

TERMS AND CONDITIONS OF SALE

1. In this document:

- 1.1. **Additional Licence** means higher level of access to the Software agreed between the User and the Supplier to allow the User to access Disabled Features (or additional features) within the Software;
- 1.2. **Administration Fee** means 5% of the of the amount of the invoice, or \$100 whichever is the higher.
- 1.3. **Agreement** means the agreement between the Purchaser and the Supplier comprising of these Terms and Conditions together with any Order Statement, invoice or application;
- 1.4. **Amount Payable** means, at any time, all amounts payable by the Purchaser to the Supplier at that time (whether or not those amounts have become due for payment under clause 4.1 or any other provision of the Agreement) in connection with the Goods (including, without limitation, any invoiced amount, interest, fees, costs or expenses);
- 1.5. **Application** means the application for commercial credit to which these Terms and Conditions are annexed;
- 1.6. **Applicant** means the applicant specified in an Application and take the same meaning as the Purchaser;
- 1.7. **Business** means the business conducted by the User at the commencement of this Agreement;
- 1.8. **Cause Beyond the Reasonable Control** includes an act of God, strike, lockout, other industrial disturbance or labour difficulty, war, act of public enemy, blockade, revolution, riot, insurrection, civil commotion, lightning, storm, flood, fire, earthquake, explosion, embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation, or anything done or not done by or to a Person, government or other competent authority, except the party relying on force majeure;
- 1.9. **Confidential Information** means all technical and other information and know how, including all information and know how in any eye or machine-readable form or other format, disclosed or given from any source in respect of or incidental to:
- (a) the Software;
 - (b) the database schema of which User information is stored within;
 - (c) and documents or manuals which accompany the Software;
 - (d) any Additional Licence;
 - (e) any Technology associated with the Software or any Additional Licence; and
 - (f) the structure of the party, its business plans, projections, financials, estimates, market plans and assessments;
 - (g) any configuration information, commands or formatting thereof;
- (h) any data which is the result of processing by a neural network or any artificial intelligence software or system; and
- (i) any other information disclosed or given to one party by the other which is declared by the disclosing party to be Confidential Information;
- 1.10. **Covered Goods** means those Goods which the Supplier has specified as being covered by its warranty under clause 14.1;
- 1.11. **Default Interest Rate** means the fixed rate of 18% per annum.
- 1.12. **Defect** means a defect, error or bug having an adverse effect on the appearance, operation or functionality of the Software;
- 1.13. **Disabled Features** mean features or functionalities that are hidden, blocked or appear disabled or "grayed out" according to the particular rights entitled to the User by any licences installed in the Software and their validity;
- 1.14. **FIS** means Free into Store;
- 1.15. **FIS Limit** means the amount included for freight up to 10% of the product price depending on the level of customisation;
- 1.16. **Future Rights** means jointly and severally all of those Rights (statutory and otherwise) comprised in the Intellectual Property Rights which may arise, be created, be granted or acquired in any way whatsoever in the future in respect of the Software;
- 1.17. **Goods** means any goods, products, services or materials supplied or to be supplied by the Supplier at any time and from time to time including, without limitation, any goods specified in an Order Statement or invoice;
- 1.18. **Hardware Device** means the instruments, mechanics, device, cameras, processing units, programmable logic controller, RADAR, video recorders, enclosures, cabling, sensors, valves, relays as part of the Goods;
- 1.19. **Improvements** means any adaption, improvement, modification, enhancement, derivative, application or use of the Intellectual Property Rights conceived, created or arising during or subsequent to the User's access to the Software or any Additional Licence, including all Future Rights;
- 1.20. **Intellectual Property Rights** means:
- (a) jointly and severally any Rights as they relate to the Confidential Information, and any copyright, trade mark Rights, design Rights, the patent Rights, the Improvements and the Future Rights; and
 - (b) all the Rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; and
 - (c) any application or Right to apply for registration of any of the Rights referred to in the subclause (a); and

