

SIGN CITY WA TERMS OF TRADE

1. Interpretation

1.1 In these Terms of Trade:

Additional Charge(s) shall mean those detailed in clause 8.

Business Day means a day that is not a Saturday, Sunday or public holiday in the state where the Services are principally being carried out and Goods provided.

Customer means a person or entity entering into an agreement for the supply of Goods and/or Services by the Supplier and includes the Customer's agents and permitted assigns.

Goods means any goods supplied by the Supplier including those supplied in the course of providing the Services.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Loss includes, but is not limited to, costs (including, but not limited to, legal costs), expenses, lost profits, awards of damages, personal injury, death and property damage.

Order means a purchase order for Goods and/or Services placed by a Customer in accordance with clause 3 and as varied in writing from time to time by the parties.

PPSA means the *Personal Property Securities Act 2009* (Cth);

Price means the price payable by the Customer to the Supplier for the Goods and/or Services;

Quote means the quote provided by the Supplier as described in clause 2.

Services means the services to be provided by the Supplier to the Customer in accordance with a Quote, Order and these Terms of Trade

Supplier means the entity specified as the supplier of Goods and/or Services on the Quote and includes the Supplier's agents and permitted assigns.

1.2 In these Terms of Trade, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a party includes that party's executors, administrators, successors and permitted assigns;
- (c) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (d) headings are for ease of reference only and do not affect interpretation;
- (e) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (ii) in all other cases, must be done on the next Business Day.

1.3 These Terms of Trade apply to all transactions between the Customer and the Supplier relating to the provision of Goods and/or Services, including all quotations, contracts and variations.

- 1.4 These Terms of Trade take precedence over Terms of Trade contained in any document of the Customer or elsewhere.
- 1.5 The variation or waiver of a provision of this agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

2. Quotes

- 2.1 The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier will be valid for acceptance by the Customer for a period of thirty (30) days from the date of issue, unless otherwise stated on the Quote.
- 2.2 Unless otherwise expressly agreed in writing, a Quote does not include delivery and/or installation of the Goods.
- 2.3 Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to the Supplier. The Price may be different to the Quote if subject to an Additional Charge.
- 2.4 The Supplier may not commence work until the Quote has been accepted by the Customer by completing an Order form and returning the form to the Supplier, as directed by the Supplier.
- 2.5 The Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of such amendment as soon as practicable. Upon the Supplier giving the Customer notification of such amendment, the amended Quote will apply and will supersede any previous Quote given with respect to the Order.
- 2.6 Any indication in a Quote of time for the provision of the Goods and/or Services is an estimate only and does not form part of the Customer's agreement with the Supplier.

3. Orders

- 3.1 Every Order by the Customer for the provision of Goods and/or Services must be submitted in writing on the Supplier's standard Order form (unless otherwise agreed).
- 3.2 Every Order by the Customer constitutes acceptance of these Terms of Trade (which may be amended from time to time).
- 3.3 The Customer's Order must specify:
 - (a) the Goods and/or Services ordered;
 - (b) the Supplier's Quote reference or number (if applicable).
- 3.4 Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer may result in an Additional Charge.
- 3.5 Orders must be signed by an authorised representative of the Customer.
- 3.6 The Supplier may require the Customer to pay a deposit prior to commencing works.
- 3.7 The Supplier may in its absolute discretion may refuse or cancel an Order where:
 - (a) Goods are unavailable for any reason whatsoever;
 - (b) credit limits cannot be agreed upon or have been exceeded; or
 - (c) payment for Goods and/or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer, has not been received by the Supplier.

