

GENERAL TERMS AND CONDITIONS

Section 1. Scope and Interpretation

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"). "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. "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."

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 "Hardware Products" means Products excluding any Software.

Section and paragraph headings shall not affect the interpretation of this Agreement. Unless the context otherwise requires:

- words in the singular shall include the plural and in the plural shall include the singular;
- a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- a reference to one gender shall include a reference to the other genders; and
- 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, 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.

The GTC, together with the Order (and any other documents referred to therein, including the Cloud Services Terms and Conditions, the Professional Services Terms and Conditions, the General Terms and Conditions of Maintenance and the On Premise Software Terms (as applicable)), the Order Confirmation and any applicable Special Conditions (including a data processing

agreement between the Parties, if applicable) are referred to as the "Agreement."

The Parties agree that an Order from the Customer is only contractually accepted by the Supplier if the Supplier sends the Customer a written Order Confirmation. The Supplier may unilaterally refuse to accept an Order for any reason and without any liability.

Orders shall be non-cancellable, and any sums paid non-refundable. The term of each Order (if applicable) shall be set out therein.

No changes to Orders may be made by the Customer after the Order Confirmation, unless the Parties mutually agree 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

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 Customer shall pay the fees for the Products and/or Services stated in the Order 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 freight / transport, installation, set up or maintenance.

All prices quoted and fees are exclusive of applicable taxes or levies ("Tax"), and any other taxes, duties and charges levied or assessed 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, at its sole discretion and without notice.

2.3. Payment terms

Unless otherwise agreed or stated elsewhere in this Agreement, an invoice for fifty percent (50%) of the total value of the Order shall be issued by the Supplier upon Order Confirmation and shall be due and payable within ten (10) calendar days of the invoice date, and an invoice for the balance shall be issued when the Product is ready for delivery.

Unless otherwise agreed or stated elsewhere in this Agreement, invoices are due and payable within thirty (30) calendar days of the invoice date, without discount for early payment.

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.

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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.

Customer shall notify any invoice disputes to the Supplier in writing within ten (10) **Business Days** (being days other than a Saturday, Sunday or public holiday in the country of the Customer's registered office) 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 seven (07) 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) 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 (d) will accrue each day at an annual rate of four percent (4%) above the Reserve Bank of Australia's repo rate, or the greatest amount allowed by law, whichever is less;
- 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 by it to 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 or stated elsewhere in this Agreement, the Supplier shall deliver the Hardware Products no less than twelve (12) weeks after the receipt of written 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 Taxes, 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:

- a) keep such Hardware Products in the same condition as when delivered by the Supplier and clearly identifiable as the property of the Supplier;
- b) 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;
- c) 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
- d) 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).

4.3 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.

4.4 As security for payment of amounts due for the Hardware Products, the Customer hereby grants the Supplier a security interest in all present and after acquired Hardware Products supplied or to be supplied by the Supplier and any proceeds of the sale of the Hardware Products as security for the Customer's obligations to the Supplier pursuant to the Personal Property Securities Act 2009 ("PPSA"). The Supplier may take any necessary action as it deems necessary to retain title or verify the security interest on the Personal Properties Securities Register, or to perfect its security interest in the Hardware Products delivered

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or to be delivered to the Customer in accordance with the provisions 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 General Terms and Conditions of Maintenance ("**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 during **Business Hours** (being 9am to 5pm on a Business Day). 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 Customer shall indemnify 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; and
- b) complete the manufacture of affected Products ordered by the Customer prior to such date.

Section 7. Warranties

7.1 Unless otherwise agreed, 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. The Customer shall pay all carrier and associated insurance costs incurred in returning defective Hardware Products to the location designated by the Supplier for repair or replacement. Subject to Section 7.5, 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.

7.2 Except as provided in this Agreement, the Supplier shall have no liability to the Customer in respect of the Hardware Products' failure to comply with the warranty set out in Section 7.1. In this regard, the Supplier does not warrant that the Products will be free of all errors or that use thereof will be uninterrupted; provided that the Supplier shall use reasonable care and skill to ensure that any errors in Products interfering with the proper operation thereof for the purpose for which they were designed, are corrected, provided always that the Customer has given the Supplier notice of any such error within the Hardware Product Warranty Period and is able to reproduce such error and demonstrate it to the Supplier.

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 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.

