

Aqipa Australia Pty Ltd

ACN 616 579 947

PRIVACY STATEMENT

1 Your rights in relation to privacy

Aqipa Australia Pty Ltd (ACN 616 579 947) (**Aqipa Australia**) understands the importance of protecting the privacy of an individual's personal information. This statement sets out how Aqipa Australia aims to protect the privacy of your personal information, your rights in relation to your personal information managed by Aqipa Australia and the way Aqipa Australia collects, holds, uses and discloses your personal information.

In handling your personal information, Aqipa Australia will comply with the Privacy Act 1988 (Cth) (**Privacy Act**) and with the 13 Australian Privacy Principles in the Privacy Act. To the extent Aqipa Australia handles your credit information, Aqipa Australia will also comply with the Credit Reporting Code. This policy statement may be updated from time to time.

2 What kinds of personal information does Aqipa Australia collect?

Personal information is information or an opinion about an identified, or reasonably identifiable, individual. During the provision of its products and/or services, Aqipa Australia may collect your personal information.

Generally, the kinds of personal information Aqipa Australia collects are:

- (a) contact and identification information such as your name, address, telephone number and email address;
- (b) where acting as the representative for your employer, details of your employment and employer;
- (c) financial information about your assets, occupation and income, account balances, account activities, payment history and transactions with us or third parties;
- (d) credit information, being credit related personal information lawfully created and accessible within the Australian credit reporting system including:
 - (i) identification information;
 - (ii) consumer credit liability information which includes information about your credit providers and credit accounts, including the dates on which the accounts are opened and closed, their limits, and their terms and conditions (or any changes to their terms and conditions);
 - (iii) whether you have or have not met any monthly repayment obligations;
 - (iv) whether you have defaulted on a payment (ie. a payment that is at least 60 days overdue and over \$150 in value) provided Aqipa Australia has notified you in accordance with the Privacy Act;
 - (v) whether you have paid any amount previously reported as being in default;
 - (vi) that another credit provider has sought credit-related personal information about you from a credit reporting body;
 - (vii) information about the types of consumer or commercial credit, and the amounts of credit, you have sought from a credit provider;
 - (viii) information about court proceedings related to credit provided to you or for which you have applied;
 - (ix) personal insolvency information and other publicly available information relating to your credit worthiness;
 - (x) a credit provider's reasonable belief that you have committed a serious credit infringement; and
 - (xi) any other information lawfully obtainable within the Australian credit reporting system;
- (e) credit eligibility information which is credit-related information about you that Aqipa Australia obtains from a credit reporting body such as Dun & Bradstreet (Australia) Pty Ltd (**D&B**) or Equifax Pty Ltd (previously known as Veda, Veda Advantage Information Services Solutions Limited, or otherwise part of the Veda group of companies) (**Equifax**) (the details of which are set out in paragraph 5), together with information Aqipa Australia derives from such information based on its own analysis including internally generated scores, ratings and other assessments used to

evaluate your credit worthiness. Aqipa Australia generally receives from D&B and Equifax information about existing credit accounts, previous defaults, and repayment history information; and

- (f) sensitive information including where you are applying for a position with Aqipa Australia, criminal record information where relevant to Aqipa Australia's assessment of whether you are able to perform the inherent requirements of the particular role.

In some circumstances Aqipa Australia may also hold other personal information provided by you.

3 How does Aqipa Australia collect personal information?

Generally, Aqipa Australia collects your personal information directly from you, through the completion of a manual or online form (including but not limited to a form for a trading and/or credit account), an interaction or exchange in person or by way of telephone, facsimile, email, post or through the use of the Aqipa Australia website. There may be occasions when Aqipa Australia collects your personal information from other sources such as from:

- (a) your employer, where necessary for Aqipa Australia to provide its products and/or services to your employer through you;
- (b) the completion of an application form by another person or entity that lists you as a director, guarantor or trade reference;
- (c) D&B, Equifax or other credit reporting bodies;
- (d) other credit providers;
- (e) an information services provider;
- (f) a publicly maintained record or other publicly available sources of information including social media and similar websites;
- (g) Aqipa Australia's own records about you, from which Aqipa Australia may internally generate its own scores, assessments or deductions, particularly in relation to your credit worthiness; or
- (h) if for recruitment purposes, an external recruitment or background screening services provider.

Generally, Aqipa Australia will only collect your personal information from sources other than you if it is unreasonable or impracticable to collect your personal information from you.

4 Why does Aqipa Australia need your personal information?

Aqipa Australia collects, holds, uses and discloses your personal information where it is reasonably necessary for the purposes of:

- (a) distributing and marketing accessories for consumer electronics;
- (b) providing other products and/or services;
- (c) assessing an application for, and if successful, administering, a commercial trading and/or credit account with Aqipa Australia;
- (d) accounting, billing and other internal administrative purposes;
- (e) identifying and informing you of products and services that may be of interest to you from Aqipa Australia or selected third parties;
- (f) assessing your application for employment with Aqipa Australia or otherwise for the purpose of engaging you as a contractor or consultant; and/or
- (g) any other legal requirements.

Aqipa Australia may also use your personal information for purposes related to the above purposes and for which you would reasonably expect Aqipa Australia to do so in the circumstances, or where you have consented or the use is otherwise in accordance with law.

Where personal information is used or disclosed, Aqipa Australia takes steps reasonable in the circumstances to ensure it is relevant to the purpose for which it is to be used or disclosed. You are under no obligation to provide your personal information to Aqipa Australia. However, without certain information from you, Aqipa Australia may not be able to provide its products and/or services to you.

5 To whom does Aqipa Australia disclose your personal information?

Aqipa Australia discloses your personal information for the purpose for which Aqipa Australia collects it. That is, generally, Aqipa Australia will only disclose your personal information for a purpose set out at paragraph 4. This may include disclosing your personal information to:

- (a) third parties engaged to perform administrative or other business management functions;
- (b) people or entities considering acquiring an interest in Aqipa Australia's enterprise or assets;
- (c) Aqipa Australia's professional advisors, contractors, consultants and related bodies corporate;
- (d) insurance providers; and
- (e) regulatory bodies if and as necessary.

Aqipa Australia may also disclose your personal information, including your credit information, to lenders, other credit providers and the credit reporting bodies, D&B and Equifax (contactable on the details set out below). In particular, Aqipa Australia may disclose to D&B and Equifax information about you failing to meet your payment obligations or if you commit a serious credit infringement. D&B and Equifax may include any information it is provided by Aqipa Australia in reports provided to other credit providers for the purpose of such credit providers assessing your credit worthiness.

