



# Terms & Conditions of Trade

When you contract any of the Rising Connection team to commence any engagement you are subjected to these Terms & Conditions of Trade by Rising Connection (the Seller).

## 1. INTERPRETATION AND CONSTRUCTION

### 1.1. Definitions

In these Terms of Trade, the following words have the following meanings:

- a) **Agreement** means this Agreement between the Customer and the Seller as outlined in the Quotation, Proposal and/or Order and as governed by these Terms;
- b) **Customer** means any person, company, organisation, or other entity that has requested the supply of Equipment and/or Services from the Seller as stated on any Order, invoice or document;
- c) **Equipment** means any Equipment available for sale by the Seller to the Customer, at the Customer's request;
- d) **Intellectual Property** includes but is not limited to all processes, procedures, methodologies, techniques and/or inventions whether registered trademarks, designs, patents or not registered;
- e) **Order** means any written, or oral, order made by the Customer from the Seller for the supply of Equipment and/or Services;
- f) **Quotation** or **Proposal** means any quotation or proposal issued by the Seller to the Customer for the supply of Equipment and/or Services;
- g) **Price** means the price payable for the supply of Equipment and/or Services in accordance with clause 4 and as specified in the Quotation or Proposal;
- h) **Seller** means Rising Connection Pty Ltd ACN 161 068 042 and its assigned representatives that have the current approval of the Seller;
- i) **Services** means any services to be rendered by the Seller to the Customer, at the Customer's request;
- j) **Terms** means these terms & conditions of trade which apply to any supply of Equipment and/or Services by the Seller to the Customer.

### 1.2. Construction

- a) A reference to these Terms or another agreement between the parties includes any variation or replacement;
- b) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- c) The singular includes the plural and vice versa;
- d) The masculine includes the feminine and neuter and vice versa;
- e) A reference to a person includes but is not limited to a reference to the person's executors, administrators, successors, substitutes, employees, agents and permitted assigns;
- f) An obligation, agreement, representation or warranty on the part of or in favour of two or more persons binds, and/or is for the benefit of them jointly and severally;
- g) A reference to anything is a reference to the whole or any part of it;
- h) References to parties or clauses are, unless otherwise stated, references to the parties and clauses contained in these Terms.

## 2. SUPPLY OF EQUIPMENT AND/OR SERVICES

- 2.1. The Customer agrees that where the Services to be supplied by the Seller include managed services with related hardware for accessing the managed services, the Seller will supply the Equipment with the embedded Intellectual Property applied within and the Seller does not supply the details on the access or working of such Equipment, including but not limited to configuration files or system passwords.
- 2.2. The Seller shall supply the Equipment and/or Services subject to first receiving the Order and payment of the Price, as described in the Quotation or Proposal. If the Equipment and/or Services provided are beyond the scope of the Quotation or Proposal, the approval for the Equipment and/or Services must be provided by Customer Order or by email confirmation from the director of the Seller and the Price for such Equipment and/or Services must be paid prior to commencement of the Services and/or supply of the Equipment.
- 2.3. The Seller's Price for the Services is contained in the Quotation or Proposal. The Seller may otherwise accept an Order for the supply of Equipment and/or Services from the Customer. Any Quotation or Proposal remains open for 30 days, or otherwise for the time stated in the Quotation or Proposal unless withdrawn earlier. All Quotations or Proposals are estimates only and are subject to withdrawal, correction or alteration at any time prior to the Seller's acceptance of the Customer's Order.
- 2.4. Any Order shall identify the Equipment and/or Services ordered and refer to any Quotation or Proposal pursuant to which the Order is made.
- 2.5. The Seller may supply and the Customer must accept Equipment and/or Services that vary from the Equipment and/or Services ordered by the Customer provided that any such variations are not material. Variations will not be material if they do not change the effect of the Equipment and/or Services provided.
- 2.6. Any variation of an Order requested by the Customer must be agreed in writing by the Seller, in the Seller's absolute discretion and may result in a change to the Price.
- 2.7. The Seller may, in its absolute discretion, cancel or terminate any Order at any time without cause, and in that event, the Seller shall repay the Customer any money paid by the Customer and the Seller is not liable for any loss or damages in any respect arising from any cancellation.
- 2.8. The Seller reserves the right, whether or not an Order has been accepted, and without notice to the Customer, to withhold supply to the Customer and will not be liable for any loss or damage resulting directly or indirectly from such action, including if the Equipment and/or Services cannot be provided for any reason whatsoever, if the Customer is in default of these Terms, or if the Seller has determined, at its absolute discretion, that credit should no longer be extended to the Customer.
- 2.9. If the Customer cancels an Order, the Customer remains liable and shall indemnify and keep indemnified the Seller for any and all loss suffered, whether direct or indirect, by the Seller as a direct result of the cancellation, including, but not limited to, loss of profits.



