and its successors and assigns ("the Agent") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply Goods and/or Services to

("the Customer") [Insert Company Name In Box Provided]

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to the Agent of all monies which are now owing to the Agent by the Customer and all further sums of money from time to time owing to the Agent by the Customer in respect of Goods and/or Services supplied or to be supplied by the Agent to the Customer or any other liability of the Customer to the Agent, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with the Agent, including but not limited to the Terms and Conditions signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to the Agent the Guarantor will immediately on demand pay the relevant amount to the Agent. In consideration of the Agent agreeing to supply the Goods and/or Services to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in all freehold, leasehold or other interests in land or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that to the extent applicable, this personal guarantee and indemnity constitutes a security agreement for the purposes of the *Personal Property Securities Act 2009* (Cth) ("**PPSA**") in Australia and unequivocally consents to the Agent registering any interest so charged. If required by the Agent the Guarantor must sign a mortgage and other documents (each in a form and substance required by the Agent) and do anything required by the Agent to more satisfactorily secure the charges given by the Guarantor. The Guarantor irrevocably appoints the Agent and each director of the Agent as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Agent may reasonably require to:
 - (a) register a mortgage or any other documents in relation to all freehold, leasehold or other interests in land or register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (b) register any other document required to be registered by the PPSA or any other law; or
 - (c) correct a defect in a statement referred to in clause 1(a) or 1(c).
2. **HOLD HARMLESS AND INDEMNIFY** the Agent on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Agent in connection with:
 - (a) the supply of Goods and/or Services to the Customer; or
 - (b) the recovery of monies owing to the Agent by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Agent's nominees costs of collection and legal costs; or
 - (c) monies paid by the Agent with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Agent, the Customer, and a third party or any combination thereof, over the supply of Goods and/or Services by the Agent to the Customer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read and understood the Agent's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to the Agent by the Customer and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Agent's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to the Agent, each Guarantor shall be a principal debtor and liable to the Agent accordingly.
6. If any payment received or recovered by the Agent is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Agent shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to the Agent.**
9. I/we irrevocably authorise the Agent to obtain from any person or company any information which the Agent may require for credit reference purposes. I/We further irrevocably authorise the Agent to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Agent as a result of this Guarantee and Indemnity being actioned by the Agent.
10. The above information is to be used by the Agent for all purposes in connection with the Agent considering this Guarantee and Indemnity and the subsequent enforcement of the same.

<p>GUARANTOR-1 SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p> <p>NAME OF WITNESS: _____</p> <p>OCCUPATION: _____</p> <p>PRESENT ADDRESS: _____</p>
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<p>GUARANTOR-2 SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p> <p>NAME OF WITNESS: _____</p> <p>OCCUPATION: _____</p> <p>PRESENT ADDRESS: _____</p>
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Terms & Conditions

1. Definitions

- 1.1 "Agent" means, as the context requires:
 PB Technologies Limited, its successors and assigns, or any person acting on behalf of, and with the authority of, PB Technologies Limited
- 1.2 "Australian Consumer Law" means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- 1.3 "Customer" means the person/s requesting the Agent to provide the Goods as specified in any invoice, document or order, and, if there is more than one person requesting the Goods, is a reference to each person jointly and severally.
- 1.4 "Delivery" has the meaning given to that term in clause 6.1.
- 1.5 "Goods" means all Goods (which includes any files, information, printed or virtual material, data, hardware or software, whether provided from a third party or where custom developed or programmed for the Customer) and/or Services (which includes any advice or recommendations, installation of Goods, product support, etc.) provided by the Agent to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.6 "GST" means Goods and Services Tax.
- 1.7 "PPSA" means the Personal Property Securities Act 2009 (Cth);
- 1.8 "PPSA Security Interest" means a security interest under the PPSA;
- 1.9 "Price" shall mean the price payable for the Goods as agreed between the Agent and the Customer subject to clause 4 of this contract.
- 1.10 In these terms and conditions, unless the context otherwise requires, the following terms have the meaning given to them in the PPSA: "collateral", "financing change statement", "financing statement", "perfected", "registration", "serial number" and "verification statement".