Aqipa Australia's disclosures of your personal information to third parties are on a confidential basis or otherwise in accordance with law. Aqipa Australia may also disclose your personal information with your consent or if disclosure is required or authorised by law.

D&B can be contacted:

- in accordance with its privacy policy at: <http://dnb.com.au/privacy-policy.html>; and/or
- via:
 - Phone: 13 23 33 or Email: clientservices@dnb.com.au (Business Information Client Services Centre);
 - Phone: 1300 734 806 or Email: PACaustral@dnb.com.au (Consumer Credit Information Public Access Centre)

Equifax can be contacted:

- in accordance with its privacy policy at: <http://www.equifax.com.au/privacy>; and/or
- at:
 - Equifax Australia Personal Solutions Pty Ltd
 - PO Box 964
 - NORTH SYDNEY NSW 2059
 - or otherwise through the 'contact us' form at <https://www.equifax.com.au/contact>.

Equifax's policy on its management of credit related personal information can be accessed through its website at: <http://www.equifax.com.au/privacy>.

6 Overseas disclosure

Aqipa Australia may disclose personal information, including credit related personal information, to overseas recipients, including its parent company in Austria and other related bodies corporate, in order to provide its products and/or services and for administrative, data storage or other business management purposes. Recipients of such disclosures are located in Austria, Germany, Switzerland, Spain, Italy, France, Belgium and Luxembourg.

Overseas recipients may have different privacy and data protection standards. However, before disclosing any personal information to an overseas recipient, Aqipa Australia takes steps reasonable in the circumstances to ensure the overseas recipient complies with the Australian Privacy Principles or is bound by a substantially similar privacy scheme unless you consent to the overseas disclosure or it is otherwise required or permitted by law. If you have any queries or objections to such disclosures, please contact Aqipa Australia's Privacy Compliance Officer on the details set out in paragraph 10.

7 Direct marketing

Aqipa Australia may use and disclose your personal information in order to inform you of products and/or services that may be of interest to you. In the event you do not wish to receive such communications, you can opt-out by contacting Aqipa Australia via the contact details set out in paragraph 10 or through any opt-out mechanism contained in a marketing communication to you.

Aqipa Australia will not use or disclose credit-related personal information for direct marketing purposes except to the extent permitted under the Privacy Act, for the purpose of D&B or Equifax assessing your eligibility to receive direct marketing communications sent on behalf of Aqipa Australia. You may make a request directly to D&B and Equifax not to use your credit-related personal information for these purposes.

8 Security of your personal information

Aqipa Australia takes steps reasonable in the circumstances to ensure that the personal information it holds is protected from misuse, interference and loss and from unauthorised access, modification or disclosure. Aqipa Australia holds personal information in both hard copy and electronic forms in secure databases on secure premises, accessible only by authorised staff. Credit eligibility information, such as information Aqipa Australia receives from D&B or Equifax for the purpose of assessing credit worthiness, is stored through equally secure methods. Staff are bound by security policies and confidentiality agreements, which are regularly revised and re-issued.

Aqipa Australia will destroy or de-identify personal information in circumstances where it is no longer required, unless Aqipa Australia is otherwise required or authorised by law to retain the information.

If you believe on reasonable grounds that you have been, or are likely to be, a victim of fraud, you may request D&B and Equifax not to use or disclose credit related personal information it holds about you by contacting D&B and Equifax on the details set out in paragraph 5.

9 Can you access and correct the personal information that Aqipa Australia holds about you?

Aqipa Australia takes steps reasonable in the circumstances to ensure personal information it holds is accurate, up-to-date, complete, relevant and not misleading. Under the Privacy Act, you have a right to access and seek correction of your personal information that is collected and held by Aqipa Australia. If at any time you would like to access or correct the personal information that Aqipa Australia holds about you, or you would like more information on Aqipa Australia's approach to privacy, please contact Aqipa Australia's Privacy Compliance Officer on the details set out in paragraph 10 below. Aqipa Australia will grant access to the extent required or authorised by the Privacy Act or other law and take steps reasonable in the circumstances to correct personal information where necessary and appropriate.

Where necessary to resolve a request for correction of your credit related personal information, Aqipa Australia may also consult with other relevant entities, including but not limited to D&B and Equifax. Aqipa Australia's use or disclosure of your credit related personal information for correction purposes is permitted by the Privacy Act.

To obtain access to your personal information:

- (a) you will have to provide proof of identity to ensure that personal information is provided only to the correct individuals and that the privacy of others is protected;
- (b) Aqipa Australia requests that you be reasonably specific about the information you require; and
- (c) Aqipa Australia may charge you a reasonable administration fee, which reflects the cost to Aqipa Australia, for providing access in accordance with your request.

Alternatively, if you would like to access personal information held about you by D&B, or Equifax please contact D&B or Equifax on the contact details set out in paragraph 5.

Aqipa Australia will endeavour to respond to your request to access or correct your personal information within 30 days from your request. If Aqipa Australia refuses your request to access or correct your personal information, Aqipa Australia will provide you with written reasons for the refusal and details of complaint mechanisms. Aqipa Australia will also take steps reasonable in the circumstance to provide you with access in a manner that meets your needs and the needs of Aqipa Australia.

If you are dissatisfied with Aqipa Australia's refusal to grant access to, or correct, your credit related personal information, you may make a complaint to the Office of the Australian Information Commissioner.

10 How to contact us

For further information or enquiries regarding your personal information, or if you would like to opt-out of receiving any promotional or marketing communications, please contact Aqipa Australia's Privacy Compliance Officer at sohan.karunaratne@aqipa.com.au.

11 Privacy complaints

Please direct all privacy complaints to Aqipa Australia's Privacy Compliance Officer. At all times, privacy complaints:

- (a) will be treated seriously;
- (b) will be dealt with promptly;
- (c) will be dealt with in a confidential manner; and
- (d) will not affect your existing obligations or affect the commercial arrangements between you and Aqipa Australia.

