

## GENERAL TERMS AND CONDITIONS

### Section 1. Scope and Interpretation

- 1.1 These General Terms and Conditions (“**GTC**”) apply to all products sold or supplied by the Supplier (as defined below), including Software (“**Products**”) and all Product-related services (“**Services**”) provided by the Supplier, and are agreed to by the legal entity ordering the Products or Services (“**Customer**”) by means of the applicable order form and/or statement of work, incorporating by reference these GTC (“**Order**”) and the member of the Glory Group that is stated on the Order (“**Supplier**”), and shall take effect on written acceptance of the Order by the Supplier (“**Order Confirmation**”).
- 1.2 In the Agreement, “**Glory Group**” means Glory Ltd., a corporation organized under the laws of Japan, and having its principal office at 1-3-1 Shimoteno, Himeji, Hyogo 670-8567, Japan, together with each entity that it Controls, directly or indirectly, anywhere in the world, from time to time.
- 1.3 “**Control**” (and its correlative terms “**Controlled**” and “**Controls**”) means, with respect to any entity,
- (a) the direct or indirect ownership of more than fifty percent (50%) of the voting securities or other voting interests of that entity; or
  - (b) the right, whether by ownership of securities, contract, or otherwise, to appoint or remove a majority of the members of the board of directors (or equivalent governing body) or to direct the management and policies of that entity.
- 1.4 In the Agreement, “**Software**” refers to any software product, including and without limitation, operating systems, computer and microprocessor programs, object code, source code and software instructions integrated in or used with the Products, whether written or customised by the Supplier or resold from already existing third-party programs; and
- 1.5 “**Hardware Products**” means Products excluding any Software.
- 1.6 Section and paragraph headings shall not affect the interpretation of this Agreement. Unless the context otherwise requires:
- (a) words in the singular shall include the plural and, in the plural, shall include the singular;

- (b) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (c) a reference to one gender shall include a reference to the other genders; and
- (d) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms, whether or not expressly stated as without limitation.

### Section 2. Orders, prices, and payment terms

#### 2.1 Orders

Unless otherwise agreed in writing, the terms of the Supplier’s documentation shall supersede the terms in any Customer purchase order or other similar document, and no non-Supplier terms shall apply to the Order.

If the Supplier and the Customer (“**Parties**”) agree that other terms shall apply to the Order, such terms (“**Special Conditions**”) shall be identified as such in the Order and thereby incorporated herein and shall prevail and take precedence over any conflicting terms and conditions hereof unless otherwise agreed in writing.

The GTC, together with the Order (and any other documents referred to therein, each of which is provided to the Customer including the Cloud Services Terms and Conditions (“**CSTS**”), the Professional Services Terms and Conditions (“**PSTC**”), the General Terms and Conditions of Maintenance (“**GTCM**”) and the On Premise Software Terms (“**OPST**”) (as applicable and made available here: <https://acrelec.com/terms-and-conditions-au/>)), the Order Confirmation and any applicable Special Conditions (including a data processing agreement between the Parties, if applicable) are referred to as the “**Agreement**.”

All Orders must be placed in the manner and form required by the Supplier from time to time and will be subject to acceptance by the Supplier.

An Order from the Customer is only accepted when the Supplier gives the

Customer a written Order Confirmation. The Supplier may unilaterally refuse to accept an Order for any reason and without any liability.

No purported cancellation or suspension of an Order or any part of it by the Customer is binding on the Supplier once the Order has been accepted. The term of each Order (if applicable) shall be set out therein.

No changes to Orders may be made to an existing Order after the Order Confirmation, unless the Parties mutually agree in writing to such changes and any associated difference in price, delivery timing, and any other terms.

The Customer warrants that the person or entity ordering the Products and/or the Services under the Order is duly authorised to enter into the present Agreement on the Customer's behalf and the Supplier warrants that it has the full capacity and authority and all necessary permissions, licences and consents necessary to enter into, and perform its obligations under, this Agreement.

## 2.2 Prices

The Supplier may provide a quotation to the Customer. A quotation does not constitute an offer to provide any Products or Services to the Customer.

Prices quoted by the Supplier shall be valid for thirty (30) calendar days from the date of quotation, unless otherwise stated. Quotations for Services are made on the basis that such Services will be performed in the country or countries specified in the Order ("**Territory**").

Unless otherwise provided in the Agreement the invoiced amounts for Products and/or Services stated in the Order will be charged either at the amount included in the quotation or, if no quotation has been issued, at the Supplier's prices in force at the date of acceptance by the Supplier of the Order. The prices for Hardware Products shall be Ex-Works (Incoterms 2020) at the Supplier's premises and shall be inclusive of the Supplier's standard packaging.

Unless otherwise provided in the Agreement, prices shall not include transport, installation, set up or maintenance.

All prices quoted and fees are exclusive of applicable goods and services tax ("**GST**") and any other taxes, duties and charges

levied or assessed in Australia or elsewhere in connection with the sale, purchase, and export or import of the Products and/or Services. The Customer shall be responsible for payment of all such taxes, duties, customs broker fees, and related governmental charges.

The Supplier reserves the right to increase the price of the Products, Services and minimum order quantities or applicable transport and freight charges of Products, upon provision of 14 days' written notice, and any such variation will apply to new Orders placed after the expiry of the notice period.

## 2.3 Payment terms

Unless otherwise agreed in writing:

- (a) an invoice for fifty percent (50%) of the total value of the Order shall be issued by the Supplier upon Order Confirmation; and
- (b) an invoice for the balance shall be issued when (as applicable) the Product is ready for delivery, or the Services have been supplied.