# Terms & Conditions of Trade

## 3. ACCEPTANCE

- 3.1. The Customer warrants that it has the power to enter into this Agreement, is solvent, able to pay its debts as and when they fall due, and this Agreement creates a binding and legal obligation and all information provided to the Seller by the Customer is true and correct in all material respects.
- 3.2. The Customer acknowledges these Terms apply to any Order, Quotation or Proposal for supply of Equipment and/or Services and the Customer accepts the Terms without amendment and agrees to be bound by them. The Terms apply over and above any other document or Agreement to the extent of any inconsistency.
- 3.3. If the Customer has accepted any Quotation or Proposal online, the Customer is taken to have accepted these Term.
- 3.4. If the Customer is the trustee of a trust, then, in addition to the entity of the Customer, the Customer agrees to bind all trusts of which it is a trustee from time to time.

## 4. PAYMENT, CREDIT AND PRICE

- 4.1. The Price is the price determined by the Seller, in its absolute discretion, in accordance with the Quotation and/or Proposal, or as otherwise agreed in writing between the Seller and Customer.
- 4.2. Unless stated otherwise, the Price is exclusive of GST. The Customer agrees that GST at the prevailing rate at the date of invoice will be included in the amount due and payable on the Price and is payable by the Customer in full at the same time as payment of the Price.
- 4.3. Unless agreed otherwise by the Seller in writing, payment of the Price must be received from the Customer prior to the supply of Equipment and/or Services. The Seller is not required to supply the Equipment and/or the Services unless payment has been received. Payment must be made by electronic payment, credit card or by any other payment method nominated by the Seller.
- 4.4. The Seller may charge to the Customer a fee for overdue payments or Customer bank fees imposed on payments including but not limited to credit card payments.
- 4.5. If the Equipment is required to be licensed, the license is not in effect until payment of all monies, as cleared funds, is received by the Seller, including the final payment where there are progressive payments or additional Services required.
- 4.6. The Customer acknowledges that if the Company supplies the Equipment and/or Services on credit, then any credit provided is to be applied wholly or predominately for business purposes. The grant of any credit facility or nomination of any credit limit is in the absolute discretion of the Company and may be varied or withdrawn by the Seller at any time without liability.

## 5. UNPAID INVOICES, INTEREST AND COSTS

- 5.1. The Customer agrees that if payment is outstanding to beyond the Seller's payment terms, the amount is immediately due and payable by the Customer and the Seller is not required to accept any further Orders until payment is made.

- 5.2. If invoices or monies outstanding are not paid in full by the due date for payment, the Seller may charge the Customer interest on the unpaid amount from the date when payment becomes due until the date of payment at the rate of 10% per annum, compounding monthly.
- 5.3. The Customer is not entitled to set off, deduct or otherwise withhold payment of any amount due and owing to the Seller including where the Customer has disputed the invoice or alleged amounts are owed or will become owing by the Seller to the Customer.
- 5.4. The Customer is liable for all costs and disbursements incurred by the Seller or its appointed agents in recovering payment of any outstanding invoice or in enforcing its rights under these Terms, including, but not limited to, legal costs determined on a solicitor/own client basis, mercantile agents' costs or commission and bank dishonour fees.
- 5.5. If the Seller incurs out of pocket expenses due to the Customer, the Seller is entitled to charge those amounts to the client by way of invoice and payment will be due by the time nominated on the invoice.

## 6. TITLE

- 6.1. Until the Seller receives full payment in cleared funds of all monies due for all Equipment and/or Services supplied by it to the Customer, as well as all other amounts owing to the Seller by the Customer and the Customer has complied with all obligations pursuant to these Terms:
  - a) The Customer must hold the Equipment as fiduciary bailee and agent for the Seller and must return the Equipment, including Equipment in transit which has not yet been delivered, to the Customer upon the Seller's request;
  - b) The Customer holds the benefit of its insurance of the Equipment on trust for the Seller and must pay to the Seller the proceeds of insurance in the event the Equipment are lost, destroyed or damaged;
  - c) The Customer must keep the Equipment separate from its Equipment and maintain the Seller's labelling and packaging;
  - d) The Customer must not charge or otherwise grant an interest over the Equipment while they remain the Seller's property;
  - e) The Customer must not convert, process or otherwise commingle the Equipment but if the Customer does so, then it holds the commingled good on trust for the benefit of the Seller and must sell or dispose of the commingled good to the Seller, on the direction of the Seller;
  - f) The Customer may sell or dispose of the Equipment only in the ordinary course of business in its capacity as agent for the Seller and if the Customer sells or disposes of the Equipment then the Customer must hold the proceeds on trust for the Seller and deliver up the proceeds to the Seller on demand;
  - g) The Customer must hold the proceeds of sale of the Equipment on trust for the Seller in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee; and