2. Acceptance of Terms and Conditions

- 2.1 The Customer is taken to have exclusively accepted and both parties are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Goods, and the Customer accepts Delivery.
- 2.2 These terms and conditions may only be amended with the Agent's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Agent.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with section 10 of the *Electronic Transactions Act 1999* (Cth) or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 None of the Agent's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Agent in writing nor is the Agent bound by any such unauthorised statements.
- 2.5 Any advice, recommendations, information, assistance or service provided by the Agent in relation to the Goods is given in good faith and is based on information provided to the Agent and the Agent's own knowledge and experience. Whilst it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods, human error is possible under these circumstances, and the Agent shall make all effort to offer the best solution to the Customer.

3. Change in Control

- 3.1 The Customer shall give the Agent not less than fourteen (14) days' prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Agent as a result of the Customer's failure to comply with this clause.

4. Price and Payment

- 4.1 At the Agent's sole discretion the Price shall be either:
(a) as indicated on any invoice provided by the Agent to the Customer; or
(b) the Price as at the date of Delivery according to the Agent's current price list; or

- (c) the Agent's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 **Additional and/or Varied Services:**
(a) The Agent reserves the right to vary the Price:
(i) if a variation to the Goods, or plan of scheduled Services, is requested (including, but not limited to, any change in the Customer's specifications, additional work required due to hidden or unidentifiable difficulties not evident prior to commencement of the Services, any request to investigate and/or repair any faults or defects outside the Agent's normal business hours); or
(ii) as a result of increases beyond the Agent's reasonable control in the cost of materials or labour, or due to fluctuations in currency exchange rates.
- (b) Where the performance of any contract with the Customer requires the Agent to obtain products and/or services from a third party, the contract between the Agent and the Customer shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to the Agent, and the Customer shall be liable for the cost in full including the Agent's margin of such products and/or services;
- (c) All work carried out whether experimentally or otherwise at the Customer's request will be charged to the Customer.
- (d) In the event that the Agent is requested to provide on-site Services, the Agent reserves the right to charge a minimum call-out fee equal to one (1) hours labour (and/or two (2) hours labour for any requested provision of Services after-hours), plus travel and Goods.
- 4.3 At the Agent's sole discretion, a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Agent, which (at the Agent's sole discretion) may be amended at any time upon serving the Customer with a tax invoice by email, and which shall become due the earlier of:
(a) twenty (20) days following the end of the month in which an invoice is sent to the Customer by email; or
(b) on the date specified on any invoice or other form as being the due date for payment.
- 4.5 Payment may only be made by electronic/on-line banking, or credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and the Agent.
5. **GST**
- 5.1 Terms used in this clause have the same meanings as given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 5.2 Unless otherwise stated the Price does not include GST.
- 5.3 If GST applies to a supply made under this contract, the Customer must pay to the Agent an additional amount equal to the GST payable on the supply ("**GST Amount**").
- 5.4 The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. The Customer's obligation to pay the GST component of the Price is subject to it receiving a valid tax invoice from the Agent in respect of the supply at or before the time of payment.
- 5.5 If this contract requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (reimbursable expense) suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense plus any GST payable by the other party.
- 5.6 In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price, except where they are expressly included in the Price.
6. **Delivery**
- 6.1 In the absence of agreement in writing between the Customer and the Agent to the contrary, Goods are supplied on a 'Delivered Duty Paid' basis as that term is defined in the Incoterms 2010 (**Incoterms**). If the parties agree in writing that another set of Incoterms will apply, then the relevant Goods will be delivered on that agreed basis. This is subject to the express terms set out in these terms and conditions.
- 6.2 Delivery of the Goods ("**Delivery**") is taken to occur at the time that:

- (a) the Customer (or the Customer's nominated carrier) takes possession of the Goods at the Agent's premises; or
(b) the Agent (or the Agent's nominated carrier) delivers the Goods to the Customer's nominated address, even if the Customer is not present at the address; or
(c) Otherwise in accordance with the relevant agreed Incoterms.
- 6.3 Where the Goods are supplied on a Delivered Duty Paid basis, the cost of Delivery (including any duty) is the responsibility of the Agent in accordance with the relevant Incoterms (and is included in the Price). Otherwise the responsibility will be determined in accordance with the agreed Incoterms.
- 6.4 The Customer must take Delivery, by receipt or collection of the Goods, whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery as arranged, then the Agent shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.5 Any time or date given by the Agent to the Customer is an estimate only. The Customer must still accept Delivery, even if late, and the Agent will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late.
7. **Customer's Property and Materials**
- 7.1 In the case of the Customer's property being left with the Agent without specific instructions, the Agent shall be free to dispose of such property at the end of sixty (60) days after the Agent receives it and to either accept and retain the proceeds (if any) and/or charge the Customer in addition to the Price to cover the Agent's own costs in storing, handling and/or disposing of such property.
- 7.2 Where products or equipment are supplied by the Customer, the Agent accepts no responsibility for imperfect work caused by defects in or unsuitability of such products or equipment.
8. **Risk and Limitation of Liability**
- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery, and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery, but prior to ownership passing to the Customer, the Agent is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.
- 8.3 If the Customer requests the Agent to leave Goods outside the Agent's premises for collection, or to deliver the Goods to an unattended address, then such Goods shall be left at the Customer's sole risk.
- 8.4 The Customer acknowledges and agrees that the Agent shall not be held responsible or liable for:
(a) any loss, corruption, or deletion of files or data (including, but not limited to, hard drives-internal and external, diskettes, CD's, DVD's, PC cards or software programmes) resulting from illegal hacking or Services provided by the Agent. Whilst the Agent will endeavour to restore the files or data (at the Customer's cost), it is the sole responsibility of the Customer to back-up any data (and/or to remove any removable media) which they believe to be important, valuable, or irreplaceable prior to the Agent providing the Services. The Customer accepts full responsibility for the Customer's software and data and the Agent is not required to advise or remind the Customer of appropriate backup procedures; or
(b) any unlicensed software, data loss or problems arising caused by the user or software.
- 8.5 The Customer acknowledges that any advice or recommendations by the Agent are provided on the basis of the Agent's industry knowledge and experience only and shall not be deemed as specialist advice.
- 8.6 To the extent permitted by law, the Agent, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Customer or any person related to or dealing with the Customer out of, in connection with or reasonably incidental to the provision of Goods by the Agent to the Customer.
- 8.7 The Customer acknowledges that it is the policy of the Agent to report all findings of illegal material (including, but not limited to, images and software) to the relevant authorities.