Where an invoice issued by the Supplier does not specify the due date for payment, it is due and payable within thirty (30) calendar days of the date of invoice.

The Customer must pay to the Supplier each invoiced amount to which the Supplier is entitled. The Customer must not withhold payment or make any deduction from the invoiced price or any other amount owing to the Supplier without the Supplier's prior written consent.

Payment shall be made by bank transfer or as otherwise agreed in writing to the Supplier's account stated in the applicable invoice, and the corresponding invoice number must be indicated with each payment.

Payment shall be deemed as received on the date on which the funds are fully credited to the Supplier's account.

Payment shall be made in the currency specified in the invoice without withholding, deduction or set-off, whether arising from incomplete or defective performance or otherwise.

If the Customer disputes any invoice, the Customer shall notify the Supplier in writing within ten (10) **Business Days** (being days other than a Saturday, Sunday or public holiday in the State of New South Wales) of the date of such invoice;

otherwise the Customer shall be deemed to have irrevocably waived its right to dispute such invoice.

2.4 **Due date payment default**

If the Customer remains in default of any payment obligation for more than thirty (30) calendar days after the date of the invoice, without limiting the Supplier's remedies hereunder, including termination rights described in Section 11 herein, the following terms shall apply:

- (a) to the maximum extent permitted at law, all sums due from the Customer to the Supplier under the Agreement shall become payable immediately;
- (b) the Supplier shall be entitled to suspend further deliveries of any Products and/or Services to the Customer, or demand advance payment (in full) for any new Orders, until payment of all outstanding amounts has been made in full;
- (c) the Supplier shall be entitled to suspend access to any Software that is required for the Customer to use the Products and/or Services, and to any Services, and/or remotely stop the functionality of the associated Products;
- (d) the Customer shall pay the Supplier interest on all sums outstanding from the due date until payment, whether before or after judgment. Interest under this paragraph 2.4; will accrue each day at an annual rate of four percent (4%) above the rate prescribed for interest on judgment debts under Rule 36.7 of the Uniform Civil Procedure Rules 2005 (NSW), from the due date until the amount is paid;
- (e) the Customer shall promptly reimburse the Supplier for any fees and costs incurred in collecting the payment, repossessing the Products, and enforcement of the Agreement; and
- (f) the Supplier reserves the right to set off any amount due to it by the Customer, however arising, against any sums due by the Supplier to the Customer for whatever reason.

**Section 3. Delivery**

- 3.1 Unless otherwise agreed in writing or stated elsewhere in this Agreement, the Supplier shall deliver the Hardware Products no less than twelve (12) weeks after the Order Confirmation provided that the Customer is not in default of any of its obligations hereunder. Delivery dates are estimates only such that late delivery thereafter shall not constitute a breach by the Supplier. Where applicable, the Supplier shall use carriers of its choice. The carrier and associated insurance costs shall either be paid for in advance, or promptly reimbursed, by the Customer, at the Supplier's sole discretion.
- 3.2 The Customer or its authorised representative shall, on delivery, sign the Supplier's delivery note ("**Delivery Note**") confirming receipt of the Hardware Products.
- 3.3 The risk of loss, damage or destruction of the Hardware Products shall pass to the Customer on delivery.
- 3.4 Unless otherwise provided in the Agreement, the Supplier shall deliver the Hardware Products Ex-Works (Incoterms 2020) at the Supplier's premises stated in the Order.
- 3.5 Where applicable, the Customer shall, within forty-eight (48) hours of delivery of the Hardware Products, notify the Supplier of any damage to the Hardware Products that has occurred during transit and shall, if requested by the Supplier, assist the Supplier with any claim for damages from any carrier or insurer for loss or damage to the Hardware Products.
- 3.6 The Customer shall, within five (5) Business Days of delivery of the Hardware Products, notify the Supplier of any claim for non-delivery of Products, or for any apparent defects, or apparent non-conformity of the Hardware Products with the Order, excluding any loss or damage occurring during transit which is subject to the preceding paragraph.
- 3.7 If at the Customer's request the Supplier agrees to postpone delivery of the Hardware Products, the Supplier may charge the Customer all reasonable additional costs of handling and storage of the Hardware Products, provided that the Customer shall remain liable to pay for the Hardware Products (and any applicable GST, and any other taxes, duties and

charges) in accordance with the payment terms of the Agreement.

**Section 4. Transfer of ownership**

- 4.1 Title to the Hardware Products shall pass to the Customer upon receipt by the Supplier of full payment of the Products.
- 4.2 Until title to the Hardware Products is transferred to the Customer, the Customer shall:
- 4.3 keep such Hardware Products in the same condition as when delivered by the Supplier and clearly identifiable as the property of the Supplier;
- 4.4 ensure that such Hardware Products are not and will not be subject to seizure, theft or other similar measures deriving from the Customers' activity, or any third party's activity;
- 4.5 keep such Hardware Products insured against the risks of loss, damage or destruction to the replacement value of Hardware Products with a reputable insurance company and provide the Supplier on request with evidence of the Customer's compliance with this clause; and
- 4.6 not under any circumstances sell, lend, rent, encumber, pledge, lease, transfer or otherwise dispose of such Hardware Products. The Customer must immediately notify the Supplier in the event of any liens, seizures, or other dispositions or encumbrances by third parties (provided that such notification shall not excuse the Customer for any breach of this Agreement and liability arising therefrom).
- 4.7 In application of the previous paragraph, the Supplier shall be entitled to repossess such Hardware Products at the Customer's exclusive expense (including legal fees and costs), and consequently the Customer hereby grants the Supplier, or any entity which represents or is appointed by the Supplier, the irrevocable right to enter the premises where such Hardware Products are stored for the purpose of such repossession.