# Terms & Conditions of Trade

- h) The Seller may without notice, enter any premises where it suspects the Equipment are and recover possession of the Equipment, notwithstanding that they may have been attached to other Equipment and not the property of the Seller, and for that purpose the Customer irrevocably licences the Seller to enter such premises and indemnifies the Seller from and against all costs, claims, demands, or actions by any party arising from such action.
- 6.2. The Seller is entitled to commence legal proceedings to recover any outstanding monies from the Customer regardless of ownership of the Equipment.

## 7. RISK

- 7.1. The risk in Equipment and/or Services passes to the Customer upon dispatch of the Equipment or the performance of the Services.

## 8. DELIVERY

- 8.1. The Customer agrees that the Customer is liable for the cost of delivery of the Equipment, unless otherwise agreed by the Seller.
- 8.2. The Seller is to arrange delivery of the Equipment at the Customer's cost and risk.
- 8.3. If a delivery date is nominated, the Seller will take all reasonable steps to achieve delivery on or about that date. Any date given for delivery is an estimate only and if the Seller is unable to deliver on that date, it shall not be liable for any loss whatsoever (including consequential loss) for any failure or a delay in delivery. The Seller is not liable for any amount payable by the Customer to a third party as a result of a failure or delay in delivery.

## 9. WARRANTIES

- 9.1. To the extent permitted by law, the Seller does not provide any warranty in the Equipment and/or Services.
- 9.2. The Seller expressly denies and excludes any warranties or conditions which would otherwise be implied to the maximum extent possible by law including but not limited to merchantable quality, suitability, fitness of purpose, quality, or otherwise. The Seller acknowledges that these Terms do not exclude any statutory warranties which may be implied pursuant to the Competition and Consumer Act 2010 (Cth).
- 9.3. The Seller does not provide any warranty in the Equipment supplied. Equipment faults are to be taken up with the Equipment manufacturer via the manufacturers approved support mechanisms.

## 10. DEFECTS AND RETURN OF EQUIPMENT

- 10.1. Subject to Clause 10.2, The Customer shall inspect the Equipment immediately upon delivery and carry out any tests which a prudent Customer would carry out and use their best endeavours to minimise loss and damage arising from the defect. The Customer shall give written notice to the Seller of any alleged defect, damage or fault within

5 business days from the date of delivery and provide full particulars of the claim made otherwise the Seller is not obliged to accept a return or grant a credit and the Customer is deemed to have accepted the Equipment.

- 10.2. The Seller shall not be liable for any faulty Equipment from the manufacturer, and all time and effort spent in diagnosing and providing support for the manufacturer's Equipment, if it is not working due to fault of the Equipment or manufacturer, shall be charged by the Seller at its rate in accordance with its standard price list, and payment is due by the Customer on the due date stated for payment in the invoice issued by the Seller.
- 10.3. The Seller is not obliged to accept returns of non-defective Equipment or to otherwise provide a refund however the Seller may do so in its sole discretion and if the Seller does not agree then the Customer is not entitled to cancel the whole or part of any Order and the Customer shall indemnify the Seller against any loss or damage suffered by the Seller.
- 10.4. Notwithstanding anything contained in this clause 10, if the Seller is required by law to accept a return, then the Seller will accept the return of Equipment on the conditions imposed by law.

## 11. RELEASE AND INDEMNITY

- 11.1. The Customer hereby releases and indemnifies and agrees to keep the Seller indemnified from any and all costs, damages, liabilities, expenses or losses including indirect, consequential losses (including but not limited to loss of profit), that the Seller may incur in relation to the Customer or any third party, where the cost, damage, liability, expense or loss is caused by or contributed to by the Equipment supplied or Services performed or for any other reason.