Specifically, if your complaint relates to credit related personal information and/or Aqipa Australia's failure to comply with its obligations regarding credit related personal information under the Privacy Act and/or the Credit Reporting Code:

- (a) Aqipa Australia will acknowledge your complaint within 7 days of receipt and endeavour to resolve it within 30 days, unless Aqipa Australia informs you otherwise and seeks your agreement in writing;
- (b) Aqipa Australia may consult with relevant third parties, such as D&B, Equifax or other credit providers, in order to sufficiently and expeditiously resolve the complaint; and
- (c) if your complaint relates to Aqipa Australia's refusal to provide access to, or correct, your credit related personal information, you may complain directly to the Office of the Australian Information Commissioner.

Aqipa Australia's Privacy Compliance Officer will commence an investigation into your complaint. You will be informed of the outcome of your complaint following completion of the investigation. In the event that you are dissatisfied with the outcome of your complaint, or an extension to the time in which Aqipa Australia will resolve it, you may refer the complaint to the Office of the Australian Information Commissioner.

TERMS AND CONDITIONS

1 Dictionary

In these Terms and Conditions, the words below have the following meanings:

Account Application means the form approved by the Company and completed by the Customer for an account with the Company for the provision of Goods and/or Services.

Agreement means each Offer which is accepted by the Company under clause 3.2.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Business Day means any day except a Saturday, Sunday or public holiday in Victoria.

Change in Control means, in relation to a party:

- (a) the person who Controls the party at the date that party first became bound by these Terms subsequently ceases to have Control of the party;
- (b) a person who does not Control the party at the date that the party first became bound by these Terms subsequently obtains Control of the party; or
- (c) if the party is Controlled by a group or consortium of persons, or if the group or consortium could Control the party were they to act collectively, any material change in the composition of that group or consortium.

Company means Aqipa Australia Pty Ltd (ACN 616 579 947).

Confidential Information means all information, texts, sketches, drawing, pictures, photographs and other content disclosed by the Company to the Customer and includes these Terms, the prices of the Goods or Services but excludes information that:

- (a) is public knowledge or becomes available to the Customer from a source other than the Company (otherwise than as a result of a breach of confidentiality); or
- (b) is rightfully known to, or in the possession or control of the Customer and not subject to an obligation of confidentiality in accordance with the terms of an Agreement.

Consequential Loss means:

- (a) indirect or consequential loss, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
- (b) loss which is beyond the normal measure of damages.

Consumer has the meaning provided to it in section 3 of the Australian Consumer Law.

Consumer Guarantee means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

Control has the meaning given in section 50AA of the *Corporations Act 2001* (Cth).

Customer means the entity or person named in the Application Form who requested that Goods and/or Services be supplied to it by the Company.

Default Notification Fee means \$20.

Default Rate means the interest rate which is fixed from time to time under section 2 of the *Penalty Interest Rate Act 1983* (Vic).

Force Majeure Event means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party including any fire, failure or shortage of power supplies or raw ingredients, abnormally inclement climate or weather conditions, flood, lightning, storm, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, riot, disease, civil commotion, insurrection, political instability, armed conflict, war, terrorist action, strike or other labour difficulty or shortage, unavailability of transport providers, failure or inability to obtain any licence or the threat of any of the foregoing.

Goods means the goods to be supplied by the Company to the Customer under an Agreement.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended, varied or replaced from time to time.

H&S Laws means all applicable laws, regulations, codes of practice and guidelines concerning the health, safety and welfare of people at work.

Insolvency Event means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or

any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.

Intellectual Property Rights means any and all intellectual and industrial property rights anywhere in the world, including but not limited to the rights comprised in any patent, copyright, design, trade mark, plant breeders rights, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets and know how, throughout the world for the full period of the rights and all renewals and extensions.

Invoice has the meaning provided to it in clause 4.5.

Loss means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

Minimum Order Value means the amount (if any) which is agreed by the Company and the Customer as the minimum value for each Order.

Offer has the meaning provided to it in clause 3.1.

Order means any order or other request by or for the Customer to the Company for it to supply to the Customer any Goods and/or Services, whether such order or request is written, verbal or implied in the circumstances and which may have been given in response to a Quote.

Personnel means any employee, officer, agent, or contractor of the Company.

PDH Goods or Services means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

Premises means the premises of the Customer where, from time to time, Goods are delivered, stored or sold from and/or Services are provided by the Personnel.

Price List means any price list or catalogue of the Company's goods published and distributed by the Company in hard copy and electronically (including by making available for viewing through its official website) to its actual and prospective customers, as updated and replaced by the Company from time to time in its discretion.

Purchase Price has the meaning provided to it in clause 4.1, as may be varied under clause 4.2.

Quotation or Quote means a quote or proposal, if any, provided by the Company to the Customer in respect of the Goods and/or Services.

Returns Policy means the Company's policy (if any), as amended from time to time, in respect of the return of Goods by the Customer

Services means the services to be supplied by the Company to the Customer under an Agreement.

Specifications means any physical, qualitative, technical or descriptive specifications, dimensions, weights or other particulars of the Goods or Services or photographs or illustrations of the Goods which are supplied by the Company or which may be available on the internet, including as provided in any Quote, Order, Price List, catalogue, brochure or other document which describes the Goods.

Tax or Taxes means any tax, levy, charge, impost, fee, deduction, compulsory loan or withholding (including corporate tax, personal income tax, fringe benefits tax, payroll tax, withholding tax, excise and import duties, consumption tax, value added tax or any other taxes, levies or charges), which is assessed, levied, imposed or collected by any government agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any such amounts.

Terms means these Terms and Conditions.

Trading Limit means the value of any trading account facility granted by the Company to the Customer pursuant to any account created under the Account Application.

2 Application

These Terms apply to and govern the supply by the Company of Goods and Services to the Customer from time to time and, more specifically, apply to and govern the supply by the Company of Goods and/or Services to the Customer which are to be provided under an Offer accepted by the Company.

3 Formation of Agreement

3.1 The Customer acknowledges and agrees that by submitting an Order the Customer makes an irrevocable offer to the Company for the Company to supply it with the Goods and/or Services on the terms of:

- (a) these Terms;
- (b) the Order; and
- (c) the Quote (if any),

(Offer).

3.2 A contract will be formed between the Company and the Customer in respect of each Offer upon the earlier of the Company:

- (a) notifying the Customer in writing that it accepts the Customer's Offer;
- (b) accepting, in full or part, payment from the Customer for any Goods or Services the subject of the Offer;
- (c) making delivery of the Goods the subject of the Offer to the Customer; or
- (d) performing the Services the subject of the Offer.