**Section 4A. PPSA**

- 4.8 Unless expressly stated otherwise, the *Personal Property Securities Act 2009* (Cth) and its associated regulations ("PPSA") applies to the Agreement.
- 4.9 All terms and expressions used in this section 4A have the meaning given in the PPSA.

4.10 If the Supplier determines that this Agreement is or includes a security interest for the purposes of the PPSA, the Customer must, at its cost and immediately upon the Supplier's request:

- (a) do whatever is reasonably required (including signing documents) to give the Supplier a continuously perfected security interest (as defined in the PPSA). This includes:
  - (i) giving the Supplier sufficient details of any item of collateral to register the security interest under the PPSA;
  - (ii) allowing the Supplier to apply for registration of or give any notification for the security interest;
  - (iii) allowing the Supplier to exercise its rights over the security interest; and
- (b) procure from any person the Supplier considers relevant to its security position, whatever agreements and waivers the Supplier may require to attain the highest ranking security possible.

4.11 If the Agreement constitutes a PPS Lease the Customer acknowledges that it is the grantor and the Supplier is the secured party holder of a Purchase Money Security Interest under the Agreement and the PPSA.

4.12 The Customer must not, except with the Supplier's express written consent, allow to be, or be liable to become, perfected or attached in any person's favour, a security interest in any of the Hardware Products, and whether to a provider of new value or otherwise.

4.13 Where the PPSA permits, the Customer waives any right to receive the notifications, verifications, disclosures or other documents specified under sections 95 (removal of accession), 118 (enforcement of security interests according to land law decisions), 121(4) (enforcement of security interests in liquid assets), 130 (disposal of collateral), 132(3)(d) (amounts paid to other secured parties), 132(4) (statement of account in respect of seized collateral), 135 (retention of collateral) and 157 (notice to grantors) of the PPSA.

4.14 The Supplier and the Customer agree to contract out of sections 96 (retention of

accession), 125 (disposal or retention of collateral), 129 (disposal by purchase), 142 (redemption of collateral) and 143 (reinstatement of security agreement) of the PPSA, and nothing in those sections will apply to the Agreement.

4.15 To the extent the PPSA permits:

- (a) the provisions of Chapter 4 of the PPSA which are for the Customer's benefit or which place obligations on the Supplier apply only:
  - (i) to the extent that they are mandatory; or
  - (ii) if the Supplier agrees, in writing, to them applying; and
- (b) where the Supplier has rights in addition to those in Chapter 4 of the PPSA, those rights continue to apply.

4.16 For the purposes of section 275(6) of the PPSA, the Supplier and the Customer agree and undertake that:

- (a) the Agreement, information about any Product, any Hardware Product, and any rental details must be kept confidential; and
- (b) neither party may disclose any information about the Agreement or any Product or any Hardware Product, except as otherwise required by law or if the information is already in the public domain.

4.17 The Customer consents to and appoints the Supplier as an interested person and the Customer's authorised representative for the purposes of section 275(9) of the PPSA.

## **Section 5. Supply of Services**

### **Maintenance and Support Services**

5.1 If the Order expressly states that maintenance and support services will be provided by the Supplier, the terms of such maintenance and support services shall be as specified in the Order and this Agreement and as set out in the Supplier's GTCM, which in the case of any conflicting provisions shall take precedence over these GTC in relation to such maintenance services.

### **Installation Services**

5.2 Where Services relating to the supply of the Products, such as installation, repair, upgrading or training ("**Installation Services**"), are expressly included in the Order, the Supplier shall:

- (a) use reasonable efforts to meet any performance dates specified in the

Special Conditions (or statement of work), but any such dates shall be estimates only such that late delivery thereafter shall not constitute a breach by the Supplier;

- (b) use reasonable care and skill in the provision of the Installation Services; and
- (c) use reasonable efforts to provide the Installation Services in accordance with the agreed description or specifications for the Installation Services as set out in the Order (hereinafter the "**Specifications**") in all material respects.

5.3 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Specifications are complete and accurate;
- (b) cooperate with the Supplier in all matters relating to the Installation Services;
- (c) provide the Supplier, its employees, agents, consultants and sub-contractors with prompt and uninterrupted access to the Products and the Customer's premises where the Products are located, or are to be installed and the Installation Services performed (hereinafter the "Location"), and provide such other facilities as may reasonably be required by the Supplier;
- (d) provide the Supplier with such information and assistance as the Supplier may reasonably require in providing the Installation Services, and ensure that such information is complete and accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions, and consents which may be required in connection with the performance of the Installation Services at the Location prior to the commencement of the Installation Services; and
- (f) keep and maintain all Supplier materials that the Supplier reasonably requests to leave at the Location in safe custody at the Customer's risk and maintain such Supplier materials in good condition until returned to the Supplier.