## 12. LIMITATION OF LIABILITY

- 12.1. The Customer agrees, to the fullest extent possible by law, in relation to any cost, damage, liability, expense or loss, including those contributed or caused by the Seller's negligence or breach of any condition or warranty, if the Customer is not a consumer pursuant to the Competition and Consumer Act 2010 (Cth), to limit any claim made to the Seller, in the Seller's absolute discretion to:
  - a) The value of any express warranty provided by the Seller to the Customer or any warranty to which the Customer is entitled;
  - b) Replacement of the Equipment or Services;
  - c) Repayment of the Price in the event that then payment has been received from the Customer.
  - d) In no circumstances shall the seller be liable for any amount in excess of the price.
- 12.2. No other term, condition, agreement, warranty, representation and/or understanding whether express or implied, in any extending to, otherwise relating to or binding upon the Seller other than these Terms is made or given by or on behalf of the Seller.
- 12.3. Notwithstanding anything in this clause 12, a Customer shall not be entitled to make any claim upon the Seller whatsoever if any amounts are outstanding from the Customer to the Seller.



# Terms & Conditions of Trade

## 13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. The Customer acknowledges and agrees that it does not have any Intellectual Property rights in the Equipment, and/or Services, and that all rights that the Seller holds in the Intellectual Property associated with the Equipment and/or Services supplied, and the right to use the Intellectual Property in the Equipment and/or Services, including where the Seller has developed or designed the Equipment for the Customer, remain the property of the Seller.
- 13.2. The Customer acknowledges that all designs or other specifications provided by it with respect to the Equipment and/or Services will not cause the Seller to infringe any Intellectual Property right in provision of the Equipment and/or Services and the Customer indemnifies the Seller against any action taken by a third party against the Seller with respect to any infringement relating to such design or specifications.
- 13.3. The Customer shall have no right to use any Intellectual Property if the Customer is in breach of these Terms, including where any or all of the fees and expenses payable to the Seller have not been paid in accordance with these Terms.

## 14. SECURITY

- 14.1. The Customer, and where the Customer is unincorporated each proprietor of the Customer, hereby charges all legal and/or beneficial interests (freehold and leasehold) in real and personal property held now or in the future by the Customer or proprietor for the benefit of the Seller to secure payment of the monies and compliance with all obligations owed by the Customer to the Seller under this Agreement and Terms.
- 14.2. The Customer agrees that this Agreement constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 (Cth) and the Seller is entitled to register its security interest on the Personal Properties Securities Register by registering a financing statement or financing change statement. The Customer specifically waives its rights to receive notification of a verification statement.
- 14.3. The Customer, and where applicable each proprietor, agrees that if demand is made upon it, him or her by the Seller, the Customer or, if applicable, that proprietor, will immediately execute a consent to caveat, or a caveat or mortgage, as required by the Seller to secure the obligations pursuant to this clause 14. The Customer or, if applicable, each proprietor, irrevocably and by way of security appoints the Seller and any director, credit manager or solicitor engaged by the Seller to be its, his or her true and lawful attorney to give effect to this clause 14 including but not limited to execute and register all documents.
- 14.4. The Customer indemnifies the Seller in relation to all of its costs and disbursements including but not limited to legal costs on a solicitor and own client basis incurred in exercising the Seller's right pursuant to this clause 14.

## 15. PPSA

- 15.1. Defined terms in this clause 15 have the same meaning as given to them in the Personal Property Securities Act 2009 (Cth) ("PPSA").
- 15.2. The Seller and the Customer acknowledge that this Agreement constitutes a security agreement and constitutes a purchase money security interest (PMSI) in favour of the Seller over the goods supplied or to be supplied to the Customer, as grantor, pursuant to these Terms.
- 15.3. The Seller and the Customer acknowledge that the Seller, as secured party, is entitled to register its interest in the goods supplied or to be supplied to Customer, under this Agreement on the personal properties securities register as collateral by registering a financing statement or financing change statement.
- 15.4. The Customer expressly waives its right to receive notification of or a copy of any verification statement with respect to the registration of a financing statement or a financing change statement relating to a security interest granted by the Customer to the Seller.
- 15.5. The Customer agrees to indemnify the Seller on demand for all costs and expenses, including legal costs and expenses on a solicitor and client basis, associated with the registration, amendment or discharge of any financing statement registered by or on behalf of the Seller or the enforcement or attempted enforcement of any security interest granted to the Seller by the Customer.
- 15.6. If the Customer is in default of its obligations and the Seller takes possession of any goods pursuant to its security interest, the Customer remains liable for the difference between the market value of the goods at the time they are sold by the Seller and the amount of the Customer's obligations for which it is in default.
- 15.7. The Customer agrees and undertakes to immediately notify the Seller of any change to its name, address or personal details and authorises the Seller to register a financing change statement without prior consent of the Customer.
- 15.8. The Customer agrees and undertakes not to agree, encourage or in any way allow another person or entity to register a financing statement without the prior written consent of the Seller and the Customer shall provide written notice to the Seller upon becoming aware that of any other person or entity are taking steps to register a security interest with respect to the Customer.
- 15.9. The Customer agrees that to the maximum extent permitted by law, sections 130, 142 and 143 of the PPSA will not apply.
- 15.10. The Customer agrees, to the extent possible under law permitted by law to waive the following rights under the PPSA: receipt of a verification statement pursuant to section 157 and a statement of account where there is no disposal pursuant to section 130(4) or pursuant to section 132 where there is a disposal; to recover any proceeds pursuant to section 140; to object to the purchase of the collateral by the secured party pursuant to section 129; to receive notice of an intention to seize collateral pursuant to section 123; to receive notice of disposal of collateral