7.5 If the Supplier establishes that a reported defect, error or failure is not covered by the warranties given under this Section 7 (Warranties), 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.

7.6 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.

7.7 The warranties given under this Section 7 (Warranties) 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.

7.8 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 warranty under this Agreement to the exclusion (to the extent permissible by law) of all other terms, conditions, guarantees and warranties, whether express or implied, statutory or otherwise including (without limitation) any implied condition or warranty as to quality and fitness for a particular purpose under the Sale of Goods Act 1923 (NSW) or Contract and Commercial Law Act 2017, if applicable.

7.9 Any warranty or requirement to repair or replace any Product (or rectify or re-perform any Services) under this Agreement, together with any right for the Customer to return any Products, shall not apply in cases arising from: 1) the Product being used in an abnormal or improper manner, including a material change in the use or usage of the Product, 2) vandalism, misuse, abuse, or accidental damage, 3) 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, 4) 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, 5) 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), 6) failure arising from spikes in or irregular power supply, 7) 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; 8) use of unapproved media or unapproved consumables on or with the Product, 9) an event of Force Majeure, 10) 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, 11) restoration and reloading of the Software for the Product, 12) use of the Product by untrained personnel or not in accordance with the Supplier's or the manufacturer's instructions, 13) any failure by the Customer to provide the Supplier with access to the Product in accordance with these terms and conditions, or 14) delay, waiting or wasted time where no reported fault is found by the Supplier.

7.10 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.

Section 8. Intellectual Property Rights

8.1. "**Intellectual Property Rights**" shall include all rights in inventions, patents, utility models, design rights, trademarks, semiconductor 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, 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.

The Customer is not authorised to use the name, logo, trademark, trade names, graphics, drawings and models, design, image or any

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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. 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.

The Customer shall not remove, try to conceal, damage, cover or alter any trademark which belongs to the Supplier. Neither the Customer, those acting with or on behalf of the Customer, nor the Customer's representatives or agents shall register or use trademarks, 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 and as determined in the sole discretion of the Supplier.

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 or misappropriated through their use.

8.2. Intellectual Property Rights indemnity

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, trademark, trade secret or other Intellectual Property Right of any third party, provided that the Customer:

- a) promptly notifies the Supplier in writing of any such actual lawsuit claim or threatened claim, whichever occurs first;
- b) 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
- c) 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.

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:

- a) 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;
- b) 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;
- c) 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
- d) 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.

If any of the Products or Services (or any of the deliverables provided under those Services, if applicable) become, or in the 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:

- a) use reasonable efforts to obtain for the Customer a right to use the Products by procuring a licence or otherwise;
- b) where technically possible, modify the Products to remove the infringement;
- c) replace the Products with other non-infringing products with substantially equivalent functions and performance;
- d) **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
- e) in the case of deliverables provided under the Professional Services Terms and Conditions ("PSTC"), refund the fees paid for such deliverables.

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.

Except as provided in this subsection, 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 On Premise Software Terms and the Cloud Services Terms and Conditions ("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, 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 in the twelve (12) months immediately preceding the event (or series of events) giving rise to the liability.

10.2 In no circumstances whatsoever shall the Supplier 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 The Supplier shall not be liable for any loss or damage whatsoever caused by the Customer's use of its Products other than in conformity with the Agreement and applicable law.

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) personal injury or death of any person to the extent caused by such Party's negligence; b) fraud or fraudulent misrepresentation by such Party; **c) any liability that cannot lawfully be excluded under Australia law, including (without limitation) liability under the Competition and Consumer Act 2010 (CCA) (to the extent that the parties have not agreed in writing to contract out of such legislation in accordance with applicable law).**

10.5 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 **seven (7)** 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), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a **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) 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 On Premise Software Terms) 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. Governing law and Jurisdiction

13.1 This Agreement is governed by the laws of **Australia and the parties agree to submit to the non-exclusive jurisdiction of the courts of Australia**, without regard to its principles of conflicts of law.

Section 14. Assignment and subcontracting

14.1 The Customer shall not assign its rights or obligations under the Agreement without the prior written consent of the Supplier,

supprimé: breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and (d)

supprimé: (d) defective products that cause damage, as defined under the Consumer Protection Act 1987

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supprimé: If translations of this Agreement (including of the Order or the Order Confirmation) are made, then the English language versions thereof shall prevail.

which may be withheld for any reason.