4. Customer's Obligations

- 4.1 In consideration for the Goods or Services, the Customer agrees to pay the Supplier the Price, and in accordance with the payment terms as further described at clause 9.
- 4.2 The Customer expressly acknowledges and warrants:
- (a) to procure, at its own cost, all necessary licences, permits or regulatory approvals (such as council approval) for installation of the Goods;
 - (b) to provide all information, documentation and instructions that the Supplier reasonably requires in order to provide the Goods or Services;
 - (c) to provide a site that is suitable for the provision of the Goods or Services by the Supplier;
 - (d) that any work site provided will comply with any work health and safety (WHS) laws and any other relevant safety standards, legislation or regulation;
 - (e) that if, for any reason, the Supplier forms the opinion that the Customer's premises is not safe for the Supplier to provide the Goods or Services, then the Supplier may delay until the premises are made safe by the Customer, at the Customer's expense;
 - (f) that the Customer will, at its own cost, supply any utilities (such as water and electricity) as necessary for the provision of the Services by the Supplier;
 - (g) that the Customer must advise the Supplier of the precise location of all services or utilities on any work site and clearly mark the same. These include, but are not limited to water, electrical, gas, oil, sewer, pumping, telecommunications and any other services that may be on site; and
 - (h) the Customer will use only the Supplier's parts and labour with respect to the Goods or Services.
- 4.3 The Supplier shall not be liable for any harm, Loss, damage, claim, injury (including death), cost or delay incurred by the Customer as a result of the Customer's act or omission in breach of clause 4.
- 4.4 The Customer agrees to indemnify the Supplier against all harm, Loss, damage, claim, injury (including death), cost or delay suffered by the Supplier to the extent it was caused by an act or omission of the Customer in breach of clause 4.

5. Production and Process

- 5.1 If specified in the Order, the Supplier will provide the Customer a proofing sheet to enable the Customer to view and approve the relevant artwork. Production of the Goods will not proceed until the Customer has provided written approval of the proofing sheet.
- 5.2 The Supplier is not responsible for production errors where:
- (a) proofs are not requested by the Customer (except for straight repeats of previous Orders without alterations);
 - (b) the Customer fails to provide their approval within a reasonable time; or
 - (c) the Customer does not communicate their approval (or otherwise) in writing.
- 5.3 The Customer acknowledges that their delay in proofing the artwork will delay production.

6. Functionality and Performance

- 6.1 The Customer acknowledges that differences in material, equipment and ink may cause variation in colour and, subject to clause 15, such variation is acceptable within the terms of the Order.

- 6.2 All information, specifications and samples provided by the Supplier in relation to the Goods and/or Services will be approximations only and, subject to any guarantees under the *Australian Consumer Law*, small deviations or slight variations which do not substantially affect the Customer's use of the Goods and/or Services will not entitle the Customer either to reject the Goods upon delivery, or to make any claim in respect of them.

7. Variations

- 7.1 The Customer may request a variation to its Order. A request for a variation must be in writing and addressed to the Supplier. A variation is effective only if agreed in writing by the Supplier.
- 7.2 The Supplier reserves the right to:
- (a) raise an Additional Charge for extra costs incurred;
 - (b) extend the time for the provision of Goods and/or Services,
- as a result of the variation.

8. Additional Charges

- 8.1 Where the Supplier incurs additional costs as a result of:
- (a) a variation;
 - (b) the costs of transport, delivery or storage of the Goods (unless included in the Quote);
 - (c) the Customer providing inaccurate, incomplete or inadequate information or material to the Supplier;
 - (d) the Customer's failure to meet its obligations under this agreement,
- then the Supplier may require the Customer to pay Additional Charges (in addition to the Price) in respect of those costs incurred.
- 8.2 Where Goods are made available for collection by the Customer, but remain uncollected two weeks after the Customer is notified the Goods are ready for collection, the Customer will be liable for all costs of storage of the Goods. The Customer agrees to indemnify the Supplier with respect to all such costs.

9. Invoicing and Payment

- 9.1 The Supplier may (in its absolute discretion) invoice the Customer in any of the following ways:
- (a) prior to commencing the provision of the Goods and/or Services for all or part of the work;
 - (b) progressively in instalments during the work;
 - (c) on completion of the work; or
 - (d) as otherwise agreed by the Supplier.
- 9.2 The Customer must pay the Supplier within 14 days of the invoice issue date, unless otherwise indicated on the Supplier's invoice.
- 9.3 If the Customer does not make payment by the invoice due date, the Supplier is entitled to do any or all of the following, without prejudice to any other rights it may have:
- (a) charge interest on the outstanding amount at a rate determined by the Supplier, calculated on a daily basis;

- (b) recover from the Customer, as a debt due and payable, all costs and expenses associated with collecting the outstanding amount;
 - (c) require the Customer to pay, in advance, for any Goods or Services;
 - (d) suspend work and/or Delivery of Goods or Services until overdue amounts are paid in full;
 - (e) terminate this Agreement in accordance with clause 14.
- 9.4 The Supplier may in its complete discretion apply any payment received from the Customer first to any amount owing by the Customer to the Supplier.
- 9.5 The Customer is not entitled to set off or deduct from the invoice amount any sums owed or claimed to be owed by the Supplier to the Customer
- 9.6 Unless otherwise stated, quoted amounts do not include GST and therefore the Supplier may add on GST to the amount payable by the Customer.