- 5.4 The Supplier shall be entitled to invoice the Customer for the reasonable costs of any additional site survey deemed necessary by the Supplier as a result of the Customer's non-compliance with Section 5.3, the Specifications or other prerequisites reasonably requested by the Supplier.
- 5.5 All building and construction work (and materials) required shall, unless indicated as forming part of the Installation Services in the Specifications, be provided by Customer, including (without limitation) cable laying, plastering, grouting, filling, flooring and carpet changes. The Customer shall provide the Supplier with all required power and communications resources (including cables, telephone and internet access) on or before the planned date for installation. All materials to be provided by the Customer pursuant to the Agreement shall be of the highest quality and furnished, installed, and finished by (or on behalf of) the Customer in strict conformity with the Specifications and applicable laws.
- 5.6 The Customer shall be responsible for determining the Location and its suitability for installation of the Products. The Customer shall undertake any required structural engineering necessary to certify the structural integrity of the Location to bear the weight of the Products, in location and during access, and any equipment necessary to undertake such access and installation. The Customer shall ensure minimum clear access as shown on the Specifications and any drawings. Time is of the essence for all actions of the Customer (including the Specifications, building and construction work, site preparation and cooperation) deemed to be necessary or desirable by the Supplier for the Installation Services occurring thereafter.
- 5.7 Any installation work to be provided as part of the Installation Services shall be performed by the Supplier on Business Days and between 9am to 5pm on a Business Day ("**Business Hours**"). If at the Customer's written request, the Supplier agrees to perform the work outside Business Hours, then an additional charge for such work shall be paid by the Customer as notified by the Supplier. Where installation is subject to delay not solely attributable to the Supplier ("**Customer Delay**") or the Supplier is prevented from working full time or on consecutive Business Days as the result of a Customer Delay, the cost of the Supplier redeploying its engineers, or withdrawing and returning to the Location, or of retaining engineers at the Location without work, and all delay, waiting or wasted time and any resulting damage to the Products shall be paid for by the Customer. If the Supplier's engineers or technicians are required to leave the Location due to a Customer Delay, the Customer shall be responsible for the engineers' or technicians' waiting and wasted time and all damage to the Products.
- 5.8 Completion of the installation of any Product shall not be conditional on the Product being put into use. The Customer shall, following installation, sign a field service report furnished by the Supplier signifying completion of the Installation Services.
- 5.9 The Installation Services do not include the making good of any Location required as a result of the Installation Services.
- 5.10 The Supplier shall have no liability for and the Customer shall indemnify, defend and hold the Supplier harmless against all and any liability or claims (including reasonable legal fees and expenses) arising from any act or omission of the Customer or any of its end customers or end users which prevents or hinders the Supplier's performance of any work within the scope of the Installation Services which is reasonably required for the safe or efficient operation of the Products or the performance of the Installation Services.
- Section 6. Discontinuation of Production**
- 6.1 The Supplier may suspend or discontinue production or provision of any of the Products at any time for any reason, including, without limitation, the unavailability of components. In such cases, the Supplier shall make reasonable efforts to give the Customer not less than six (6) months' notice of suspension or discontinuance, or otherwise shall give such notice as soon as is reasonably possible if the suspension or discontinuance is due to Force Majeure (as defined below).
- 6.2 The Supplier shall make reasonable efforts to:
- (a) inform the Customer of the date after which orders for the Products affected shall no longer be accepted;

- (b) not issue an Order Confirmation for any order forms that include a suspended or discontinued Product; and
- (c) complete the manufacture of affected Products ordered by the Customer prior to such date.

## **Section 7. Warranties**

7.1 If the Customer is a “consumer” within the meaning of the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (“ACL”), then the Supplier confirms:

(a) *‘Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:*

- (i) *to cancel your service contract with us; and*
- (ii) *to a refund for the unused portion, or to compensation for its reduced value.*

(b) *You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done, you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.’*

(c) The contractual warranties in Sections 7.2 – 7.12 apply in addition to any statutory rights and remedies available under the ACL, and nothing in this Agreement limits, modifies or restricts the Customer’s rights or remedies under non-excludable laws.

7.2 Unless otherwise agreed in writing, for a period of twelve (12) months from either the date of delivery of the Hardware Products to the Customer or from the agreed installation date where Installation Services are provided (the “**Hardware Product Warranty Period**”) the Supplier will at its discretion, either repair (including parts and labour) or replace any Hardware Products that are defective as a

result of defects in design, workmanship or materials, or credit or reimburse the Customer with the price thereof, provided that the Customer has given the Supplier written notice of the defect within the Hardware Product Warranty Period. Except where the Customer is a “consumer” under the ACL, the Customer shall pay all carrier and associated insurance costs incurred in returning Hardware Products to the location designated by the Supplier for repair or replacement. Subject to Section 7.4, the Supplier shall pay all carrier and associated insurance costs incurred in returning repaired or replacement Hardware Products to the Customer’s delivery address set out in the Agreement.

7.3 The Supplier warrants that it will rectify any failure to provide Services with due care and skill provided that the Customer has given the Supplier notice of such failure within thirty (30) days of completion of the Services (“**Service Warranty Period**”).

7.4 To the extent permitted by law, the Customer shall, within the Hardware Product Warranty Period or the Service Warranty Period as applicable, give the Supplier prompt notice of any defect, error or failure, providing the Supplier with all information regarding such defect, error or failure which the Supplier may reasonably require and comply with all reasonable suggestions or instructions which the Supplier may offer with a view to the diagnosis and/or remedy of such defect or error. Where it receives a notice from a Customer under this Section 7.4, the Supplier will:

- (a) inspect and test the Hardware Product once it is returned by the Customer; or
- (b) inspect and assess the Services. The Customer must allow the Supplier or its authorised agent to carry out such inspection or assessment.