TERMS AND CONDITIONS OF SALE

- 1.21. **Intellectual Property** shall have the same meaning.
- 1.22. **Materials** means any documents or other material forms of expression or any other object, process or thing comprising Intellectual Property Rights which is provided or brought into existence through the use of the Software by the User;
- 1.23. **Order** means any order or offer to purchase Goods;
- 1.24. **Order Statement** means any statement which the Supplier provides to the Purchaser on receiving the Order;
- 1.25. **Person** includes a partnership, trust or other entity which is not a legal person;
- 1.26. **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- 1.27. **Price** means the price payable for the Goods as specified in an Order Statement;
- 1.28. **Purchaser** means the person or entity placing the order or requesting the quotation for Goods and Services, or on whose behalf the Order or quotation is placed, with the Supplier.
- 1.29. **Right** includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action;
- 1.30. **Software** means the system that this Agreement relates to and is attached to, that operates in conjunction with any Hardware or Goods sold.
- 1.31. **Supplier** means PRM Engineering Services Pty Ltd ACN 623 115 079 and its related bodies corporate (within the meaning of the *Corporations Act 2001* (Cth));
- 1.32. **Technology** means all that technical information which relates to or forms part of the Software, including without limitation methodology, techniques, drawings, outlines, notes, algorithms, detailed designs, flow charts, results, software, (partial or intermediate versions and prototypes) data, formulae and other proprietary information and know how in the User's possession or control or which is revealed to the Supplier which relates to the Software;
- 1.33. **Terms and Conditions** means the terms and conditions contained in this document;
- 1.34. **User** includes the Purchaser and the Purchaser's:
(a) employees and contractors;
(b) related entities and their employees, contractors and third parties; and
(c) third parties;
who operate the Hardware Device and Software; and
- 1.35. **Website** means the Supplier's website located at <http://prmeng.com.au>.
- 1.36. the terms **accession, financing statement, personal property, proceeds, processed or commingled goods, purchase money security interest, security agreement, security interest and verification statement** have the respective meanings given to them under, or in the context of, the PPSA.
- ### 2. Delivery
-
- 2.1. Delivery of the Goods ("**Delivery**") is taken to occur at the time that:
(a) the Purchaser or the Purchaser's nominated carrier takes possession of the Goods at the Supplier's address; or
(b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Purchaser's nominated address even if the Purchaser is not present at the address.
- 2.2. At the Supplier's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 2.3. Delivery of the Goods to a third party nominated by the Purchaser is deemed to be delivery to the Purchaser for the purposes of this Agreement.
- 2.4. The Purchaser must take delivery by receipt or collection of the Goods whenever either is tendered for delivery. In the event that the Purchaser is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery of the Goods and/or the storage of the Goods.
- 2.5. The Purchaser shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
(a) such discrepancy in quantity shall not exceed five percent (5%); and
(b) the Price shall be adjusted pro rata to the discrepancy.
- 2.6. The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms and Conditions.
- 2.7. Any time or date given by the Supplier to the Purchaser is an estimate only. The Purchaser must still accept delivery of the Goods even if late and the Supplier will not be liable for any loss or damage incurred by the Purchaser as a result of the delivery being late.
- ### 3. Risk
-
- 3.1. Risk of damage to or loss of the Goods passes to the Purchaser on Delivery and the Purchaser must insure the Goods on or before Delivery.
- 3.2. If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Purchaser, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms and Conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

TERMS AND CONDITIONS OF SALE

4. Payment terms

- 4.1. The terms of payment are strictly thirty (30) days from the statement date (or such other period as nominated by the Supplier in Part E of the Application).
- 4.2. The Supplier will invoice the Purchaser at the intervals noted as the Invoice Terms in Part E of the Application.
- 4.3. Should the Purchaser not pay for the Goods supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to:
 - (a) Charge interest in accordance with clause 31.1;
 - (b) charge an Administration Fee; and
 - (c) suspend or terminate supply of Goods at its sole discretion.
- 4.4. A processing fee of \$100 will be charged in the event of a dishonoured payment.
- 4.5. The Supplier may require the Purchaser to pay a non-refundable deposit for the Goods by a date nominated by the Supplier. The amount of the deposit may be determined by the Supplier in its sole discretion.

5. Purpose of credit

- 5.1. The Purchaser acknowledges and agrees that the credit to be provided to the Purchaser by the Supplier is to be applied wholly or predominantly for commercial purposes.

6. Formation of contract

- 6.1. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Purchaser's offer will complete a contract.
- 6.2. Where the Supplier has given the Purchaser a quote:
 - (a) The Supplier need not supply the Purchaser until the Supplier has given written acceptance of the Purchaser's offer to purchase;
 - (b) The Purchaser shall offer to purchase the Goods by supplying the Supplier in writing a purchase order making specific reference to the Supplier's quote number.
 - (c) Quotes are valid for thirty (30) days only, unless an extension has been authorised by the Supplier.
 - (d) The Supplier reserves the right to withdraw the quote for whatever reason.
 - (e) The Purchaser warrants that it has not relied on any representation by the Supplier and its

employees and agents other than as is specified in writing in the quote.

- 6.3. The Supplier may amend the quote after a period of three (3) months from the date of the signed acceptance of the quote to take into account any rise or fall in the cost of performing the Order and the Supplier shall notify the Purchaser of such amendment as soon as practicable thereafter. Upon the Supplier giving the Purchaser notification of such amendment the amended quote shall be deemed to be the quote for the purposes of the Terms and Conditions.
- 6.4. Placement of an order, either verbally or in writing, will imply acceptance of these Terms and Conditions.
- 6.5. Where a deposit is required in accordance with clause 4.5 of these Terms and Conditions, the contract is conditional on the Purchaser paying the deposit amount to the Supplier on the terms stipulated by the Supplier.
- 6.6. The Purchaser shall indemnify the Supplier from any additional cost incurred by the Supplier, should the Purchaser increase the scope of the Goods and/or services to be provided by the Supplier.
- 6.7. The Purchaser warrants, as a fundamental condition of this Agreement, that all drawings and specifications and other design information supplied by the Purchaser to the Supplier shall be accurate in all aspects.
- 6.8. The Purchaser shall indemnify the Supplier from all costs incurred when Goods are manufactured exclusively to the Purchaser's specification. These Goods cannot be cancelled.

7. Prices

- 7.1. Prices quoted include packing where applicable (unless otherwise specified). The cost of any special or export packing which is not standard will be added to the Purchaser's account.
- 7.2. Any increase in the cost of supplying the Goods which is beyond the control of the Supplier and which occurs between the date of Order and the date of Delivery shall be to the Purchaser's account.
- 7.3. Unless otherwise stated in the quote, the Supplier reserves the right to alter its list prices without notice and may vary the purchase price to reflect the addition in costs, taxes or duties incurred or to be incurred by the Supplier after the date the quote is accepted.
- 7.4. All list prices are exclusive of GST and other government impost unless otherwise stated in writing and are subject to alteration without notice.