3.3 An Agreement formed under clause 3.2 will comprise these Terms, any Account Application, the Order (only to the extent that any additional terms in the Order are accepted by the Company in writing), the Quote (if any) and the Invoice.

3.4 The Company is not bound to accept any Offer and may decide not to accept any Offer for any reason and in the sole discretion of the Company.

4 Price and payment

4.1 Unless otherwise agreed by the parties, the price the Customer must pay for the Goods and/or Services under each Agreement will be the higher of:

- (a) the price for the Goods and/or Services specified in the Quote or, if there is no Quote, in the Price List; and
- (b) the Minimum Order Value,

(Purchase Price).

4.2 The Company may, prior to delivery of the relevant Goods and/or Services amend the Purchase Price by notice in writing to the Customer:

- (a) if, and to the extent, the prices for the relevant Goods which are charged by the Company's supplier of the Goods are increased; or
- (b) otherwise at the Company's discretion, however if the Customer does not wish to accept the new Purchase Price it may terminate the Order by notice in writing to the Company and the Company must refund any monies already paid by the Customer in respect of that Order.

4.3 Unless otherwise expressly specified by the Company or in these Terms, all prices stated are stated exclusive of Taxes and the Customer is solely responsible for the payment of all Taxes levied or payable in respect of the Goods and/or Services and must immediately upon request by the Company provide the Company with evidence of payment of any Taxes.

4.4 Subject to clause 5.1(a), all prices stated are stated exclusive of any transport, freight, packaging and insurance costs and the Customer acknowledges that it will be responsible for arranging and paying the cost of any transport, freight, packaging and insurance in respect of any Goods which are being supplied to the Customer under these Terms.

4.5 The Company may invoice the Customer for the Purchase Price at any time following formation of the relevant Agreement (Invoice).

4.6 The Company may set off any amount owing by the Customer to the Company, whether or not due for payment, against any money due for payment by the Company to the Customer under any agreement, understanding or arrangement between the Company and the Customer.

4.7 Subject to clause 4.8, unless otherwise agreed in writing between the Customer and the Company the due date for payment by the Customer to the Company of the Purchase Price for the Goods and/or Services supplied pursuant to an Agreement (**Due Date**) is:

- (a) the due date agreed by the Company when accepting the Account Application but only if the value of the Invoice, combined with any outstanding amounts owed by the

Customer to the Company, does not exceed any approved Trading Limit; or

- (b) if the conditions set out in paragraph (a) are not satisfied, prior to the scheduled date of delivery for the Goods or performance of the Services.

4.8 If:

- (a) the Customer has previously failed to make any payment to the Company by the due date for that payment (whether under these Terms or otherwise); or
- (b) the creditworthiness of the Customer is, in the Company's sole opinion, unsatisfactory,

the Company may require payment of the Purchase Price in full prior to the Company delivering the relevant Goods or providing the Services.

4.9 If the Customer fails to make any payment by the Due Date, breaches any term of an Agreement or is the subject of an Insolvency Event, then, without prejudice to any other right or remedy available to the Company, the Company may, in its sole discretion, elect to do any one or more of the following:

- (a) suspend any further deliveries to the Customer arising from any Agreement;
- (b) cancel any Agreement in respect of any Goods or Services not yet supplied to the Customer in whole or in part by the Company;
- (c) terminate any Agreement in accordance with clause 21.1;
- (d) enter the property of the Customer in order to repossess the Goods and the Customer grants the Company an irrevocable licence to do so;
- (e) dismantle any other goods into which the Goods have been installed or incorporated and remove the Goods from such goods;
- (f) charge the Customer the Default Notification Fee;
- (g) charge the Customer interest (both before and after any judgement) on the unpaid amount at the Default Rate, which interest will accrue and be chargeable from the first day on which such amount becomes overdue until the Company receives payment of all such amounts (including all interest) by way of cleared funds;
- (h) cancel any Trading Limit or account facilities previously granted to the Customer by the Company (including under the Account Application);
- (i) cancel or reverse any trade discounts or rebates provided, or otherwise offered, to the Customer under any Agreement or other arrangement; and
- (j) exercise any rights which the Company may have under law, including the *Personal Property Securities Act 2009* (Cth).

4.10 The Customer may not set off or combine any amount owing by the Company to the Customer, whether or not due for payment, against any money due for payment by the Customer to the Company under an Agreement and the Customer must pay, and not withhold, any amount due to the Company under an Agreement notwithstanding the Customer may be in dispute with the Company regarding the Goods or Services supplied by the Company to the Customer.

5 Delivery of Goods and provision of Services

5.1 Goods requested by a Customer under an Order which is accepted by the Company and:

- (a) have a total Purchase Price which is greater than \$200, will be supplied by the Company to the Customer under an Agreement 'Free In Store' (FIS); and
- (b) have a total Purchase Price of \$200 or less, will be supplied by the Company to the Customer under an Agreement at the Customer's cost and the Customer shall be responsible for all of the costs in having the Goods transported from the premises of the Company or its supplier to the Customer.

5.2 If a Customer places an Order for Goods which has a total Purchase Price of \$200 or less, the Company may, at its discretion, provide the Customer with the opportunity to increase the Order or combine the Order with another Order or Orders so that the total Purchase Price is more than \$200.

5.3 The Company will deliver the Goods and provide the Services to the Customer in the manner determined by the Company unless otherwise agreed between the Company and the Customer.