pursuant to section 130; to receive notice of retention of collateral pursuant to section 134 or to object to that notice pursuant to section 137; to redeem collateral pursuant to section 142; to reinstate a security agreement pursuant to section 143; to receive a notice of removal of accession under section 95; and any other right in favour of the Customer that can be lawfully contracted out of pursuant to section 115 of the PPSA which shall not apply to these Terms or any security.

## 16. STATEMENT OF DEBT

- 16.1. A certificate signed by a director, secretary, financial controller, credit manager or any other authorised person of the Seller shall be prima facie evidence of the indebtedness of the Customer to the Seller.

## 17. PRIVACY AND CREDIT INFORMATION

- 17.1. The Customer irrevocably authorises the Seller to make enquiries, exchange, collect and use a Customer's personal information including credit information and information relating to property, business or other solvency matter from time to time as the Seller may deem necessary which may include enquiries with persons nominated as trade references, financiers, any other credit provider, credit reporting bodies, any government department and/or any similar or other organisation (Information Provider) for the following purposes:
- Obtaining information on the credit position of the Customer or the director/s or management team of the Customer;
  - Investigating the credit worthiness of the Customer in relation to the credit to be provided by the Seller;
  - Marketing purposes (unless the Customer has notified the Seller it wishes to opt out of direct marketing);
  - To allow the Seller to provide a credit facility for the supply of Equipment and/or Services to the Customer;
  - To notify the credit provider of a default by the Customer;
  - To a credit reporting body to obtain a credit report or to permit a credit reporting body to maintain or update the Customer's credit file.
- 17.2. The Customer acknowledges that the information exchanged under clause 16.1 may include any information in relation to the Customer's creditworthiness or credit history.
- 17.3. The Customer consents and irrevocably authorises the Information Provider to disclose any information about the Customer in their possession to the Seller; the Seller may use any information which it holds for the purposes listed in clause 16.1; and may disclose any of the Customers' personal information to any interested person (including overseas third parties) for any purpose listed in clause 16.1, to the extent permitted by the Privacy Act 1988 (Cth) and the Australian National Privacy Principles (if applicable). To the maximum extent permitted by law, the Customer agrees (unless the Customer otherwise withdraws consent), to waive all rights under the Privacy Act 1988 (Cth).

## 18. DEFAULT AND TERMINATION

- 18.1. Without prejudice to any other remedies available to the Seller, if the Customer is in breach of these Terms, including their payment obligations, or if the Customer becomes insolvent or appoints an administrator, receiver, receiver and manager, liquidator or trustee in bankruptcy, all monies become immediately due and owing to the Seller and the Seller may immediately:
- Terminate or suspend supply of Equipment and/or Services;
  - Retain all monies paid and/or take immediate possession of Equipment which has not been paid for;
  - Cease all future deliveries;
  - Cancel all or any part of any Order unfilled;
  - Exercise its rights pursuant to clause 14 of these Terms; and/or
  - Recover from the Customer any loss of profits arising from the Customer's default.
- 18.2. If the Seller exercises its rights pursuant to clause 17.1, it is not liable to the Customer for any consequential loss or damages suffered by the Customer.

## 19. CUSTOMER RESTRUCTURE

- 19.1. The Customer shall provide written notice to the Seller of any change to its structure or management (including changes to its name or address). If the Customer fails to comply then the Customer agrees to indemnify the Seller from any resulting loss.