8. Cancellation of terms of credit

- 8.1. The Supplier reserves the right to withdraw credit at any time, whether the Purchaser is in default under the terms of this Agreement or not.

TERMS AND CONDITIONS OF SALE

8.2. Upon cancellation with or without notice all liabilities incurred by the Purchaser become immediately due and payable to the Supplier.

9. Credit Limit and Cash accounts

9.1. If credit is granted, the Purchaser agrees and acknowledges that the amount of credit granted will not exceed the credit limit noted in Part E of the Application and that should this credit limit be reached, the Supplier is under no obligation to provide further Goods until all amounts outstanding are paid.

9.2. Unless credit is granted:

- (a) cleared payment must be received before dispatch or provision of Goods;
- (b) payment may only be made by direct deposits, cheques, credit card (Mastercard and Visa) or eftpos; and
- (c) the Supplier may accept cash on delivery by arrangement.

10. Availability of Goods

10.1. If any Goods are unable to be supplied when an Order is placed the Supplier reserves the right to cancel the Order and refund the Price paid for the Goods impacted.

10.2. The Supplier may withdraw or suspend from sale any item displayed for sale, either temporarily or permanently, at any time. The Supplier will not be liable to the Purchaser for any loss the Purchaser or any third party suffer as a result of a withdrawal or suspension of sale of a particular item.

10.3. The Supplier reserves the right not to honour any incorrect offers represented made by genuine human or system error. When an Order is affected by an error (or e.g., in a description, an image, price or otherwise), the Supplier will reject that part of the Order affected by the error. The Purchaser will be refunded the value of that part of the Order affected by the error and the Supplier will fulfil the remainder of the Order.

10.4. If the Order is affected by a genuine error (including in a description, an image, price or otherwise), the Supplier reserves the right to cancel the Order and refund the Price paid for the Goods impacted.

11. Freight

11.1. Orders under the FIS Limit, remote destinations or for supply of Products with a dead weight or cubic weight exceeding 50kg's will be charged freight in accordance with the Purchaser's requirements.

11.2. The Supplier offers a convenient freight service based upon our negotiated contract rates and the Supplier will calculate and pay the freight on the Purchaser's behalf which will be itemised separately on the invoice. Purchaser's may elect to use their own carrier at their own expense by indicating the transport and account details on their order.

11.3. Orders over FIS Limit will be FIS to the Purchaser's trade delivery address as specified in this application, within Australia, subject to the goods being delivered by the Supplier's nominated transport.

11.4. A dangerous goods surcharge will be applied to all orders containing dangerous goods.

11.5. Orders containing products exceeding a dead weight or cubic weight of 50kg's will be treated as a standalone order and will be sent separately and charged accordingly.

12. Back orders

12.1. All goods unable to be supplied when the Purchaser orders are placed will be back-ordered unless otherwise stated. Please advise the Supplier's sales office immediately if goods placed on back-order are no longer required. A handling fee may apply as outlined in clause 13.5.

13. Order cancellations and returns

13.1. Unless agreed by the Supplier, the Purchaser cannot cancel or change an Order. The Purchaser must carefully check the Order is accurate before submitting it.

13.2. If the Supplier cannot contact the Purchaser about an Order using the contact details provided by the Purchaser, the Supplier may cancel the Order and refund the Price paid for the Order.

13.3. The Supplier will consider the return of Goods within 14 days of the receipt of such Goods by the Purchaser and may provide a credit against such returns to the Purchaser if the Goods: -

- (a) do not comply with the quantity or description of the Purchaser's Order; or
- (b) are not of acceptable quality as defined in the *Competition and Consumer Act 2010* (Cth); and provided that the Purchaser has inspected the Goods and notified the Supplier within 48 hours after Delivery or any later time as deemed reasonable by the Supplier.

13.4. The Purchaser must then give written notice to the Supplier of a request for a credit which details all alleged non-compliances. This request must also specify the original invoice number in respect of the Goods as proof of their purchase and the Supplier is then satisfied as to the accuracy of the claim in that notice.

13.5. All freight costs are at the Purchaser's expense and the Supplier also reserves the right to charge a handling fee of up to 10% of the Quoted amount depending on the level of customisation unless the goods:

- (a) have been supplied incorrectly, or
- (b) are for a previously authorised warranty claim.

13.6. In the case where goods have been incorrectly supplied or subject to warranty then the Supplier's nominated carrier is to be used. The Supplier will

TERMS AND CONDITIONS OF SALE

not be responsible for freight costs incurred if the Purchaser chooses to use an alternative carrier.

13.7. Buy-in items will not be accepted for credit.

14. Warranty

14.1. Subject to clause 14.2 the Supplier warrants that if any defect in any Covered Goods manufactured by the Supplier becomes is reported to the Supplier within twelve (12) months of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) repair the defect or replace the Covered Goods.