- 5.4 The Customer agrees that, unless otherwise agreed by the Company, delivery of Goods will occur by the Customer collecting the Goods from premises nominated by the Company and such collection must occur within 7 days of any delivery date which the Company notifies to the Customer.
- 5.5 The Company will endeavour, but is not obliged, to deliver Goods and provide the Services between the hours of 9.00am and 5.00pm Monday to Friday (excluding public holidays in Victoria) (**Trading Hours**) at the place of delivery or service provision.
- 5.6 There must be a representative of the Customer present at the delivery location at the time delivery is made of the Goods and, if no such representative is present, a redelivery fee may be charged by the Company.
- 5.7 Unless otherwise agreed in writing by Aqipa, the Customer must, prior to taking possession of the Goods, inspect the Goods and immediately notify the Company in writing if the Goods are not fit for any purpose for which the Customer intends to use the Goods, have any defect or otherwise do not meet any Specifications.
- 5.8 The Customer acknowledges that a Good which is subject to an Offer may be modified after the time the Customer makes the Offer by the Company or the supplier of the Good as a result of an improvement in technology or because of a requirement imposed by law.
- 5.9 In the event of the Customer returning or failing to accept any delivery of the Goods (including failure to collect the Goods in accordance with clause 5.4), the Company shall be entitled to payment for those Goods and to treat the obligation to supply the remainder of the Goods (if any) as cancelled by the Customer.
- 5.10 Without limiting any other rights the Company may have, the Company will be entitled to store at the risk and cost of the Customer any Goods which the Customer refuses or fails to take delivery of (including failure to collect the Goods in accordance with clause 5.4).
- 5.11 The Company will use its reasonable endeavours to deliver the Goods and provide the Services on any date specified or estimated by the Company or set out in an Order however such dates are estimates only and the Company will not, in any circumstances or for any reason (including the occurrence of a Force Majeure Event), be liable for late or part delivery of the Goods or provision of the Services and later delivery of Goods or provision of the Services does not entitle the Customer to cancel any order for the Goods or Services.
- 5.12 Without limiting clause 5.11, the Company may deliver a portion of the Goods or Services and may invoice or otherwise charge the Customer for that portion. The Customer may not refuse to accept delivery of the Goods or to pay for the Goods or Services because only a portion of the quantity ordered was delivered and the Customer agrees that the Company will not be liable for any Loss that the Customer suffers as a result of any delay or cancellation.
- 5.13 The Customer acknowledges and agrees that:
- the Company may, but will not be required to, provide proof of delivery or other similar documentation (whether at the time of delivery or after);
 - it will not request proof of delivery or other similar documentation from the Company; and
 - it will not dispute any Invoice based on (in whole or in part) proof of delivery or other similar documentation not having been provided by the Company.
- 6 Sale of Goods**
- If the Company notifies the Customer of any territories or sales channels in which the Customer must not sell or promote the Goods (**Restricted Territories and Channels**), the Customer must not sell or promote the Goods in those Restricted Territories and Channels.
- 7 Return of Goods**
- 7.1 The terms of this clause 7 (including any Returns Policy) are subject to clause 11 and, if a Good is not of acceptable quality, faulty, defective or damaged, the Customer may have rights under the Australian Consumer Law which are not affected by this clause 7 or the Returns Policy.
- 7.2 If:
- there is a Returns Policy, clauses 7.3 to 7.8 will not apply and the Customer agrees to be bound by the terms of the Returns Policy and to only return the Goods to the Company in accordance with the terms of the Returns Policy; and
 - if there is no Returns Policy, then the Customer agrees to be bound by, and only return Goods in accordance with, clauses 7.3 to 7.8.
- 7.3 Subject always to any applicable provisions of the Australian Consumer Law, the Customer may only return the Goods to the Company with the prior written consent of the Company and the Company will be under no obligation to accept Goods returned to it or provide any refund or other remedy in respect of such returned Goods.
- 7.4 Any claims in respect of the Goods made by the Customer to the Company must:
- in respect of claims relating to damaged Goods or Goods not meeting Specifications, be made within 7 days of the date of delivery of the Goods and details of the damage or how the Goods do not meet the Specifications; and
 - in respect of claims for non-delivery of Goods, be made within 7 days of the delivery date.
- 7.5 If the Customer makes a claim in respect of the Goods:
- the Goods returned must be clean, unaltered, undamaged, in saleable condition and with all packaging and seals intact;
 - the Goods must be received by the Company within 30 days from the date of Invoice; and
 - the Goods being returned must be accompanied by the Invoice number for those Goods.
- 7.6 The Customer will be responsible for the cost of having the Goods returned to the Company.
- 7.7 The provision to the Customer of any refund or other remedy in respect of any Goods which are returned to the Company and determined by the Company to be damaged or not meet the Specifications will be at the Company's sole discretion.
- 7.8 If any Goods which are returned to the Company are not damaged and meet the Specifications, then the Company may, at the Customer's cost, return those Goods to the Customer.
- 8 Title and risk of Goods**
- 8.1 Title to, and property in any Goods supplied under an Agreement remain with the Company and will only pass to the Customer once all moneys owing by the Customer to the Company in respect of the Agreement or any other agreement or arrangement between the Customer and the Company have been paid in full.
- 8.2 Subject to clause 5.1(a), risk in the Goods passes to the Customer upon the Goods being removed from the Company's premises (or that of the Company's supplier) for delivery to the Customer or collection by the Customer from such premises, and:
- the Customer is responsible for arranging, and taking out in its own name and its own cost, any insurance in respect of the Goods from the time risk passes to the Customer under this clause; and
 - the Customer indemnifies the Company against any Loss or damage to the Goods, however caused, occurring after the Goods have been removed from and left the Company's premises (or the premises of the Company's supplier).
- 8.3 In the event that the Customer is required to return any Goods to the Company, risk in the Goods passes to the Company on confirmation of receipt of the Goods by the Company.
- 8.4 Until such time as full title, property and ownership of the Goods passes to the Customer in accordance with clause 8.1, and while the Goods remain in the Customer's full control and possession:
- subject to clause 8.5, the Customer must hold the Goods as the Company's fiduciary agent and bailee and must not sell, lease, dispose of or otherwise deal with the Goods in any way without the Company's prior written consent;
 - the Customer must insure the Goods for their full replacement value and must store the relevant Goods separately from any other goods and in a way that enables the Goods to be clearly identified as the Company's and referable to a particular Invoice;
 - the Company may enter the premises of the Customer or any third party where the Goods are stored during the hours of 9.00am to 5.00pm to inspect the Goods and:

- (i) the Customer expressly authorises and grants the Company an express, irrevocable licence to enter the premises of the Customer or relevant third party to inspect the Goods; and
 - (ii) the Customer indemnifies the Company against any Loss that may be incurred or sustained by the Company, its employees or agents, as a result of the entry of those premises where the Goods are stored;
- (d) the Company may at any time after payment is overdue require the Customer to deliver up the Goods to the Company and, if the Customer fails to deliver up the Goods immediately, the Company may enter the premises of the Customer or any third party where the Goods are stored and repossess them and:
- (i) the Customer expressly authorises and grants the Company an express, irrevocable licence to enter the premises of the Customer or relevant third party to remove or arrange for the removal of the Goods; and
 - (ii) the Customer indemnifies the Company against any Loss that may be incurred or sustained by the Company, its employees or agents, as a result of the entry of those premises where the Goods are stored;
- (e) the Customer must not pledge or grant a security interest in or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Company. If the Customer does pledge or in any way charge by way of security, for any indebtedness, any of the Goods for which property and ownership has not passed to the Customer, the Customer must remove the pledge, charge or security interest immediately and all moneys owing by the Customer to the Company will (without prejudice to any other right or remedy of the Company) immediately become due and payable to the Company; and
- (f) the Customer must not remove, deface, alter, obliterate or cover up any names, marks, designs, numbers, code or writing on the Goods.
- 8.5 Notwithstanding that title to the Goods has not passed to the Customer under clause 8.1, the Customer may, subject to obtaining the Company's prior written approval, resell the Goods or any part thereof in the name of the Customer but only as agent for the Company and may deliver any such Goods to the buyer of those Goods but only in the ordinary course of its business and on terms which will not prejudice the Company's ability to obtain the sale proceeds thereof and:
- (a) any amount paid or due to be paid by the buyer of such Goods to the Customer (**Sale Proceeds**) must be held by the Customer on trust for the Company and any amounts paid must be banked in a separate bank account relating only to the sale proceeds of any Goods and shall be forwarded as soon as possible to the Company in satisfaction of any amount owed by the Customer in respect of the Goods;
 - (b) the Customer must keep and maintain separate records in relation to the Sale Proceeds received and held by the Customer and must provide such records to the Company immediately upon request by the Company; and
 - (c) if and when the full amount due to the Company in respect of the Goods has been received by the Company, any further Sale Proceeds may be retained by the Customer.
- 8.6 The Customer must cease the resale of any Goods under clause 8.5 if:
- (a) the Company revokes any consent it has given to the Customer to resell the Goods under clause 8.5; or
 - (b) immediately if the Customer fails to make any payment under an Agreement by the relevant Due Date.
- 8.7 In the event that the Customer processes, incorporates, transforms or installs the Goods (or any portion of them) into any other goods manufactured or produced by the Customer or a third party, then the Customer must:
- (a) keep and maintain records in relation to the Goods which have been processed, incorporated, transformed or installed and the goods in which the Goods have been processed, incorporated, transformed or installed; and
 - (b) hold a proportion of any payment (**Relevant Proportion**) received by the Customer for such goods on trust for the Company and the Customer acknowledges that the Relevant Proportion must be not less than the dollar value of the portion of the Goods processed, incorporated, transformed or installed.
- 8.8 If an Insolvency Event occurs in respect of the Customer then, without the need for notice or demand by the Company, the Customer acknowledges that any sale or purported sale of the Goods will not be in the ordinary course of the Customer's business and the proceeds of any Goods sold in such circumstances will, to the extent of any money owing by the Customer to the Company, be held on trust for the Company by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.
- ## 9 PPSA
- 9.1 Words and expressions used in this clause 9 which are not defined in these Terms but are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the meaning given to them in the PPSA.
- 9.2 Unless a Customer has paid for Goods in respect of an Agreement before they are delivered to the Customer, each Customer acknowledges that:
- (a) the Agreement for the supply of Goods created under these Terms is a security agreement for the purposes of the PPSA, under which the Customer grants the Company a security interest in the Goods and over any amount owed to the Customer in respect of the Goods (**Account**) to secure all monies owing by the Customer to the Company from time to time;
 - (b) where the Company has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply; and
 - (c) the Company is not obliged to act in any way to dispose of or to retain any Goods which have been seized by the Company or any person nominated by the Company under its rights under the PPSA.
- 9.3 Without limiting anything else in these Terms, the Customer consents to the Company effecting a registration on the register in relation to any security interest created by or arising in connection with, or contemplated by, these Terms, including in relation to the Goods and any Account. The Customer agrees to promptly do all things necessary to ensure that any security interest created under these Terms is perfected and remains continuously perfected, the Company's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.
- 9.4 The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by the Company for that purpose in relation to the Goods or the Account). Without limiting the foregoing, the Customer must:
- (a) create and implement appropriate policies and systems to register a security interest in relation to the Goods where the Customer on sells the Goods to a third party; and
 - (b) where appropriate, take reasonable steps to identify security interests in relation to the Goods in the Customer's favour and to perfect and protect them, with the highest priority reasonably available.
- 9.5 The Customer must indemnify, and on demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the register, and for the enforcement of any rights arising out of any of the Company's security interests.
- 9.6 The Customer must not change its name, address or contact details without providing prior written notice to the Company and must not register a financing change statement or a change demand without the Company's prior written consent.
- 9.7 To the extent that the PPSA permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
- 9.8 The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if the Company has given prior written consent.

10 Manufacturer's Warranty

- 10.1 Other than any warranties that cannot be excluded by law and subject to clause 11, the Company provides no warranties, including any warranty against defect, to the Customer in respect of any Goods supplied by the Company to the Customer under an Agreement.
- 10.2 The parties acknowledge that in respect of certain Goods, the original manufacturer of those Goods may provide a warranty to the Customer (**Manufacturer's Warranty**) and the Customer acknowledges that any Manufacturer's Warranty is provided by the manufacturer of the relevant Goods and not by the Company.
- 10.3 The Customer is responsible for:
- ensuring it understands the terms and conditions of any Manufacturer's Warranty including the basis and requirements for making a claim under the warranty; and
 - subject to the provisions of any Returns Policy, making any claim in respect of a Manufacturer's Warranty.

11 Warranties and liability

- 11.1 If the Customer is a Consumer and the Company supplies PDH Goods or Services to the Customer, the Company acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Goods or Services supplied by the Company and nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of any such rights.
- 11.2 If the Customer is a Consumer and any goods or services supplied by the Company to the Customer are non PDH Goods or Services, the Company's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at the Company's discretion) to the replacement or resupply of the non PDH Goods or Services, the repair of the non PDH Goods or Services, or the payment of the cost of having the non PDH Goods or Services replaced, supplied again or repaired.
- 11.3 If the Customer makes a claim against the Company which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, the Company expressly excludes all liability in respect of the Goods or Services supplied by the Company to the Customer.
- 11.4 In relation to the supply of Goods which are non PDH Goods or Services, if the Company is liable to indemnify the Customer under section 274 of the Australian Consumer Law, the Company's liability to the Customer is limited to an amount equal to the lower of:
- the cost of replacing the Goods;
 - the cost of obtaining equivalent Goods; or
 - the cost of having the Goods repaired.