10. Acceptance of Goods

- 10.1 If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 48 hours of delivery, the Customer is deemed to have accepted the Goods as is. Nothing in this clause affects any applicable rights under the Australian Consumer Law.

11. Risk and Retention of Title

- 11.1 Risk in Goods passes to the Customer immediately upon delivery or making available for collection by the Supplier.
- 11.2 Subject to clause 13, title in Goods supplied to the Customer pursuant to these Terms of Trade does not pass to the Customer until all moneys (including moneys owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.
- 11.3 Where Goods or Services are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods or Services provided by the Supplier in respect of those Goods, the Customer:
- (a) is a bailee of the Goods until title in them passes to the Customer;
 - (b) acknowledges that the Supplier may register its interests in the Goods under the *Personal Property Securities Act 2009* (Cth) (**PPSA**);
 - (c) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;
 - (d) must not allow any person to have or acquire any Security Interest (as defined in the PPSA) in the Goods;
 - (e) must pay to the Supplier on demand the amount of any Loss suffered or incurred by the Supplier arising out of or in connection with any Loss or damage to the Goods whilst in the Customer's care, or any copying or replicating of the Goods;
 - (f) agrees that the Supplier may repossess the Goods if payment is not made within 14 days (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and
 - (g) the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this clause. The Customer indemnifies the Supplier in respect of any damage to property or personal injury

which occurs as a result of any negligent or wrongful act by the Supplier or its agent in entering the Customer's premises or recovering possession of the Goods.

- 11.4 Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and the Customer:
- (a) makes a new object from the Goods, whether finished or not; or
 - (b) the Customer mixes the Goods with other goods;
 - (c) the Goods become part of other goods,
- (new goods)**
- the Customer acknowledges that the ownership of the new goods immediately passes to the Supplier.
- 11.5 The Customer will hold the new goods on trust for the Supplier until payment of all sums owing to the Supplier whether under this contract or any other contract with the Supplier have been made and the Supplier may require the Customer to store the new goods in a manner that clearly indicates the Supplier's ownership.
- 11.6 For the avoidance of doubt, under clause 11.4, the ownership of the new goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- 11.7 Notwithstanding clause 11.3 the Customer may transfer, sell or dispose of Goods, including new goods, to a third party in the ordinary course of business provided that:
- (a) where the Customer is paid by a third party in respect of Goods including new goods, the Customer shall hold the whole of the proceeds of sale less GST on trust for the Supplier – in a separate account – until all amounts owed by the Customer to the Supplier have been paid; or
 - (b) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against such third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to such assignment the Customer irrevocably appoints the Supplier as its attorney.
- 11.8 Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer acknowledges that the Supplier has a right to register and perfect (and where relevant enforce) a personal property security interest under the PPSA.

12. Personal Property Securities Act

- 12.1 The Customer agrees and acknowledges that the title to goods supplied on credit is retained by the Supplier until such time that all debts are duly discharged, and that the Supplier's title is not displaced by possession of the Goods by the Customer or any third party.
- 12.2 The Customer acknowledges and agrees that these Terms, and any subsequent sales agreements are an accepted and adopted Security Agreement between the Supplier and the Customer for the purposes of the PPSA, and that a Security Interest exists in all Goods supplied to the Customer (and their proceeds). This Security Agreement between the parties includes any arrangements documented by emails or information or documents exchanged electronically.
- 12.3 In requesting the Supplier provide Goods or Services, the Customer is deemed to have accepted this Security Agreement and any later amendments that may arise.
- 12.4 The Customer acknowledges, agrees and grants to the Supplier, a Security Interest in:

- (a) all Goods and any proceeds previously supplied or that will be supplied in the future by the Supplier to the Customer; and
 - (b) any proceeds that relate to the Goods purchased on credit by the Customer for the benefit of the Customer.
- 12.5 The above Security Interest secures all moneys owing by the Customer to the Supplier under these terms or otherwise.
- 12.6 The Customer acknowledges and agrees the Security Interest is a continuing and subsisting interest in the Goods with priority over any registered or unregistered general (or other) Security Interest and any unsecured creditor.
- 12.7 The Customer acknowledges that the Security Interest over Goods or their proceeds arising under these terms as and where applicable will be a Purchase Money Security Interest (PMSI).
- 12.8 The Customer will do everything reasonably required of it by the Supplier to enable the Supplier to register its Security Interests with the priority it requires and to maintain those registrations, including to correct a defect in a financing statement.
- 12.9 The Security Interests arising under this clause 12 will be perfected by the Supplier prior to the Customer obtaining possession of the Goods and the parties confirm they have not agreed that any Security Interest arising under this clause attaches at any later time.
- 12.10 The Supplier does not need to give the Customer any notice under the PPSA (including notice of the financing statement or verification statement) unless required by the PPSA.
- 12.11 Any time the Customer makes a payment to the Supplier, irrespective of whether the payment is made under or in connection with this Agreement, the Supplier may apply that payment:
- (a) first to satisfy an obligation that is not secured;
 - (b) second, to satisfy an obligation that is secured, but not by a PMSI;
 - (c) third, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI; and
 - (d) fourth, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source.
- 12.12 For the avoidance of doubt and without prejudice to the Supplier's rights under the PPSA, the Customer:
- (a) may sell the Goods to its customers and if it does so, then the Supplier will have a Security Interest in the proceeds of sale; and
 - (b) will, where and when applicable and instructed by the Supplier, implement, maintain and comply in all material respects with, procedures for the perfection of Security Interests, including taking all steps under the PPSA to perfect continuously any such Security Interest.
- 12.13 The Customer agrees that sections 95, 120, 121(4), 125, 128, 129, 130, 132, 134, 135, 142, 143 and 157 of the PPSA will not apply to the enforcement of those Security Interests.
- 12.14 The Customer agrees not to disclose to an 'Interested person' (as defined in section 275(9) of the PPSA) or any other person, any Information of the kind described in section 275(1) of the PPSA including these terms as the Security Agreement between the Customer and the Supplier.
- 12.15 The Customer will notify the Supplier immediately in writing if the Customer changes its name or address for service, contact details or if there are any changes required under the PPSA in respect of these terms.
- 12.16 The Customer's right to possession of Goods still owned by the Supplier under these terms will cease if:

- (a) the Customer being an individual, commits an act of bankruptcy; or,
- (b) the Customer being a corporation, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's assets, any proceedings are instituted for winding up, or the Customer enters into a deed or scheme of arrangement; or
- (c) the Customer ceases or threatens to cease conducting business in the normal manner or apply for deregistration or receive a deregistration notice; or
- (d) the Customer fails to comply with any demand for payment issued by the Supplier; or
- (e) the Customer is in breach any of these Terms or is in default of any other agreement with the Supplier.

12.17 The Customer agrees that the Supplier is entitled to exercise the rights contained in section 123 of the PPSA and enter any premises where the Goods supplied by the Supplier are still unpaid for, repossess such Goods. The Customer agrees to indemnify and keep the Supplier indemnified in respect of any claims, actions and costs that may arise against the Supplier in relation to the removal, repossession and sale of the Goods pursuant to these Terms including any claims brought by third parties.

12.18 The Customer agrees that repossession and retention of the Goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to the Supplier by the Customer, as is equivalent to the Supplier's estimation of the market value of the Goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest the Customer has in relation to the Goods.

12.19 Until any obligations owed to the Supplier by the Customer are discharged in full, the Customer must not give the Supplier a written demand or allow any other person to give the Supplier a written demand requiring the Supplier to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPSR, a financing change statement.

12.20 The rights and obligations of the Supplier and the Customer under the Terms will be binding on, and will be of benefit to, each of the party's successors, permitted assigns, heirs, executors and administrators.

13. Intellectual Property

13.1 The Parties agree that, unless otherwise expressly agreed in writing, all Intellectual Property Rights in any works created by the Supplier in connection with the Goods or Services remain the property of the Supplier.

13.2 The Customer warrants that all designs, specifications or instructions given to the Supplier to fulfil the Customer's Order will not cause the Supplier to infringe any third party Intellectual Property Rights. The Customer agrees to indemnify the Supplier against any action, claim, Loss, harm or damage in respect of any such infringement.

13.3 Subject to clause 13.2 and payment of all invoices due in respect of the Goods and/or Services, the Supplier grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods and/or Services under these Terms of Trade.