14.2. The conditions of the warranty in clause 14.1 are:

- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Purchaser to properly maintain and operate the Goods; or
 - (ii) failure on the part of the Purchaser to follow any instructions or guidelines provided by the Supplier; or
 - (iii) use of the Goods for any application not specified on a quote or Order Statement; or
 - (iv) the continued use of the Goods after any defect becomes apparent or would have become apparent to a reasonably prudent user; or
 - (v) fair wear and tear, any accident or act of God; or
 - (vi) Any interference by the Purchaser with the software.
- (b) The warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the Covered Goods are repaired, altered or overhauled without the Supplier's consent.
- (c) Any claim by an Purchaser in respect of Covered Goods and the warranty in this clause must be made in writing to the Supplier and must specify the claim, the original invoice number in respect of the Covered Goods as proof of their purchase.
- (d) The Supplier must be satisfied as to the accuracy of the claim and the Purchaser in claiming under this warranty is only entitled to the replacement of the Covered Good or the supply of an equivalent goods.

14.3. In respect of all claims the Supplier shall not be liable to compensate the Purchaser for any delay in either replacing or repairing the Covered Goods or in properly assessing the Purchaser's claim.

14.4. For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall be under no liability whatsoever, except for the

express conditions as detailed and stipulated in the manufacturer's warranty.

15. Limitation of liability

15.1. Except as provided below, all express and implied warranties and conditions under statute or general law as to description, quality, suitability, or fitness of any Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded. The Supplier shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, installation or operation of any Goods or arising out of contract or negligence or in any way whatsoever.

15.2. The Supplier's liability for trade and non-consumer sales for a breach of condition or warranty implied by the *Competition and Consumer Act 2010* (Cth) ("**Act**") is limited to any one or more of the following:

- (a) where the Goods are goods:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or acquiring equivalent goods; or
 - (iv) the payment or the cost of having the Goods repaired.
- (b) where the Goods are services:
 - (i) supplying the Goods again; or
 - (ii) providing for the cost of having the Goods supplied again.

15.3. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Purchaser.

15.4. If the Purchaser is a consumer for the purposes of the Australian Consumer Law the following statement applies:

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

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

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

TERMS AND CONDITIONS OF SALE

- loss or damage from a failure in the goods or service.
- 15.5. To the fullest extent permitted by law, the Supplier makes no representation or warranty in respect of the provision of the access and the use of the Software except that it will provide these competently, professionally and to the best of its ability within the scope of this Agreement.
- 15.6. The Supplier's warranties with respect to the state, quality or condition of the Software is limited to those imposed upon the Supplier by statute, including those contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the Supplier expressly disclaims all other implied warranties and conditions except where the infringement is known by the Supplier beforehand.
- 15.7. The User expressly accepts and acknowledges that the Supplier is not liable to the User for any costs, expenses, loss, liability or damage of any kind, including but not limited to loss of profits, however arising from or in connection with:
- (a) any delay in the Supplier attending to the Software to repair any breakdown;
 - (b) any failure or inability to repair any breakdown;
 - (c) any inability of the User to access the Software;
 - (d) any disruption or interference with the User's Business in connection with the Software and access being provided;
 - (e) any information technology being properly in the possession of the Supplier;
 - (f) the User failing to ensure that their equipment, software systems, hardware and other information technology componentry are appropriate for the operation, use and access of the Software or any Additional Licences
 - (g) the Software failing to operate at any time; or
 - (h) any delay, failure or error in the provision of the Software due to any circumstance outside the Supplier' reasonable control, including without limitations, failure of any communications network or system, electronic power surges, overloads, failures or blackouts, except to the extent that such costs, expenses, losses, liabilities or damages are caused by the Supplier's wilful or negligent act or omission.
- 15.8. The Supplier will not be liable for any costs, expenses, loss, liability or damage of any kind suffered by the User in connection with any non-deliberate inaccuracy, error or omission on the part of the Supplier in providing the Software notwithstanding any negligence on the part of the Supplier.
- 15.9. To the fullest extent permitted by law, the Supplier excludes all liability for direct, indirect and consequential loss including without limitation the loss or corruption of the Software or the Users data, loss of revenue, loss of profits, failure to realise expected profits or savings and any other commercial or economic loss of any kind arising from this Agreement or the provision of the Software by the Supplier except to the extent that such liability is a result of the Supplier' wilful or negligent acts or omissions.
- 15.10. The User accepts and acknowledges that the Supplier may enlist the services of third-parties in the development of the Software and any such services which may be required to provide the User with access and use of the Software, including but not limited to cloud and/or server providers, internet access and other communications systems and that the Supplier will not be liable to the User for any costs, expenses, loss liability or damage of any kind, including but not limited to loss of profits which may occur as a result of any delay, failure or error in the provision of the Software due to the operation of any third-party services effecting the Software and its operation.
- 15.11. The User acknowledges that:
- (a) it does not rely upon any prior statement, undertaking or representation made or given by or behalf of the Supplier which is not set out in this Agreement;
 - (b) it is fully aware of the contents of this Agreement and all documents referred to herein and has had the opportunity to obtain independent legal advice on its terms and the terms of all other related documents prior to entering into the Agreement;
 - (c) where the Supplier is liable for any costs, expenses, loss, liability or damage suffered by the User the Supplier's liability is limited to the amount of Fees paid for the access and use of the Software.
- 15.12. Nothing in these Terms and Conditions shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by the law (including the Act) and which by law cannot be excluded, restricted or modified.
- ### 16. Retention of Title to Goods
- 16.1. The Supplier and the Purchaser agree that ownership of the Goods shall not pass until:
- (a) the Purchaser has paid the Supplier all amounts owing to the Supplier; and
 - (b) the Purchaser has met all of its other obligations to the Supplier.
- 16.2. Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 16.3. The parties further agree that:

TERMS AND CONDITIONS OF SALE

- (a) until ownership of the Goods passes to the Purchaser in accordance with clause 16.1 the Purchaser is only a bailee of the Goods and must return the Goods to the Supplier on request;
- (b) the Purchaser holds the benefit of the Purchaser's insurance over the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Purchaser must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Purchaser sells, disposes or parts with possession of the Goods then the Purchaser must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
- (d) the Purchaser should not convert or process the Goods or intermix them with other Goods but if the Purchaser does so then the Purchaser holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
- (e) the Purchaser irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
- (f) the Supplier may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Supplier shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier;
- (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Purchaser.

laid down by the Supplier. The User must not do any of the following without the written consent of the Supplier:

- (a) allow or cause, directly or indirectly, any third party to make attempt to gain access to data or damage, delete, alter or insert data to any part of the Software, the Supplier systems, or servers without authority;
- (b) reproduce or modify the Software;
- (c) use the Software, or allow anyone else to use the Software for illegal or improper uses, including:
 - (i) for fraudulent, criminal or other activities in breach of any law (including without limitation, any law at any place where the communication of transmission was sent, viewed or received);
 - (ii) use which breaches another person's rights, including copyright or other intellectual property rights, to copy, store, modify, republish or redistribute Software content;
 - (iii) use which in anyway breaches any security or other safeguards; or
 - (iv) use which in any other way harms or interferes with the Supplier;
- (d) allow anyone else to use any right to access, username or password obtained by the User.

17.3. The User must:

- (a) ensure that all its employees and any other persons permitted to access the Software are appropriately trained, competent and do not misuse or recklessly or negligently damage the Software or Hardware Device;
- (b) allow the Supplier, its employees and consultants reasonable access, including through the use of the User's allocated username and password, during ordinary business hours on work days to enable the Supplier to perform any maintenance work required on the Website or Software. The User accepts and acknowledges that such maintenance may interrupt or disrupt the Business and their ability to access and use the Software; and
- (c) ensure that all its employees, agents and contractors co-operate with the Supplier, its employees and consultants at all times and provide the Supplier with assistance as reasonably required.

17. Software License

17.1. The Supplier grants the User a non-exclusive, non-transferable, non-assignable right to access and use a compiled version of the Software through the Hardware Device and any accumulated data on the terms of this Agreement. The User agrees to:

- (a) not engage in activities that may interfere or disrupt the Supplier's ability to provide the Software as intended; and
- (b) not engage in any activities that may interfere with or disrupt the ability of other Software users to use the Software.
- (c) comply with the Supplier's Terms of Use.

17.2. The User must not use the Software except in accordance with the normal operating procedures

17.4. If the User requests minor variations and updates to the content of the Software, the Supplier may, at its sole discretion:

- (a) refuse to vary the Software despite the request by the User;

TERMS AND CONDITIONS OF SALE

- (b) comply with requests made pursuant to clause 17.4 without requiring further payment from the User; and
- (c) comply with requests made pursuant to clause 17.4 and provide notice to the User that a fee will be charged to cover the additional requirements associated with the upgrade or variation.
- 17.5. At any time, the Software may contain Disabled Features. Any Disabled Features will be enabled if the User is granted one or more Additional Licences which explicitly allow these features for the specified duration of the Additional Licences. The User must not access, or attempt to access, any Disabled Features other than through the use of such enabling technologies, nor may the User rely on the Supplier to create a feature substantially similar to any Disabled Feature or otherwise circumvent the technology that controls activation of any such feature.
- 17.6. The User must not, and will not, directly or indirectly, allow or cause any third party, to decompile, disassemble, reverse engineer, reverse assemble, copy or modify the Software, any Additional Licence file or information or use the whole or any part of the Software or any Additional Licence to assist in the development of a similar or competitive product.
- 17.7. The User must not adapt or attempt to modify the Software, any Additional Licence or merge any part of it with another software program without the written consent of the Supplier. The following rules apply to a modification or merger, whether the Supplier has consented to it or not:
- (a) the User must bear all of the costs associated with the modification or merger;
- (b) the Database schema must not be provided to any third party without express written consent from the Supplier;
- (c) the User must continually indemnify the Supplier against any liability, loss, damage, or expense that the Supplier incurs or suffers as a direct or indirect result of the adaption, modification or merger; and
- (d) this Agreement applies to the modified or merged Software as if it were the licensed Software or any Additional Licence.
- 17.8. The User may download, print or copy information from the compiled version of the Software for its own use within its Business except that the User must not on sell any information obtained using the Software to any third party.
- 17.9. The User must ensure that their equipment, software systems, hardware and other information technology componentry are appropriate for the operation, use and access of the Software or any Additional Licences. The User expressly accepts and acknowledges that the Supplier is not liable to the User for any costs, expenses, loss, liability or damage of any kind, including but not limited to loss of profits, arising from or in connection with the User's equipment, software systems, hardware or other information technology componentry which interferes or otherwise effects the operation, use or access to the Software.
- ### 18. Security interest, charges and power of attorney
- 18.1. The Purchaser grants to the Supplier a security interest in the Goods to secure payment of the Amount Payable. The security interest:
- (a) extends to and continues in all proceeds, accessions and processed or comingled goods; and
- (b) is a purchase money security interest to the extent to which it secures payment of that part of the Amount Payable which comprises the aggregate unpaid purchase price of the Goods.
- 18.2. The Purchaser agrees that the Supplier may also register on the Personal Property Securities Register a security interest over all the Purchaser's personal property.
- 18.3. For the purposes of section 19(2) of the PPSA, the Purchaser:
- (a) warrants that the Purchaser has rights in the Goods, or the power to transfer rights in the Goods, to the Supplier;
- (b) acknowledges that the purchase money security interest has arisen in the Goods by the Purchaser's acceptance;
- (c) warrants that the Purchaser has rights in the personal property, or the power to transfer rights in the personal property, to the Supplier; and
- (d) acknowledges that the Supplier has given value for its security interest in the personal property, including by its providing or continuing to make available any financial accommodation to the Purchaser.
- 18.4. For the purposes of section 20(2)(b)(ii) of the PPSA, the Purchaser acknowledges that the security interest over the personal property is taken in all of the Purchaser's present and after acquired property.
- 18.5. The Purchaser must not do or permit anything to be done that may result in the security interests granted to the Supplier ranking in priority behind any other security interest.
- 18.6. The Purchaser agrees that sections 95, 130, 132(3)(d), 132(4), 135 and 143 of the PPSA will have no application to this Agreement and the Purchaser waives all its rights under section 157 of the PPSA to receive a notice under that section.
- 18.7. The Purchaser charges in favour of the Supplier all of its estate and interest in any real property that