12 Intellectual Property

- 12.1 Unless expressly stated by an Agreement, the parties acknowledge and agree that nothing in these Terms shall be construed as a transfer from the Company to the Customer of the ownership of, or title to, any of the Intellectual Property Rights in the Goods, material created as part of the Services, in-store promotions, displays (including any point of sale displays), advertising, marketing and sales material related to the Goods or any other Intellectual Property Rights owned by or licensed to the Company or a third party and the Customer agrees that it must not infringe or use the Intellectual Property Rights of the Company or any other third party which exist in the Goods or materials created as part of the Services without the prior consent of the Company or relevant third party.
- 12.2 The Customer must only sell or promote the Goods using any trade mark, name or brand which is specified in writing by the Company to the Customer.
- 12.3 The Customer must not modify, adapt, vary, reverse engineer, disassemble or copy all or any part of any Good without the prior written consent of the Company.
- 12.4 The Customer must not make available for purchase, sell or promote any:
- good which is a copy or imitation, in whole or in part, of any Good; or
 - Good which has been modified or varied.

13 Safety

- 13.1 From time to time the Personnel may attend the Premises to assist the Company deliver the Goods and/or provide the Services or assist the Customer in the installation, set up and maintenance of in store promotions, displays (including any point of sale displays), advertising, marketing and sales material related to the Goods.
- 13.2 The Customer is responsible for conducting health and safety risk assessments of the Premises and for all aspects of health and safety at the Premises and must:
- comply with H&S Laws including ensuring appropriate consultation with other duty holders under H&S Laws in relation to any work occurring at the Premises;
 - do all things necessary to ensure that its agents, officers, employees and contractors comply with all H&S Laws and reasonable directions provided by the Customer about managing risks to health and safety;
 - provide the Company with access to such documentation as may be necessary to establish the Customer's compliance with H&S Laws and the requirements of these Terms; and
 - provide the Company with reasonable access to the Premises to allow the Company to monitor the Customer's compliance with the health and safety requirements of these Terms and H&S Laws.
- 13.3 Without limiting clause 13.2, the Customer must eliminate risks to health and safety at the Premises so far as is reasonably practicable and, if it is not reasonably practicable to eliminate risks to health and safety, reduce those risks as is reasonably practicable.
- 13.4 The Customer will verbally notify the Company immediately in the event of:
- any incident or injury that occurs involving Personnel and provide the Company with copies of any documentation that is created or produced as a result of or relating to such incident or injury, including but not limited to incident reports; and
 - any notices issued by a regulatory authority about the systems of work and/or plant at the Premises relevant to the attendance of the Personnel at the Premises.
- 13.5 The Customer indemnifies the Company for any claim, including in relation to any injury, illness or death, arising out of or in connection with a breach by the Customer of the H&S Laws or this clause 13.

14 Indemnity

The Customer indemnifies the Company and holds the Company harmless from and against all Losses (including all legal costs, and any other associated fees and costs) for which the Company incurs as a direct or indirect result of:

- recovering any amounts the Customer owes to the Company (including any fees paid to a debt collector, mercantile agent or similar);
 - any breach of an Agreement by the Customer; and
 - any negligent or wilful act or omission by the Customer, the Customer's employees, agents, servants, contractors or others for whom the Customer is legally responsible.
- ## 15 Notification of claims
- 15.1 The Customer shall notify the Company immediately if it becomes aware of:
- any claim; or
 - any death, serious injury or serious illness,
- in respect of, or caused by, the Goods or other goods of which the Goods are a component or mixed with and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.
- 15.2 If Goods are sold by the Customer to a third party for commercial use by that third party, the Customer must impose on the third party an obligation to notify the Customer immediately if the third party becomes aware of:
- any claim; or
 - any death, serious injury or serious illness,
- in respect of the Goods or other goods of which the Goods are a component or mixed with and to take all reasonable steps to mitigate Loss arising as a consequence of the claim, death, serious injury or serious illness.

15.3 The Customer must, and must impose on any third party to whom it sells the Goods an obligation to:

- (a) not, without the Company's express written consent, make any representation to any Consumer regarding the purpose, performance or durability of the Goods, which is in breach of the Australian Consumer Law;
- (b) take all steps and do all things necessary to promptly pass on to the Company any claim made by a Consumer arising out of or in connection with the Australian Consumer Law and must, at the Customer's expense, assist the Company to comply with its obligations under the Australian Consumer Law;
- (c) not, other than in respect of any warranties or guarantees which cannot be excluded by law, make on behalf of the Company any undertaking, assertion, statement, warranty, admission or other representation in respect of the Goods which is inconsistent with the Agreement under which the Goods are supplied; and
- (d) not agree to settle any claim made by a Consumer without the prior written consent of the Company.

16 No representations

The Customer acknowledges and agrees that it has not relied on any representations, inducements or statements made to it by the Company regarding the supply of the Goods or Services and it has satisfied itself that the Goods and Services are fit for the purpose it requires them for.

17 Confidentiality

17.1 The Customer:

- (a) may use Confidential Information solely for the purposes of the relevant Agreement;
- (b) must keep confidential all Confidential Information; and
- (c) may disclose Confidential Information only to (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by the Company; (ii) as required by law or securities exchange regulation; or (iii) with the prior written consent of the Company (for example, advertising catalogues clearly marked as being for public distribution).

17.2 The Customer must notify the Company immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

18 Privacy

The Customer acknowledges and agrees that personal information (as that term is defined in the *Privacy Act 1988* (Cth)) regarding the Customer if the Customer is an individual, or the employees, contractors, officers and agents of the Customer if the Customer is an organisation, may be collected, held, used and disclosed by the Company for the purposes set out in the Company's privacy policy (which privacy policy is available on the Company's website or on request from the Company). The Customer consents, and where applicable will make all reasonable endeavours to have its employees, contractors, officers and agents consent, to the Company collecting, holding, using and disclosing any such personal information for all purposes specified in the Company's privacy policy.

19 GST

Unless otherwise expressly stated in writing in an Agreement, all amounts payable by the Customer in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by the Company under these Terms, the Customer must pay to the Company, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by these Terms to reimburse or indemnify the Company for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that the Company will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by the Company in respect of the reimbursement or payment. This clause does not merge on completion or termination of the relevant Agreement or contract. In this clause, words and

expressions which are defined in the GST Act have the same meaning given to them by the GST Act.