PLEASE INITIAL HERE: _____

9. **Title**
- 9.1 The Agent and the Customer agree that ownership of any Goods shall not pass (and the Customer's obligations to the Agent for the provision of Services shall not cease) until:
- (a) the Customer has paid the Agent all amounts owing to the Agent; and
- (b) the Customer has met all other obligations due by the Customer to the Agent in respect of all contracts between the Agent and the Customer.
- 9.2 Receipt by the Agent of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then the Agent's ownership or rights in respect of the Goods, and this contract, shall continue.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to the Agent on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Agent and must pay to the Agent the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Agent and must pay or deliver the proceeds to the Agent on demand;
- (d) if the Customer disposes of or otherwise deals with the Goods or an interest in the Goods in breach of clause 9.3(c), the Customer agrees that the Agent has not authorised the disposal or agreed that the dealing would extinguish its interest (including any PPSA Security Interest), and that its interest (including any PPSA Security Interest) continues in the Goods or interest, despite the disposal or dealing;
- (e) the Customer must not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Agent and must sell, dispose of or return the resulting product to the Agent as it so directs;
- (f) the Customer irrevocably authorises the Agent to enter any premises where the Agent believes the Goods are kept and recover possession of the Goods;
- (g) the Agent may recover possession of any Goods in transit, whether or not Delivery has occurred;
- (h) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Agent; and
- (i) the Agent may commence proceedings to recover the Price of the Goods sold, notwithstanding that ownership of the Goods has not passed to the Customer.
10. **PPSA**
- 10.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA in Australia;
- (b) a purchase money security interest is granted by the Customer to the Agent in all Goods (including any replacements, substitutions, additions, attachments and proceeds), and/or any monetary obligation of the Customer to the Agent for Services previously provided (if any) and that will be provided in the future by the Agent to the Customer; and
- (c) the Agent may register one or more financing statements in relation to any PPSA Security Interest provided for by these terms and conditions. If permitted by the PPSA, the Customer waives its right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.
- 10.2 The Customer undertakes to:
- (a) do everything necessary to protect the Agent's title to and its PPSA Security Interest in the Goods;
- (b) do or cause to be done anything which the Agent considers necessary or desirable to perfect and protect any PPSA Security Interest provided for by these terms and conditions;
- (c) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Agent may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register and to ensure that any registration of any PPSA Security Interest provided for by these terms and conditions is, and remains, fully effective and with the required priority;
- (d) indemnify, and upon demand reimburse, the Agent for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (e) not allow registration of a financing change statement or a change demand in respect of the Goods without the prior written consent of the Agent; and
- (f) immediately advise the Agent of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.3 The Customer and the Agent agree with each other not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. The Customer agrees that the Customer will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if the Agent approves. Nothing in this clause will prevent any disclosure by the Agent that the Agent believes is necessary to comply with its other obligations under the PPSA. To the extent that it is not inconsistent with this clause 10.3 constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, the Customer agrees that the Agent may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that the Agent is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- 10.4 To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Agent of any PPSA Security Interest provided for by these terms and conditions, the Agent and the Customer agree with each other that the following provisions of the PPSA do not apply (a) to the extent that section 115(1) of the PPSA allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and (b) in addition, to the extent that section 115(7) of the PPSA allows them to be excluded: sections 127, 129(2) and (3), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137. If section 115(1) of the PPSA does not allow section 125 of the PPSA to be excluded, the Customer agrees that at any time after any PPSA Security Interest provided for by these terms and conditions has become enforceable, the Agent may delay disposing of, or taking action to retain, the whole or part of the collateral to the extent permitted by law.