TERMS AND CONDITIONS OF SALE

- the Purchaser owns at present and in the future with the amount of its indebtedness hereunder until discharged and grants the Supplier the right to place a caveat in favour of the Supplier over all such property.
- 18.8. The Purchaser agrees to execute all documents and do all acts, matters and things which the Supplier reasonably requires to more effectively secure its rights pursuant to the security interest created under this Agreement.
- 18.9. The Purchaser appoints as its duly constituted attorney the Supplier's authorised representative from time to time to execute in the Purchaser's name and as the Purchaser's act and deed any real property mortgage or consent to any caveat which the Supplier may choose to lodge against real property that the Purchaser may own in any Land Titles Office in any state or territory of Australia, even though the Purchaser may not have defaulted in carrying out its obligations hereunder.
- 18.10. Where the Purchaser has previously entered into an Agreement with the Supplier by which the Purchaser has granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this Agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.
- 19. Confidentiality and intellectual property rights**
-
- 19.1. A party must not disclose any of the other party's Confidential Information except in any of the following circumstances:
- (a) the disclosure is necessary to comply with the party's obligations under this Agreement or under another agreement between the parties;
 - (b) the disclosure is to an officer, employee, agent or consultant of the party, to the extent that he or she needs to know the Confidential Information in order to perform a function consistent with the ordinary and intended operation of the Hardware Device and Software. The party disclosing must take reasonable steps to ensure that its officer, employee, agent or consultant does not make a disclosure which, if the party disclosed it, would be a breach of this clause;
 - (c) the disclosure is required by law;
 - (d) the disclosure is reasonably made to a professional legal adviser or professional auditor; or
 - (e) the other party consents in writing to the disclosure.
- 19.2. The parties must not copy any information which it must not disclose, and may only use it to the extent necessary to make appropriate use of the Software or any Additional Licence or comply with the terms of this Agreement.
- 19.3. The User must not use any Confidential Information or information obtained through the use of the Software or any Additional Licence in any capacity with a business, product or in a manner which is or could be similar to or competitive with the Supplier.
- 19.4. The User agrees not to disclose, reveal or make use of any information during discussion or observation regarding the methods, concepts, ideas, product/services, or proposed new products or services.
- 19.5. The User must not disclose any Confidential Information without the prior written permission of the Supplier.
- 19.6. The Intellectual Property Rights in the Software or any Additional Licence remain exclusively the Suppliers.
- 19.7. The Intellectual Property Rights in any Materials created by or arising out of the User's access and use of the Software shall immediately be assigned to and vest absolutely in the User.
- 19.8. In the event that the User develops any Improvements, the User shall notify the Supplier of the nature of the same and the mode of carrying out the Improvements with practical effect provided always that the User hereby irrevocably assigns, transfers and sets over absolutely to the Supplier all Right, title and interest to the Improvements including all Claims as they relate to the Improvements. The User will do all things necessary to give effect to an assignment of the Intellectual Property Rights in respect of the Improvements to the Supplier.
- 19.9. The User accepts and acknowledges that the Intellectual Property Rights in any additional features or Improvements to the Software remain exclusively owned by the Supplier notwithstanding any input, request or suggestion from the User.
- 20. Data Security**
-
- 20.1. The User's data is and will remain the property of the User at all times. Except as required by Law, the Supplier must:
- (a) not use the User's data for any purpose other than directly in relation to the performance of its obligations under this Agreement;
 - (b) ensure that it, its employees or consultants will not, sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any User's data;
 - (c) make any User's data available to a third party other than an approved subcontractor and then only to the extent necessary to enable the approved subcontractor to perform