## 20. SUBCONTRACTORS

- 20.1. The Seller may, in its absolute discretion and without notice to the Customer, engage subcontractors or other suppliers to provide the Services and/or Equipment to the Customer.
- 20.2. Any subcontractor or other supplier is engaged at the Customer's risk and cost and on its behalf.
- 20.3. Notwithstanding anything contained in clauses 11 and 12, any subcontractor or other supplier remains liable for any acts or omissions in connection with any Services and/or Equipment provided by them, and the Seller is not liable for any loss or damage resulting directly or indirectly as a result of any act or omission by any subcontractor or other supplier.

## 21. DISPUTE RESOLUTION

- 21.1. Any dispute in relation to the Equipment and/or Services, shall at the option of the Seller, proceed by way of mediation with a mediator appointed by the Seller. The Customer is not entitled to commence proceedings unless the Seller elects not to proceed with mediation or the mediator provides consent to do so.
- 21.2. For the avoidance of doubt, this clause will not prevent the Seller from instituting legal action at any time to recover moneys owing by the Customer to the Seller.

## 22. MISCELLANEOUS

- 22.1. **Force Majeure:** The Seller shall not be in breach of any Agreement or these Terms as a result of Force Majeure. Force Majeure shall include national emergency, war, prohibitive government regulations or any cause beyond the reasonable control of the Seller which means that the Equipment and/or Services cannot or are delayed in being provided by the Seller to the Customer.
- 22.2. **Notices:** A notice, demand, waiver, approval or other document given pursuant to these Terms must be in writing and may be given by personal service, prepaid post, facsimile transmission or email transmission at the address of the party as provided from time to time.
- 22.3. **Severance:** If any provision or part of a provision of these Terms cannot be given effect or is declared void for any reason, the provision or part which cannot be given effect shall be severed and the remaining provisions shall remain valid, binding and enforceable on the parties.
- 22.4. **Waiver:** No rights under these Terms will be waived unless agreed in writing and signed by the Seller. The Seller does not waive a right if an extension or other forbearance is given to the Customer. No waiver of a provision of these Terms shall be construed as a continuing waiver of the provision. A waiver by the Seller of any matter does not prejudice its rights in respect of any matter. Any non-exercise or partial exercise of or any delay in exercising any right or remedy does not constitute a waiver of that right or remedy.
- 22.5. **Variation:** The Seller, in its absolute discretion, may amend or vary these Terms from time to time and the Customer agrees it is deemed to have notice of change to these Terms and be bound by such variations as they appear on the Seller's website from time to time, whether or not the Customer has actual notice of any such variation.
- 22.6. **Assignment:** The Customer is not entitled to assign the benefits or obligations under this Agreement to any entity without the Seller's prior written consent, which may be given in the Seller's absolute discretion. The Seller may assign all or any part of the benefits and obligations under this Agreement without the requirement for the Customer's consent.
- 22.7. **Jurisdiction:** The provisions of the Agreement for supply of Equipment and/or Services between the Seller and the Customer shall be governed by the laws of the state of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that State.
- 22.8. **Entire Agreement:** These Terms supersede all previous Agreements, discussions and representations between the Seller and the Customer and constitute the entire Agreement in relation to the Agreement for provision of Equipment and/or Services between the Seller and the Customer.
- 22.9. **Counterparts:** These Terms may be signed in any number of counterparts and each counterpart shall together constitute one Agreement. This Agreement may be executed and delivered by facsimile, electronically or by way of electronic signature and the receiving party may rely upon same as if it was an original document or signature.
- 22.10. **Enforceable Directors Guarantee:** Where a Signed Directors Guarantee has not been received, the director(s) of the Customer shall be fully liable for all costs until paid once the

Seller is engaged. The delivery of Equipment to site, receipt of a payment to Seller, or any form of communication requesting the Seller to commence the supply of Services, shall be taken as the Customer that engages Seller as having accepted this. Where correspondence has included specifically an individual director leading up to the provision of Equipment and/or Service from the Seller, that individual director shall be held liable as the director though where that director fails to make good on the guarantee due to death (the Seller may recover funds from deceased estate) or bankruptcy, the Seller will be able to recover all costs from any other listed directors of the Customer that acquired the Equipment and/or Services.

- 22.11. **Social Media and Marketing:** The Seller reserves the right to share progress of works or associated milestones regarding the Equipment and/or Services and the Customer on social media, and for other marketing purposes, unless the Customer explicitly provides written direction prohibiting this, or confidentiality agreements have been entered into by the Seller and the Customer.

Terms & Conditions Updated effective from 01<sup>st</sup> May 2021.