11. **Customer's Disclaimer**
- 11.1 The Goods are provided on the basis of specifications, information and instructions provided by the Customer to the Agent (whether written or verbal). The Customer acknowledges that it is its responsibility to ensure that such specifications, information and instructions are detailed sufficiently to satisfy the Agent's requirements of interpretation and understanding, as once accepted by the Customer the Agent's quotation shall be deemed to interpret correctly those specifications, information and instructions. Therefore, to the extent permitted by law, the Agent shall not accept any liability for the provision of Goods contrary to the Customer's intention, or errors or omissions in the Services, due to insufficient or inadequate provision of detailed specifications, information and instructions by the Customer or oversight or misinterpretation thereof, and the Agent may charge the Customer additional costs incurred thereby in rectifying the Goods, and if reasonably practical, will notify the Customer of such costs before they are incurred and the Customer agrees to them.
- 11.2 To the extent permitted by law, the Customer hereby disclaims any right to rescind, or cancel any contract with the Agent or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Agent and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
12. **Defects, Returns, Repairs and Warranty**
- 12.1 Clauses 12.2 to 12.12 are subject to clauses 12.13 and 12.14.
- 12.2 The Customer shall inspect the Goods on Delivery and shall within seven (7) days of such time (being of the essence) notify the Agent of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quotation. The Customer shall afford the Agent an opportunity to inspect/review the Goods within a reasonable time following such notification if the Customer believes the Goods are defective in any way. If the Customer does not notify the Agent in accordance with this clause 12.1, the Goods shall be presumed to be free from any defect or damage.
- 12.3 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1;
- (b) the Customer has obtained a valid return merchandise authorisation ("RMA") number from the Agent by way of the Agent's website;
- (c) the Agent has agreed in writing to accept the return of the Goods; and
- (d) the Goods are returned at the Customer's cost within seven (7) days of Delivery.
- 12.4 The Agent will not be liable for Goods which have not been stored or used in a proper manner.
- 12.5 The Agent may (in its absolute discretion) accept non-defective Goods for return, in which case the Agent may require the Customer to pay handling fees of a minimum of twenty percent (20%) of the value of the returned Goods, plus any freight costs. However, subject to clause 12.1, non-stocklist items or Goods made or procured to the Customer's specifications, are under no circumstances acceptable for credit or return.
- 12.6 The Customer acknowledges that items presented for repair may be replaced by refurbished Goods of the same type rather than being repaired.
- 12.7 Where the Customer has left any item/s with the Agent for repair, modification, exchange or for the Agent to perform any other service in relation to the item/s, the Agent will, after attempting to contact the Customer on three (3) separate occasions in order for the Customer to collect the item/s and/or pay any outstanding monies owing to the Agent, have (after twelve (12) months):
- (a) a lien on the item/s; and
- (b) the right to retain and salvage and/or sell the item/s, and such will be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 12.8 The lien of the Agent shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Agent having been obtained against the Customer.
- 12.9 Subject to the conditions of warranty as follows and those (if any) that may be contained in any warranty card supplied by the Agent to the Customer, the Agent warrants that if any defect in any of its workmanship becomes apparent and is reported to the Agent, then the Agent will either (at the Agent's sole discretion) replace or remedy the workmanship. The conditions applicable to this warranty are:
- (a) the warranty will be valid for the timeframe (after Delivery in accordance with clause 6) as specified by the Agent;
- (b) if any defect does not materialise prior to the date provided in accordance with sub-clause (a), the Agent will have no liability to the Customer under the warranty, and the Customer releases the Agent from all claims for loss or damage in any way connected with the workmanship from that date;
- (c) the warranty shall cease, and the Agent shall thereafter in no circumstances be liable under the terms of the warranty, if the workmanship is repaired, altered or overhauled without the Agent's consent; and
- (d) in respect of all claims the Agent shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 12.10 Notwithstanding clauses 12.1 to 12.9, the Agent shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