14. Default and Cancellation

14.1 Each of the following occurrences constitutes an event of default:

- (a) the Customer breaches or is alleged to have breached these Terms of Trade for any reason (including, but not limited to, defaulting on any payment due under these Terms of Trade);
- (b) the Customer, being a natural person, commits an act of bankruptcy;

- (c) the Customer, being a corporation, is subject to:
 - (i) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - (ii) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
 - (iii) the entering of a scheme of arrangement (other than for the purpose of restructuring); or
 - (iv) the Customer purports to assign its rights under these Terms of Trade without the Supplier's written consent;
- (d) any assignment for the benefit of creditors; or
- (e) the Customer ceases or threatens to cease conduct of its business in the normal manner.

14.2 Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:

- (a) refuse to deliver Goods or provide further Services;
- (b) pursuant to clause 11, repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
- (c) retain (where applicable) all moneys paid an account of Goods and/or Services or otherwise.

14.3 In addition to any action permitted under clause 14.2, upon the occurrence of an event of default:

- (a) all invoices payable by the Customer will become immediately due and payable; and
- (b) the Supplier may terminate all contracts and credit arrangements (if any) with the Customer.

14.4 In addition to the express rights of termination provided in these Terms of Trade, the Supplier may immediately terminate the agreement between the parties upon the occurrence of any of the following:

- (a) an event of default pursuant to clause 14.1;
- (b) the customer breaches any of its obligations at clause 4;
- (c) the customer fails to make a required payment by the due date; or
- (d) in any other circumstances, upon the Supplier giving 30 days written notice to the Customer.

1.1 Should the Customer cancel its Order once it has been placed, or the Supplier has otherwise commenced works for the Customer:

- (a) the Customer indemnifies the Supplier against any and all Losses (including loss of profit, loss of opportunity and third-party costs) incurred by the Supplier; and
- (b) the Customer will not be entitled to any refund of monies paid.

15. Liability and Indemnity

15.1 The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these Terms of Trade by any law is excluded.

- 15.2 The Supplier gives no warranty in relation to the Service provided or supplied. Under no circumstances and to the maximum extent permissible at law, the Supplier or any of its suppliers is not liable or responsible in any way to the Customer or any other person for any Loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services including in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
- (a) any Goods or Services supplied to the Customer;
 - (b) any delay in supply of the Goods or Services; or
 - (c) any failure to supply the Goods or Services.
- 15.3 To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on Terms of Trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- 15.4 The *Australian Consumer Law* may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.
- 15.5 The Customer acknowledges that the Goods and/or Services are not for personal, domestic or household purposes.
- 15.6 Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods and/or Services is given in good faith, but is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- 15.7 The Customer agrees to indemnify and keep indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods and/or Services or the subject matter of this agreement including, but not limited to any legal costs incurred by the Supplier in relation to meeting any claim or demand or any legal costs for which the Supplier is liable in connection with any such claim or demand.
- 15.8 This clause 15 survives termination or expiry of this agreement.

16. General

- 16.1 Force Majeure
- (a) Unless otherwise expressly provided for in these Terms of Trade, neither Party will be liable to the other for the consequences of any delays or failures of its performance which are caused by any event beyond the first Party's reasonable control, including without limitation acts of God, fire, flood, pandemic, accident, terrorism, strike and riots.
 - (b) The Party affected by such circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- 16.2 Subcontracting

At any time, the Supplier may appoint a subcontractor to perform any of the Supplier's obligations under these Terms of Trade.

16.3 Assignment

- (a) A Party may assign and transfer all its rights and obligations under this Agreement provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this Agreement.
- (b) Notwithstanding 16.3(a), this Agreement may not be assigned without the consent of both Parties in writing.

16.4 Announcements

Neither Party may issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure is approved by the other Party.

16.5 Variation

This Agreement may not be changed or modified in any way except in writing signed by or on behalf of all the parties.

16.6 Whole Agreement

- (a) These Terms of Trade and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.
- (b) These Terms of Trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (c) In entering into this agreement, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of this agreement.

16.7 Severance

If any provision of this agreement at any time is or becomes void, voidable or unenforceable, that provision will be severed and the remaining provisions of this agreement will continue to have full force and effect.

16.8 No Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

16.9 Notices

- (a) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this clause). In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee or sent by email to the addressee.
- (b) A party may only change its postal or email address for service by giving notice of that change in writing to the other party.

16.10 Governing Jurisdiction

These Terms of Trade are governed by the laws of the state where the Supplier's registered or primary office in Australia is situated and each party irrevocably submits to the non-exclusive jurisdiction of the courts of such State or Territory.