7.5 Except as provided in this Agreement, the Supplier shall have no liability to the Customer in respect of the Hardware Products or Services’ failure to comply with any warranty, unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL. Subject to applicable laws, the Supplier does not warrant that the Products or Services will be free of all errors or that their operation will be uninterrupted. However, the

- Supplier shall use reasonable care and skill to correct any errors in Products or Services that interfere with their proper operation for their intended purpose, provided that the Customer:
- (a) has given the Supplier notice of any such error within the Hardware Product Warranty Period or Service Warranty Period; and
  - (b) is able to reproduce such error and demonstrate it to the Supplier.
- 7.6 If the Supplier establishes that a reported defect, error or failure is not covered by the warranties given under this Section 7, the Customer shall be liable for the costs of the Supplier's investigative and remedial work and the repair or replacement of the Products at the Supplier's then current prices, and for all associated carriage and insurance costs.
- 7.7 The Supplier shall not be liable for any failure of the Products or Services caused by the use thereof in conjunction with any other equipment or Software which has not been provided by the Supplier or caused by any use of the Products or Services other than for the purposes for which they were designed.
- 7.8 The warranties given under this Section 7 shall be void if any person or entity, other than the Supplier or a third party nominated by the Supplier, has modified, altered, added to or repaired the Products or has attempted to do so.
- 7.9 Unless expressly specified elsewhere in this Agreement, the remedies provided by this Section 7 shall be the Customer's sole and exclusive remedies in respect of any breach of a contractual warranty under this Agreement to the exclusion (to the extent permissible by law) of all other terms, conditions, guarantees and warranties.
- 7.10 Any contractual warranty or requirement to repair or replace any Product (or rectify or re-perform any Services) given under this Agreement, together with any right for a Customer to return any Products, shall not apply in cases arising from:
- (a) the Product being used in an abnormal or improper manner, including a material change in the use or usage of the Product;
  - (b) vandalism, misuse, abuse, or accidental damage;
  - (c) failure to care for and maintain the Product, including keeping it clean, free from any foreign objects, paper clips and similar items, and in proper, or in accordance with manufacturer's recommended, environmental conditions;
  - (d) failure to keep the Product cleaned in accordance with all instructions and recommendations as may be issued from time to time by the applicable manufacturer(s) or the Supplier;
  - (e) contamination of the Product by or exposure to any liquid, dust or other material (other than dust which is present in normal ambient conditions of commercial operations);
  - (f) failure arising from spikes in or irregular power supply;
  - (g) malfunction of a part or attachment not originally attached to the Product or a defect in the Product caused by its attachment to or operation with such a part or attachment;
  - (h) use of unapproved media or unapproved consumables on or with the Product;
  - (i) an event of Force Majeure;
  - (j) the movement of, or work having been undertaken upon, or the relocation or reinstallation of the Product by a person or entity not approved by the Supplier;
  - (k) restoration and reloading of the Software for the Product;
  - (l) use of the Product by untrained personnel or not in accordance with the Supplier's or the manufacturer's instructions; and
  - (m) any failure by the Customer to provide the Supplier with access to the Product in accordance with these terms and conditions, or n) delay, waiting or wasted time where no reported fault is found by the Supplier.
- 7.11 Unless the Customer is a "consumer" under the ACL, cables and excluded products listed in any additional terms, Addendum or Special Conditions shall be excluded from any warranty or requirement of return, repair or replacement.
- 7.12 The contact details for warranties given by the Supplier shall be the Supplier's contact details set out in the Order.

## **Section 8. Intellectual Property Rights**

8.1 **“Intellectual Property Rights”** shall include all rights in inventions, patents, utility models, design rights, trademarks, semi-conductor design rights and mask works, topography rights, service marks, rights in the nature of passing off and unfair competition, rights in designs, trade dress, business and trade names, domain names, copyrights (including copyright in Software) and neighbouring and related rights, moral rights, database rights, know-how, trade secrets and other confidential information (however described) of commercial value, and all other intellectual property rights and rights of a similar or corresponding character which may exist now or in the future subsist in any part of the world (whether registered or not or the subject of an application for registration) and including all rights to apply for, and obtain, registrations in respect of any and all of the foregoing, each for their full term including extensions, revivals, reissues, continuations, continuations-in-part, divisionals, re-examinations and renewals thereof.

- (a) The Customer is not authorised to use the name, logo, trade mark, trade names, graphics, drawings and models, design, image or any other elements for which the rights are held by the Supplier in any of the Customer’s advertisements, communications, publications or other elements, without the Supplier’s prior written agreement thereto.
- (b) The Customer has no right or licence to reconstruct any portion of the Products or Services. Any implied licence to use the Products or Services by Customer is limited to sole use of the Supplier-supplied Products or Services by only the Customer and its retail customers at the Customer’s facility, and no reproduction, copying, manufacturing or making of derivations thereof is allowed by or implicitly licensed to the Customer or those acting with or on behalf of the Customer.
- (c) The Customer shall not remove, try to conceal, damage, cover or alter

any trade mark which belongs to the Supplier.

- (d) Neither the Customer, those acting with or on behalf of the Customer, nor the Customer’s representatives or agents shall register or use trade marks, text, slogans, images, or derivations thereof, that may cause a risk of confusion or association with the Supplier’s Intellectual Property Rights, the facts of which being considered most favourably toward the Supplier.

- (e) If the Customer’s Specifications contain drawings, images, photographs, designs, descriptions, models, samples, or other data, the Customer warrants that third-party proprietary rights are not infringed through their use.

### **8.2 Intellectual Property Rights Indemnity**

- (a) The Supplier shall indemnify, defend and hold harmless the Customer from and against all losses, liabilities, damages, costs and expenses incurred by the Customer, arising out of or related to any third-party claim that the Products infringe a patent, copyright, trade mark, trade secret or other Intellectual Property Right of any third party, provided that the Customer:

- (i) promptly notifies the Supplier in writing of any such actual lawsuit claim or threatened claim, whichever occurs first;
- (ii) allows the Supplier to conduct and/or settle all negotiations, proceedings and litigation arising from any such claim using counsel of its choice and upon settlement terms at the sole discretion of the Supplier; and
- (iii) gives the Supplier all reasonable assistance in connection with the conduct of such negotiations, proceedings, and litigation, acting in accordance with the reasonable instructions of the Supplier in connection therewith.