TERMS AND CONDITIONS OF SALE

- its part of the Supplier's obligations under this Agreement; and
- (d) remove or transfer the User's Data to any non-the Supplier premises or non-the Supplier system without obtaining the prior approval of the User unless this Agreement is assigned in accordance with clause 41.1.
- 20.2. The Supplier must make all attempts to, where possible and commercially reasonable, establish and maintain safeguards against the destruction, loss or alteration of the User's data in its possession or control that:
- (a) are consistent with and no less rigorous than those which would be reasonably expected to be maintained to secure that data;
- (b) comply with all applicable Laws and any procedures concerning data security;
- (c) prohibit and prevent any person who does not have the appropriate authorisation from gaining access to the User's Data; and
- (d) notify the User immediately if the Supplier becomes aware of the contravention of any data security requirement.
- 20.3. Data produced by neural networks or other artificial intelligence software or systems is for the purpose of this agreement not User Data and remains the property of the Supplier.
- 21. Indemnity**
- 21.1. The Purchaser agrees to indemnify the Supplier and keep the Supplier indemnified against any claim against the Supplier for the any liability, personal injury, loss, damage or expense that is incurred or suffered as direct or indirect result of the installation and use of the Hardware Device as apart of any existing system, asset, device, building or otherwise. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.
- 21.2. The Supplier must continually indemnify the Purchaser against any claim or proceeding that is made or commenced, and against any liability, loss, damage or expense that is incurred or suffered as direct or indirect result of the Purchaser's use of the Software, any Additional License or the operating or user manuals and associated technical literature being an infringement of intellectual property rights of anyone other than the Supplier. This indemnity does not extend to consequential loss of any type. This indemnity will only be given if the following conditions precedent are satisfied:
- (a) the Purchaser promptly informs the Supplier in writing of any indication that an infringement is being alleged or may have taken place;
- (b) the Purchaser gives the Supplier the option of dealing with the matter, including defending and settling any claim that may be made;
- (c) the Purchaser gives the Supplier all the reasonable assistance in connection with dealing with the matter and defending any claim;
- (d) the Purchaser allows the Supplier to do anything necessary to avoid continuing any infringement, including substituting another Software or any Additional License; and
- (e) the Purchaser authorises the Supplier to obtain for the Purchaser authority to continue using the Software or any Additional License.
- 21.3. The Supplier's indemnity does not apply in relation to an infringement arising from any of the following:
- (a) use of the Software during any trial period or testing phase;
- (b) use of the Software or any Additional License in combination with software not specifically approved in writing by the Supplier;
- (c) use of the Software or any Additional License in a way or for a purpose not reasonably contemplated by the Supplier and not specifically authorised in writing by the Supplier; or
- (d) a modification of the Software or any Additional License without the written consent of the Supplier; and
- the Purchaser expressly acknowledges that:
- (e) The Supplier does not moderate, control or authorise the activities of users in posting content to the Software or any information, documents, graphics, materials and any other works incorporated within the system from social media;
- (f) The Purchaser will be solely responsible for any breach of any law, directly or indirectly by infringing uploading content which is illegal or breaches a third party's intellectual property right.
- 21.4. The Purchaser must indemnify the Supplier against any claim or proceeding that is made or commenced, and against any liability, loss, damage or expense that is incurred or suffered arising from any of the following:
- (a) an event specified in clause 21.2;
- (b) a breach of this Agreement by the Purchaser;
- (c) a failure by the Purchaser to give the Supplier all reasonable assistance in connection with dealing with a possible or alleged infringement and defending any claim in respect of it;
- (d) an infringement of any intellectual or industrial property rights of a third party by the Purchaser in giving information to the Supplier in order to enable it to develop or customise the Software or any Additional License for the Purchaser.

TERMS AND CONDITIONS OF SALE

- 21.5. The Supplier warrants that it is entitled to grant the right of access and use or any Additional License to the Purchaser.
- 21.6. The Supplier does not warrant that the Software or any Additional License is:
- (a) error free or virus free;
 - (b) that it can be used without interruption;
 - (c) that it will work on all devices, systems or setups; or
 - (d) that it will meet the Purchaser's needs.

22. Provision of further information

- 22.1. The Purchaser undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Purchaser's creditworthiness, including an updated credit application.
- 22.2. The Purchaser must give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Purchaser and/or any other change in the Purchaser's details (including but not limited to, changes in the Purchaser's name, address, contact phone or fax number/s, or business practice).
- 22.3. If the Purchaser is a corporation (with the exception of a public listed company), it must give the Supplier not less than fourteen (14) days prior written notice of any proposed alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.
- 22.4. In addition, the Purchaser must give the Supplier not less than fourteen (14) days prior written notice of any proposed change in the Purchaser's details (including but not limited to, changes in the Purchaser's name, address, contact phone or fax number/s, or business practice).
- 22.5. The Purchaser is liable for any loss incurred by the Supplier as a result of the Purchaser's failure to comply with this clause.

23. Corporations

- 23.1. If the Purchaser is a corporation, the Purchaser warrants that at least two (2) of its directors have signed this Agreement and that at least two (2) of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Purchaser's obligations to the Supplier.

24. Trustee capacity

- 24.1. If the Purchaser is the trustee of a trust (whether disclosed to the Supplier or not), the Purchaser warrants to the Supplier that:
- (a) the Purchaser enters into this Agreement in both its capacity as trustee and in its personal capacity;

- (b) the Purchaser has the right to be indemnified out of trust assets;
- (c) the Purchaser has the power under the trust deed to sign this Agreement; and
- (d) the Purchaser will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.