14.2 The Supplier may assign the Agreement to any affiliate or purchaser of substantially all its assets related to the Products and may delegate or subcontract performance of any of its obligations under the Agreement without the Customer's permission.

14.3 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 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 or other next day delivery service 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 the such notice is sent by pre-paid first-class post or other next Business Day delivery service 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 data protection and privacy legislation in force from time to time in the Australia as applicable, including the Privacy Act 1988, Privacy Personal Information Protection Act 1998 (New South Wales) or similar legislation applicable to the nature of Products or Services supplied by the Supplier ("Privacy Laws"). If the Parties process personal data in connection with and for the purpose of executing the Agreement, each Party shall act as APP entity responsible for its compliance under the Data Privacy Laws. Each Party shall take all reasonable technical and organisational measures to ensure the security of such data (and to guard against unauthorised or unlawful processing, accidental loss, destruction or damage to such data). In this regard, the Parties shall comply and shall ensure that the Parties' personnel involved in processing data shall comply with all relevant legal obligations when processing personal data relating to any employee, worker, customer, client, supplier, agent or other data subject.

16.2 The Parties understand that, for the execution of the Agreement, processing of names, positions, departments,

signatures, telephone numbers and email addresses may be required.

16.3 Each signatory representative of the Parties hereby declares that it has been informed of the processing by the other Party of its personal data necessary for concluding and executing the Agreement and fulfilling that Party's legal obligations and have been informed of their rights under and in accordance with Data Privacy Laws.

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 any Sanctions list maintained by the Australian Sanctions Office under the Department of Foreign Affairs and Trade, the United Nations or any applicable governmental or regulatory body, the National UK Sanctions List issued by the Office of Financial Sanctions Implementation (OFSI) or be subject to an embargo administered by the U.S. Department of Treasury's Office of Foreign Assets Control, the U.S. Department of Commerce's Bureau of Industry and Security or other applicable regulatory agencies around the world, resell the Products to or enter into any relationship with those who are, or be subjected 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 the government of Australia, United Kingdom or other applicable regulatory agencies around the world, including but not being limited to the Bribery Act 2010; and (c) have not been subjected to investigation or sanction for bribery or money laundering.

Parties hereby agree that Customer shall be responsible for and shall indemnify and hold the Supplier harmless against the costs of financing the collection, treatment, recovery and disposal of the Hardware Products (and any goods which the Hardware Products replace). 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 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 to 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 any costs associated with claims made by a third party, arising from, in connection with or relating to any of the following: i) negligent acts or omissions or wilful misconduct of its personnel; ii) breach of its obligations under the Agreement; or iii)

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supprimé: Where the Hardware Products are subject to the provisions of The Waste Electrical and Electronic Equipment Regulations 2013 ("WEEE Regulations"), pursuant to regulation 12(2) of the WEEE Regulations the Parties hereby agree, that Customer shall be responsible for and shall indemnify and hold the Supplier harmless against the costs of financing the collection, treatment, recovery and disposal of the Hardware Products (and any goods which the Hardware Products replace) that would, but for the provisions of this Section, be required to be financed by Supplier under the WEEE Regulations....

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supprimé: as defined by section 3(10) (supplemented by section 205(4)) of the Data Protection Act 2018, the Data Protection Act 2018 (and regulations made hereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and, where applicable, the provisions of the General Data Protection Regulation (Regulation (EU) 2016/679)

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any theft or other misappropriation of the Supplier's or its personnel's information, property or funds.

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. 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 ("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, the Supplier shall be entitled to 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 to the exclusion of (and supersedes) any prior or contemporaneous understandings, agreements, representations, and communications, whether verbal or written. The Parties acknowledge that neither has placed any reliance on any prior communications other than those expressly incorporated in the Agreement. The Parties irrevocably and unconditionally waive any right they may have to rescind the Agreement and/or claim damages for any misrepresentation whether or not contained in the Agreement or breach of any warranty not contained in the Agreement unless such misrepresentation or warranty was made fraudulently.

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.

No variation or modification of the terms and conditions of the Agreement shall have effect unless it is agreed to in writing and signed by the Parties' authorised representatives.

The terms and conditions of the Agreement shall apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

17.6. No Third-Party beneficiaries

Nothing in the Agreement is intended to create any rights for a 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.

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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.

Each Party irrevocably agrees that the courts of Sydney shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

END OF TERMS

- supprimé: England
- supprimé: Mumbai
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