- (b) The Supplier’s obligation to indemnify under this subsection shall not apply, and the Customer

shall indemnify, defend and hold harmless the Supplier and its affiliates from and against all claims, actions, threats, losses, liabilities, damages, costs, and expenses, including reasonable attorney’s fees incurred by the Supplier, arising out of or related to any third-party claim:

- (i) where any infringement or misappropriation arises as a result of the Products having been altered, modified or combined with other apparatus or Software, such as in a contributory or inducing indirect infringement assertion;
  - (ii) to the extent that such claim relates to aspects of the Products developed or manufactured to designs or specifications provided by the Customer, or which otherwise incorporate documents, materials, ideas, data or other information provided by the Customer;
  - (iii) where such claim relates to the Products being used other than for the purpose for which they were designed or beyond the scope of this Agreement; or
  - (iv) where such claim relates to a Software Product, if such Software Product is other than the latest version of the Software Product released by the Supplier.
- (c) If any of the Products or Services (or any of the deliverables provided under those Services, if applicable) become, or in the reasonable opinion of the Supplier, may become, the subject of a claim in respect of the infringement of the Intellectual Property Rights of a third party, the Supplier may, at its sole discretion:
- (i) use reasonable efforts to obtain for the Customer a right to use the Products by procuring a licence or otherwise;
  - (ii) where technically possible, modify the Products to remove the infringement;

- (iii) replace the Products with other non-infringing products with substantially equivalent functions and performance;
  - (iv) refund the depreciated price of the Hardware Products calculated on a straight-line basis over four years commencing upon the date of delivery at 25 percent (25%) per year or part thereof; or
  - (v) in the case of deliverables provided under the PSTC, refund the fees paid for such deliverables.
- (d) The monetary indemnification and liability of the Supplier to the Customer shall be capped at and not exceed the price of the Products paid by the Customer related to the third-party claim. The terms of this subsection 8.2 constitute the entire liability that may be incurred by the Supplier and constitute the Customer’s sole remedy for any actual or alleged infringement of Intellectual Property Rights.
- (e) Except as provided in this subsection 8.2, the Supplier shall not be liable in respect of any claim of infringement of any third-party Intellectual Property Rights.

**Section 9. Software licences and subscriptions**

- 9.1 All third party Software will be licensed to the Customer in accordance with the terms and conditions of applicable licensing agreements enclosed with the Software provided by the third party, which in the case of any conflicting provisions shall take precedence over these GTC in relation to such third party Software.
- 9.2 All on-premise Software and cloud Software subscription services provided by the Supplier will be provided to the Customer in compliance with the Supplier’s applicable terms and conditions, including the OPST and the CSTC respectively, which in the case of any conflicting provisions shall take precedence over these GTC in relation to such Software.

**Section 10. Liability**

- 10.1 Except as provided elsewhere in the Agreement, to the maximum extent permitted at law, the Supplier’s maximum aggregate liability to Customer for any

- cause whatsoever (whether the claim is in contract, tort, breach of statutory duty or otherwise) shall under no circumstances in the aggregate exceed the total amount paid to the Supplier by the Customer under the Order to which the claim relates in the twelve (12) months immediately preceding the event (or series of events) giving rise to the liability.
- 10.2 Except to the extent imposed by the ACL, in no circumstances whatsoever shall either party be liable for: i) any indirect or consequential loss; or ii) loss of any of the following, whether direct or indirect or consequential, and whether or not foreseeable or actually contemplated: a) loss of profits, loss of revenue, loss of data, corruption of or damage to data up to the last date of backup, loss of or damage to Software, loss of use, loss of goodwill, loss of agreements, loss of opportunity or loss of business; b) loss or damages representing or calculated by reference to increased cost of working, loss of efficiency, rent or replacement charges for replacement equipment, loss of anticipated savings, the need to increase or incur additional labour charges or the payment to or reimbursement for payments to third parties; and c) economic, punitive, special or pecuniary loss or damage, whatsoever or howsoever occurring.
- 10.3 Subject to the Customer's rights under the ACL, the Supplier shall not be liable for any loss or damage whatsoever caused by the Customer's use or storage of its Products other than in conformity with the Agreement.
- 10.4 Notwithstanding the foregoing, nothing in this Agreement shall exclude or limit the liability of either Party for liabilities that cannot be limited by law, including: a) fraud or fraudulent misrepresentation by such Party; b) wilful misconduct; c) any liability that cannot lawfully be excluded under Australian law, including (without limitation) liability under the Competition and Consumer Act 2010 (Cth).
- 10.5 The Customer agrees that to the extent permitted by law, any claim by the Customer arising out of or related to this Agreement must be filed within one (1) year of the occurrence of the event(s) giving rise thereto.
- Section 11. Termination**
- 11.1 Either Party may terminate the Agreement with immediate effect if:
- (a) the other Party commits a material breach of its obligations under the Agreement, and, in the case of a breach that is capable of being remedied, the other Party does not remedy the breach within thirty (30) calendar days after receipt of notice in writing from the non-defaulting Party requiring it to do so; or
  - (b) any sum due by one Party to the other remains unpaid for a period of thirty (30) calendar days after issue of a written demand therefor; or
  - (c) the other Party takes any step or action i) in connection with its entering administration, liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), having a receiver or statutory manager appointed to any of its assets, or ceasing to carry on business or ii) if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.
- 11.2 The Supplier may terminate the Agreement with immediate effect if the Customer undergoes a majority change of ownership, change of control or merges or consolidates with any other Party without the advance approval of the Supplier, which may be withheld for any reason.
- 11.3 Upon expiry or termination of this Agreement, for any reason:
- (a) the Supplier shall immediately cease delivery and/or performance of all Products and/or Services with effect from the applicable termination or expiry date;
  - (b) to the maximum extent permitted at law, all fees which have been invoiced prior to the applicable termination date but which remain outstanding shall become immediately due and payable;
  - (c) Services which have been performed but have not been invoiced prior to the applicable termination or expiry date shall be invoiced and payable on receipt by the Customer;

- (d) all licences granted (or procured from a third party for the Customer) by the Supplier will automatically terminate (save to the extent that the Supplier has granted any perpetual licences to the Customer (under the OPST) and the Customer is not in breach of such licence); and
- (e) the Supplier shall use its commercially reasonable endeavours to assist the Customer to retrieve any of the Customer's data (including any confidential information) that the Supplier holds at the date of termination for thirty (30) calendar days following such termination, after which the Supplier shall delete any such data.