- 24.2. The Purchaser must give the Supplier a copy of the trust deed upon request.

25. Partnership

- 25.1. If the Purchaser enters into this Agreement as partners, the Purchaser warrants that all of the partners have signed this Agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Purchaser's obligations to the Supplier.
- 25.2. If the Purchaser is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

26. Execution as Agent or Attorney

- 26.1. If an agent of the Purchaser enters into this Agreement, they warrant and represent that they are a duly authorised agent in accordance with s 126(1) of the *Corporations Act (Cth) 2001*.
- 26.2. If the Purchaser enters into this Agreement under power of attorney, the person signing under the power of attorney:
- (a) must provide the Supplier with a copy of the power of attorney; and
 - (b) warrants, represents and agrees that it has had no notice of revocation of the power of attorney under which it is signing this Agreement.

27. Insolvency

- 27.1. If the Purchaser becomes insolvent, the Purchaser remains liable under this Agreement for payment of all liabilities incurred hereunder. The Purchaser remains liable under this Agreement even if the Supplier receives a dividend or payment as a result of the Purchaser being insolvent.

28. Waiver

- 28.1. A waiver of any provision or breach of this Agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this Agreement by the Purchaser must be made by the Purchaser's authorised officer in writing.

29. Costs and indemnity

- 29.1. The Purchaser must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by

TERMS AND CONDITIONS OF SALE

the Purchaser. The Purchaser must also pay for all stamp duty and other taxes payable on this Agreement (if any).

29.2. The Purchaser must pay, and agrees to indemnify the Supplier and keep the Supplier indemnified against, the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Purchaser, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Purchaser to the Supplier, and the Purchaser's indemnification of the Supplier against such costs will have effect, irrespective of whether pursuit of the recovery action, claim or remedy is successful.

29.3. The Purchaser acknowledges and agrees that payments by the Purchaser will be applied by the Supplier as follows.

- (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 29.1 and 29.2.
- (b) Secondly, in payment of any interest incurred in accordance with clause 31.
- (c) Thirdly, in payment of the outstanding invoice(s).

30. Taxes and duty

30.1. The Purchaser must pay GST on any taxable supply made by the Supplier to the Purchaser under this Agreement. The payment of GST is in addition to any other consideration payable by the Purchaser for a taxable supply.

30.2. If as a result of:

- (a) any legislation becoming applicable to the subject matter of this Agreement; or
- (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Purchaser, then the Purchaser must pay the Supplier these additional amounts on demand.

31. Interest rates

31.1. The interest rate on any outstanding debts is charged at the Default Interest Rate.

32. Set-off

32.1. All payments required to be made by the Purchaser under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding.

32.2. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Purchaser by the Supplier.

33. Miscellaneous

- 33.1. References to the singular form of a word include the plural form and vice versa.
- 33.2. A reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

34. Force Majeure

- 34.1. A party is not liable for failure to perform, or delay in performing, an obligation (except an obligation to pay money) if each of the following conditions is satisfied.
 - (a) The failure of delay arose from a Cause Beyond the Reasonable Control of that party.
 - (b) The party took all reasonable precautions against that cause and did its best to mitigate its consequences. This does not require the party to settle a labour dispute, if, in the party's opinion, that is not in its best interests.
 - (c) The party gave the other party notice of the cause as soon as practicable after becoming aware of it.

35. Jurisdiction

- 35.1. The Purchaser acknowledges and agrees that this Agreement will be governed by the laws of the Commonwealth of Australia which are in force in Queensland.
- 35.2. The Purchaser acknowledges and agrees that any contract for the supply of Goods between the Supplier and the Purchaser is formed at the Supplier's registered address in the state of Queensland.
- 35.3. The Purchaser submits to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

36. Independent Advice

- 36.1. Each party has been given the opportunity to seek independent legal advice with respect to the content and effect of this Agreement and has sought such advice as it deems necessary.

37. No Adverse Construction

- 37.1. No rule of construction applies to the disadvantage of a party on the basis that the party put forward this Agreement or any part of it.

38. Severance

- 38.1. If any provision of this Agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
- 38.2. If any part of this Agreement is invalid or unenforceable, that part is deleted and the remainder of the Agreement remains effective.

TERMS AND CONDITIONS OF SALE

39. Variation

- 39.1. The Purchaser agrees that these Terms and Conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Purchaser.
- 39.2. Any proposed variation to these Terms and Conditions by the Purchaser must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

40. Entire agreement

- 40.1. This Agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.

41. Assignment

- 41.1. The license to use the software may not be assigned to any party without the consent in writing of the Supplier provided that the assignee shall enter into a software license on the same terms and conditions contained herein.

42. Termination

- 42.1. The Software license is terminated upon any breach by the Purchaser or User of the Terms and Conditions contained herein.

43. Privacy policy

- 43.1. The Purchaser acknowledges that it has read, understood and agrees to terms and conditions of the Supplier's privacy policy.
- 43.2. The Purchaser agrees that the Supplier may report and provide the Purchaser's personal information to credit reporting bodies in accordance with the Supplier's privacy policy.

TERMS AND CONDITIONS OF SALE

Executed as an Agreement

Executed by PRM Engineering Services Pty)
Ltd ACN 623 115 079 in accordance with)
section 127 of the Corporations Act 2001)