20 Force Majeure

- 20.1 The Company will not be liable for any failure to perform or delay in performing its obligations under an Agreement (including any delay in delivery of Goods) if that failure or delay is due to a Force Majeure Event.
- 20.2 If a Force Majeure Event under clause 20.1 exceeds 20 Business Days, the Company may immediately terminate the Agreement by written notice to the Customer.

21 Termination

- 21.1 Without limiting the Company's other rights under these Terms, the Company may terminate any and all Agreements and any account facility under an Account Application with immediate effect by written notice to the Customer if:
 - (a) the Customer is the subject of an Insolvency Event;
 - (b) the Customer has breached any term of the relevant Agreement (including these Terms); or
 - (c) in accordance with clause 20.2.
- 21.2 On termination of an Agreement, the Customer must, at its cost and within 10 Business Days of the date of termination, return to the Company all Goods the subject of the Agreement (other than any Goods which have been paid for) and any in store promotions, displays (including any point of sale displays) and other promotional, advertising, marketing and sales materials in relation to the Goods.

21.3 Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.

22 Acknowledgements and representations

- 22.1 If an Offer has been accepted by the Company, the Customer acknowledges that the Offer was accepted by the Company on the basis of, and in reliance upon, any information, specifications, data, representations, statements and documents provided by the Customer.
- 22.2 By making an Offer, the Customer warrants and represents to the Company that it has read and understood these Terms prior to making the Offer, and agrees to be bound by them in full.
- 22.3 Any Price List, goods lists or other similar documents or catalogues issued by or on behalf of the Company do not constitute an offer by the Company to supply Goods appearing in those lists or catalogues or an offer by the Company to supply Goods at the prices set out in those lists or catalogues. The Company's Price Lists and catalogues may be changed by the Company at any time without notice.
- 22.4 The Specifications are approximate only and the Company makes no representation or warranty as to the completeness or accuracy of the Specifications and the Customer is responsible for making its own enquiries in relation to the completeness and accuracy of the Specifications provided.

22.5 Where any instructions or material in whatever form (including documents, specifications, designs, plans, processes, information and data) are required to be provided by the Customer to the Company before the Company can proceed with or complete the provision of the Goods or Services such instructions or materials must be supplied by the Customer to the Company within a reasonable time (as determined by the Company) so as to enable the Company to deliver the Goods or Services within any agreed time frame.

23 Inconsistency

- 23.1 Unless otherwise specified in these Terms, in the event of an inconsistency between any of the documents listed in clause 3.3, the following order of precedence shall apply to the extent of the inconsistency:
 - (a) the prices and quantity of Goods and/or Services set out in a Quote (if any);
 - (b) these Terms;
 - (c) the Account Application;
 - (d) any other terms of the Quote (if applicable);
 - (e) the Invoice; and
 - (f) without limiting clause 23.2, any terms in the Order which are accepted by the Company in writing.
- 23.2 These Terms shall prevail over any Customer terms and conditions, except to the extent specifically agreed by the Company in writing and any terms or conditions included in an

Order or other document provided or issued by the Customer will only be binding on the Company if expressly agreed by the Company in writing.

24 Cancellation

24.1 Without limiting clause 4.9(b), the Company may cancel or suspend any Agreement effective immediately upon providing the Customer with written notice of cancellation or suspension where the Company believes (for any reason) that it will be unable to supply the relevant Goods or provide the Services to the Customer, provided that if the Company cancels an Agreement under this clause 24.1 it will refund to the Customer any amounts already paid by the Customer for the Goods or Services subject to the cancellation and which are not provided to the Customer. The refund of any such amounts will be the Customer's sole remedy against the Company in respect of any cancellation pursuant to this clause 24.1.

24.2 Neither an Agreement nor any Offer that has been submitted can be cancelled by the Customer except with the prior written consent of the Company and without prejudice to any other rights the Company may have, the Customer indemnifies the Company for any Loss incurred by the Company in connection with such cancellation.

25 Miscellaneous

25.1 In these Terms:

- (a) the singular includes the plural and vice versa;
- (b) the word person includes a firm, a body corporate, an unincorporated association, body or organisation established pursuant to international treaty, intergovernmental body, or government authority and other official authority;
- (c) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (e) headings are inserted for convenience and do not affect the interpretation of these Terms;
- (f) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms; and
- (g) unless otherwise provided, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.

25.2 The Customer must maintain and keep current and complete records of the Goods which the Company has supplied to the Customer, including the Goods which are sold by the Customer to a third party and must, immediately upon written request from the Company, provide the Company with access to, or copies of, those records.

25.3 The Customer must not assign or otherwise deal with any of its rights or obligations under these Terms without the Company's prior written consent. The Company may, to the extent permitted by law, assign, subcontract or deal with any of its rights or obligations under these Terms (including any right to be paid or chose in action) at any time in circumstances where, in the opinion of the Company acting reasonably, the assignment will not adversely affect the rights of the Customer.

25.4 For the purposes of clause 25.3, a Change in Control of the Customer shall be considered an assignment of the Customer's rights or obligations under these Terms.

25.5 The Company may, to the extent permitted by law, vary these Terms from time to time with the variation becoming effective as soon as the Company provides the Customer notice of the variation (**Variation Date**). Any variation to these Terms will only apply to any Offer made after the Variation Date and the parties acknowledge that nothing in these Terms requires the Customer to make any further Offers after the Variation Date.

25.6 A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future. Waiver of any rights under these Terms must be in writing and is only effective to the extent set out in that written waiver.

25.7 If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are

to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.

25.8 These Terms and the accepted Agreement constitute the entire agreement between the Customer and the Company in respect of the supply of the relevant Goods or Services the subject of the relevant Agreement and supersede all previous communications, representations, understandings or agreements.

25.9 These Terms are governed by the laws in force in Victoria, and the Customer and the Company submit to the non-exclusive jurisdiction of the courts of Victoria.

25.10 The termination or expiry of these Terms or any Agreement does not operate to terminate any rights or obligations under an Agreement that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 1, 8, 9, 10, 11, 12, 14, 15, 17, 18, 19, 21, 23 and 25.

25.11 Each party must:

- (a) do all acts necessary or desirable to give full effect to an Agreement; and
- (b) refrain from doing anything which might prevent full effect being given to an Agreement.

25.12 The relationship between the parties is and will remain that of independent contractors, and nothing in the Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.

25.13 Notices by a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party specified in the Agreement. Notices shall be deemed to have been received by hand upon delivery, by post within two (2) Business Days of sending and by email one hour after the email (unless the sender knows that email has failed to send).