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- (a) the Customer failing to properly maintain or store the Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by the Agent; or
- (e) fair wear and tear, any accident, or act of God.
- 12.11 For Goods not manufactured by the Agent, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Agent 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.
- 12.12 In the case of second-hand Goods, the Customer acknowledges that they have had full opportunity to inspect the same and that they accept the same with all faults and that no warranty is given by the Agent as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Agent shall not be responsible for any loss or damage to the Goods, or caused thereby, or any part thereof however arising.
- 12.13 All implied conditions and warranties of any type in relation to the Goods are excluded to the maximum extent allowed by law.
- 12.14 Notwithstanding anything else in this contract, if a mandatory term is implied by law or a mandatory consumer guarantee applies to goods or services provided in connection with this contract, to the maximum extent permitted by law, the Agent's liability for breach of the term or guarantee is limited, at the Agent's option to:
- (a) in the case of goods not of a kind ordinarily acquired for personal, domestic or household use or consumption, either replacement or repair of the goods or payment of the cost of replacing or repairing the goods; and
- (b) in the case of services not of a kind ordinarily acquired for personal, domestic or household use or consumption, to either resupply of the services or the cost of the resupply of the services.
- 13. Intellectual Property**
- 13.1 Where the Agent has provided the Customer with computer software (including coding and routines) and/or has designed, drawn or developed Goods for the Customer, the Agent retains full ownership of the computer software and/or the copyright in any designs and drawings and documents shall remain the property of the Agent, and the Agent hereby grants to the Customer an irrevocable, non-exclusive and non-transferable licence to use the software (under the terms of the licence it was provided) and/or Goods.
- 13.2 The Customer warrants that all designs and instructions given to the Agent will not cause the Agent to infringe any patent, registered design or trademark in the execution of the Customer's order. Furthermore, the Customer agrees to indemnify, defend, and hold the Agent harmless from all loss incurred or suffered by the Agent arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's intellectual property rights by the Customer during the use of the Goods.
- 14. Default and Consequences of Default**
- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of five percent (5%) per calendar month (and at the Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes the Agent any money the Customer shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Agent's collection agency costs, and bank dishonour fees).
- 14.3 Further to any other rights or remedies the Agent may have under this contract, if the Customer has made payment to the Agent by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Agent under this clause 14
- where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 14.4 Without prejudice to any other remedies the Agent may have, if at any time the Customer is in breach of any obligation under this contract (including those relating to payment, whether or not the payment is due to the Agent) the Agent may suspend or terminate the provision of Goods to the Customer, (this includes but is not restricted to, retaining/withholding details, passwords, and other information pertaining to the Customer and the Goods) and any of its other obligations under this contract. The Agent will not be liable to the Customer for any loss or damage the Customer suffers because the Agent has exercised its rights under this clause 14.4.
- (a) Without prejudice to the Agent's other remedies at law, the Agent shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable if a liquidator is appointed in respect of the Customer or any asset of the Customer.
- 15. Cancellation**
- 15.1 The Agent may cancel any contract to which these terms and conditions apply, or cancel Delivery at any time before the Goods are delivered, by giving written notice to the Customer. On giving such notice the Agent shall repay to the Customer any money paid by the Customer for the Goods. The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Customer cancels this contract, or Delivery, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Agent as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16. Privacy Act 1988**
- 16.1 Subject to the Agent agreeing to provide me with access to any information relating to the Customer/me held by the Agent, and to correct any information that is inaccurate when advised to be the case, I hereby authorise the Agent to collect, use and disclose information about the Customer/me for the purposes of assessing credit worthiness.
- 16.2 I further acknowledge that in accordance with the *Privacy Act 1988* (Cth) ("**Privacy Act**") in Australia certain information about the Customer/me permitted to be kept on a credit information file may be disclosed by the Agent to a credit reporting agency for the purpose of:
- (a) obtaining a credit report about Customer/me; or
- (b) allowing the credit reporting agency to create and maintain a credit information file about Customer/me.
- 16.3 I agree that the Agent may obtain from a credit reporting agency a credit report containing information about the Customer/me for the purposes of assessing the Customer's application for commercial credit.
- 16.4 I agree that where required the Agent's credit insurer may obtain from a credit reporting agency, or any other appropriate sources, information about the Customer/me for the purpose of assessing whether to provide trade insurance to the Agent in respect of commercial credit to be provided by the Agent to the Customer.
- 16.5 I acknowledge and agree that personal information relating to the Customer/me may be held by the Agent in New Zealand.
- 16.6 The Agent agrees to comply with the Privacy Act when collecting, using, disclosing and storing personal information (as that term is defined in the Privacy Act) relating to the Customer/me.
- 17. General**
- 17.1 The failure by the Agent to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Agent's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, Australia and are subject to the jurisdiction of the courts of Victoria, Australia.
- 17.3 The Agent shall be under no liability whatsoever to the Customer for any indirect, special and/or consequential loss and/or expense (including loss of profit, revenue, business, contracts or anticipated savings) suffered by the Customer, or any loss or expense resulting from a claim by any third party, arising out of a breach by the Agent of these terms and conditions (alternatively the Agent's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 17.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Agent nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.5 The Agent may license or sub-contract all or any part of its rights and obligations under this contract without the Customer's consent.
- 17.6 The Customer agrees that the Agent may amend these terms and conditions at any time. If the Agent makes a change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Agent to provide Services to the Customer.
- 17.7 A party shall not be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of that party.
- 17.8 The Customer warrants that it has the power to enter into this contract and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this contract creates binding and valid legal obligation.

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