### **Section 12. Confidentiality**

- 12.1 Each Party shall and shall cause its employees, officers, owners, contractors, agents and affiliates to keep confidential and not use (other than fulfilling its obligations under the Agreement), nor without the prior written consent of the other disclose to any third party, any information of a confidential nature relating to the other (including, without limitation, any trade secrets, confidential or proprietary technical information (including Software, electronics, drawings), trading and financial details (including pricing for the Products and Services) and any other information of commercial value or that would be deemed to be confidential by a person acting reasonably) which may become known to such Party under or in connection with the Agreement, except that each Party may disclose such information
- (i) to its affiliates, accountants, legal advisers, and consultants that are subject to confidentiality requirements no less stringent than set out in this Agreement, and
  - (ii) to the minimum extent possible, where a disclosure of such information is required by court order, subpoena, or other law, with (in the case of the Supplier's confidential information) advance notice thereof being provided to the Supplier and with the Customer assisting the Supplier to obtain a

confidential protective order or similar to prevent public disclosure of the confidential information.

- 12.2 This Section 12 (Confidentiality) shall not apply to any such information which either Party can show is public knowledge or was already known to it at the time of disclosure (without restriction as to disclosure or use and corroborated by written evidence) or subsequently becomes public knowledge other than by breach of the Agreement or subsequently comes lawfully into its possession from a third party who was not restricted from disclosing it.
- 12.3 On the termination or expiration of the Agreement, the Customer shall promptly return to the Supplier or destroy (and confirm such destruction in writing) upon the Supplier's request, all of the Supplier's confidential information in written or tangible form or on any other media.
- 12.4 The terms of this Section 12 (Confidentiality) shall survive the expiration or termination of the Agreement.
- 12.5 The Parties' obligations with respect to the non-use and non-disclosure of any confidential information that was disclosed under or in connection with the Agreement shall continue for five (5) years from the disclosure date, provided that the Parties' obligations with respect to non-disclosure and non-use of any trade secrets disclosed hereunder shall be of unlimited duration.

### **Section 13. Applicable Law and Jurisdiction**

- 13.1 This Agreement is governed by and construed in accordance with the laws of New South Wales, Australia. The Parties agree to the non-exclusive jurisdiction of the courts of New South Wales, Australia, the Federal Court of Australian, and of courts entitled to hear appeals from those courts.
- 13.2 The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

### **Section 14. Assignment and subcontracting**

- 14.1 Neither party may assign its rights or obligations under the Agreement without the prior written consent of the other party, which may not be unreasonably withheld.
- 14.2 The Customer may not delegate or subcontract the performance of its payment obligations under the Agreement without the prior written consent of the Supplier, which may be withheld by the Supplier for

any reason, except that the Customer may delegate or subcontract its Specification preparation, building and/or construction work to qualified entities or individuals related to the Installation Services who have agreed in writing to confidentiality obligations at least as stringent as those included herein.

### **Section 15. Notices**

- 15.1 Any notice or other communication given to a Party under or in connection with the Agreement shall be in writing and shall be:
- (a) delivered by hand, or by post, to the address of the recipient Party stated in the Order Confirmation; or
  - (b) sent by email to the email address of the recipient Party stated in the Order Confirmation; provided that within three (3) Business Days of such email communication a copy of such notice is sent by post to the address of the recipient Party stated in the Order Confirmation. The effective date of such notice shall be:
    - (i) if hand-delivered, at the time of delivery;
    - (ii) if sent by post, at 9.00 am on the second Business Day after posting; or
    - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours, when Business Hours resume.
- 15.2 All notices by the Customer related to defects or non-compliance with the Order shall include the following:
- (a) full details of the Customer's claim set out in a format prescribed by the Supplier;
  - (b) a copy of the signed Delivery Note;
  - (c) a copy of the Order Confirmation; and
  - (d) photographs of any damage (if applicable).
- 15.3 This Section 15 shall not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **Section 16. Data protection**

- 16.1 Each Party shall comply with all laws applicable in the Territory with regard to the collection, use, disclosure, and protection of personal information, including but not limited to all applicable privacy legislation in force from time to

time in Australia, including the Privacy Act 1988 (Cth).

- 16.2 The Parties understand that, for the execution of the Agreement, collection, use and disclosure of personal information including names, positions, departments, signatures, telephone numbers and email addresses may be required.

### **Section 17. General stipulations**

#### **17.1 Compliance with law**

In performing its obligations under the Agreement, each Party shall comply with all applicable laws in the Territory. Each Party shall notify the other on becoming aware of any changes in applicable laws material to the validity, enforcement, or performance of the Agreement.

The Customer represents and warrants that it and its owners:

- (a) are not and will not for the term of this Agreement be listed on the Consolidated List maintained by the Australian Sanctions Office, or be subject to any law, embargo, sanction or otherwise limited in its transaction with the Supplier;
- (b) are not and will not violate any law, regulation, policy or other limitation imposed by Australia or any other relevant jurisdiction; and
- (c) have not been subjected to investigation or sanction for bribery or money laundering.

Neither party shall export, directly or indirectly, any technical data acquired from the other Party under this Agreement (or any Products, including Software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including Australian and United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

Each Party undertakes to:

- (a) contractually oblige any third party to whom it discloses or transfers any such data or Products to make an undertaking to it in similar terms to the one set out above; and
- (b) if requested, to provide the other Party with any reasonable assistance, at the reasonable cost of the other Party, to enable it to

perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

#### 17.2 **Indemnity**

Subject to Section 10, the Customer will indemnify, defend and hold harmless Supplier, its affiliates, and its respective officers, directors, employees, agents, successors and assigns, from and against all losses, damages, costs or liability of any kind (including legal fees), including, but not limited to, any costs associated with claims made by a third party, arising from, in connection with or relating to any of the following:

- (a) negligent acts or omissions or wilful misconduct of its personnel;
- (b) breach of its obligations under the Agreement; or
- (c) any theft or other misappropriation of the Supplier's or its personnel's information, property or funds.
- (d) The Customer shall maintain all appropriate public liability insurance to cover any accidents and injuries occurring in or on the Customer's facility and property during the delivery, installation and use of the Products and Services for each accident or occurrence. A certificate of insurance from a well-established and reputable insurer shall be provided by the Customer to the Supplier upon request.

#### 17.3 **Force majeure**

Except for obligations to pay amounts when due (which are not excused), neither Party shall be held liable for any delay or breach of its contractual obligations resulting from unpredictable circumstances or circumstances beyond its reasonable control which were impossible or unreasonably burdensome to overcome or avoid the consequences of ("**Force Majeure**"). A Force Majeure event shall include, without limitation, total or partial strikes which hinder a Party's operating activities or those of its suppliers, subcontractors or carriers, epidemic or pandemic, war, national emergency, civil disturbance, fire, flood, explosion, natural disaster, unusually severe weather conditions, prohibitive legislation or regulations, judicial or administrative

decrees, failure of power or utility supplies (including telecommunications), and interruption of transport, energy, raw material or spare part supplies. If a Force Majeure event arises, performance of the obligations by the Party affected by such event shall be suspended throughout the duration thereof. The affected Party shall promptly notify the other Party of the commencement and cessation of such Force Majeure event.

If a Force Majeure event lasts for more than two (2) months, either party may immediately terminate the Agreement (or any part of it) by written notice without liability. If the Agreement is terminated for Force Majeure under this subsection, all Orders for Products and/or Services placed prior to the date of termination will be deemed to have been cancelled but the Customer shall pay the Supplier for all Products and Services already supplied, work-in-progress and the cost of materials reasonably ordered by the Supplier in pursuance of the Agreement.

#### 17.4 **No waiver**

Subject to the final paragraph of Section 10, any failure or delay by either Party to exercise or enforce any right shall not affect its right to exercise or enforce that right against the other Party, nor shall any waiver of any breach of any provision be taken as a waiver of any subsequent breach or of the provision itself. To be effective, any waiver must be in writing, signed by an authorised representative of the waiving Party, and be delivered to the other Party in accordance with Section 15.

#### 17.5 **Entire agreement and variation**

The Agreement embodies the entire agreement between the Parties regarding its subject matter.

The Customer also acknowledges that all particulars, descriptions, specifications and details of weight and dimension set out in catalogues, brochures, and similar documents are approximate only and intended for general guidance.

The GTC may be amended at any time, and from time to time, by the Supplier and notified to the Customer. If the Customer continues to order Products and/or Services from the Supplier, after the Customer has been notified of any such amendments, the Customer will be deemed

- to have accepted such amendments and to be bound by the GTC as so amended.
- 17.6 **No Third-Party beneficiaries**  
Nothing in the Agreement is intended to create any rights for any third party to enforce any term of the Agreement, nor shall the Agreement be construed as benefiting any third party.
- 17.7 **Survival**  
Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement (such as but not being limited to payments, warranties, indemnifications and confidentiality) shall remain in full force and effect. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of such termination or expiry, including the right to claim damages in respect of any breach of the Agreement, which existed at or before the date of such termination or expiry, subject to the final paragraph of Section 10.
- 17.8 **Severability**  
If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Subject to the foregoing, each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any court or arbitrator deems any section of this Agreement to be invalid or unenforceable then the court or arbitrator shall rewrite that section to preserve the intent of the Parties if possible, and if not, sever that section from this Agreement.
- 17.9 **Announcements**  
Neither Party may use the name of the other Party in any publicity or advertising nor
- issue any press release or otherwise disclose the existence of this Agreement, or its terms and conditions, without the prior written consent of the other Party.
- 17.10 **Non-Solicitation**  
During the term of the Agreement and for one (1) year thereafter, absent the other Party's written approval, a Party shall not solicit or hire the other Party's personnel. This shall not apply to bona fide advertisements for jobs that are made generally available to the public and open to all applicants.  
In case of a breach of this non-solicitation Section, the Party in breach shall be required to pay the other Party an amount in damages representing eighteen (18) months' salary of the employee concerned before tax and social security and similar deductions, in addition to any actual damages incurred.
- 17.11 **No partnership or agency**  
The Parties are independent contractors. Unless otherwise agreed in writing, nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, or constitute any Party as the agent or representative of the other Party. Neither Party nor its employees or other representatives are authorised to bind the other Party or make any representations or any commitment on the other Party's behalf unless previously authorised by such Party in writing.
- 17.12 **Rights and remedies**  
Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by applicable law.