

# Terms and Conditions of Sale

## 1 Application of Conditions

- 1.1 These Conditions of Sale ("**Conditions**") apply to all quotations, offers and purchase orders made or accepted by Project Worxx Pty Ltd (ABN 68 685 910 598) Office 1, 204-218 Dryburgh Street, North Melbourne VIC 3051 ("**Supplier**") and to deliveries of all goods manufactured or supplied by the Supplier ("**Products**") to any person, firm or company which enters into an agreement with the Supplier ("**Customer**").
- 1.2 So far as applicable, these Conditions also apply to the provision of any services including advice accompanying the supply of, or provided in relation to, Products ("**Services**") and, where the context allows, any reference to the supply of Products includes the provision of such Services.
- 1.3 These Conditions (which can only be waived or varied in writing by the Supplier) will prevail over all conditions of the Customer to the extent of any inconsistency.

## 2 Definitions

- 2.1 In these Conditions:

"**ACL**" means *Australian Consumer Law* as set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*;

"**Confidential Information**" means any proprietary or confidential documents, knowledge and information, prices, specifications, business and trade secrets, formulas and know-how, prices, production method, samples, models, drawings, data standard sheets, manuscripts and other technical and business documentation supplied or made known to the Customer, or other information in any form concerning the Supplier and its related entities worldwide;

"**Consequential Loss**" means any:

- (i) loss of profits;
- (ii) loss of revenue;
- (iii) loss of production;
- (iv) loss or denial of opportunity;
- (v) loss of or damage to goodwill;
- (vi) loss of business reputation, future reputation or publicity;
- (vii) loss of use;
- (viii) loss of interest;
- (ix) losses arising from claims by third parties;
- (x) loss of or damage to credit rating;
- (xi) loss of anticipated savings; and
- (xii) loss of contract,

whether direct, indirect or consequential;

"**Consumer Guarantees**" has the meaning given to the term in clause 12.1 of these Conditions;

"**Force Majeure Event**" means any cause whatsoever that is beyond the Supplier's control including but not limited to delays caused by suppliers, epidemic, pandemic, disease or public health alert, Act of God; war; civil disturbance; requisitioning governmental restrictions, prohibitions or enactments of any kind; import or export regulations; strikes; lock-outs or other industrial disputes (whether involving its own employees or those of any other person); difficulties in obtaining workmen or materials; breakdown of machinery; fires; or accident;

"**GST**" means the goods and services tax or similar value added tax levied or imposed in Australia under the GST Act and includes any replacement or subsequent similar tax;

"**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

"**Government Agency**" means means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in Australia;

"**Loss**" means any losses, liabilities, damages, costs, charges or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct or indirect (including Consequential Loss), fines and penalties;

"**Taxable Supply**" and "**Tax Invoice**" have the same meaning as in the GST Act;

"**Intellectual Property**" means all intellectual property rights of the Supplier and its related bodies corporate (including, without limitation, all copyright, designs, trade marks and patents) of any nature in any samples, cost estimates, sketches, inventions, designs, works, discoveries, trade secrets, know-how, computer software, Confidential Information (including in electronic form) and subject matter other than works, any application or right to apply for registration of such rights,

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

"**Security Interest**" shall have the meaning as defined under the PPSA.

## 3 Quotations and Orders

- 3.1 An order submitted or placed by a prospective Customer ("**Order**") shall not be binding on the Supplier unless and until the Customer has paid 50% of the purchase price for the Products to the Supplier and the Supplier has given written

## Terms and Conditions of Sale

acknowledgement of its acceptance on terms which include these Conditions ("**Order Confirmation**"). The Supplier reserves the right not to accept an Order, including where the prospective customer has exceeded its credit limit or has on an earlier occasion breached these Conditions. If Products are supplied without an Order Confirmation, the applicable invoice shall be deemed to constitute the Order Confirmation.

- 3.2 Each supply which the Supplier makes in response to an Order Confirmation will be regarded as a separate contract for sale which is subject to these Conditions ("**Contract**").
- 3.3 Unless previously withdrawn, all quotations by the Supplier for the supply of Products or Services are binding and valid for 30 days from the date of the quotation or such other period as stated in that quotation. Quotations do not constitute a contractual offer by the Supplier.
- 3.4 If the Customer places the Order subject to finance, the Supplier will not be obliged to procure or supply the Product until the Customer has provided written evidence to the Supplier's reasonable satisfaction that such finance will be provided to the Customer.

### 4 Description and Use of Products

- 4.1 Products are supplied in accordance with any specification in force at the time of the Supplier and the Customer entering the Contract ("**Specification**"). Any additions and alterations made to a Specification by the Supplier at the request of the Customer shall be subject to an additional charge as specified by the Supplier.
- 4.2 The Supplier reserves its right to change the Specifications of the Products at any time. Where the Supplier changes or discontinues Products which are subject to a Contract, the Supplier will inform the Customer and provide the Customer with revised or updated Products which have the same or equal functionality and performance as stated in the Order Confirmation. If the Supplier is unable to provide such alternative Products, the Customer has the right to terminate the Contract, and the Supplier will refund any payments which the Customer has made to the Supplier.
- 4.3 The Customer is solely responsible, and must itself examine and test the Products at its cost, to ensure they are fit or suitable for the Customer's purposes. Subject to the ACL, the Supplier accepts no liability for the fitness or suitability of the Products for the Customer's particular purposes.
- 4.4 The Customer must use the Products at all times:
- (a) in accordance with any instructions or user manuals provided by the Supplier;

- (b) in an operating environment that meets any requirements specified by the Supplier, and is otherwise appropriate for the Product; and
- (c) in a manner that complies with all applicable laws and regulations.

### 5 Prices and Payment

- 5.1 The prices of the Products are the prices which have been notified in writing by the Supplier to the Customer ("**Prices**").
- 5.2 Unless otherwise specified by the Supplier in writing, all prices are:
- (a) quoted EX WORKS (INCOTERMS 2020) the Supplier's warehouse, factory or depot as stated on the Order Confirmation ("**Place of Delivery**"); and
  - (b) exclusive of GST, all packaging, freight costs, insurance, import charges, including customs duties, imposts and levies relating to the import, supply or use of the Products.
- 5.3 The Customer must pay a deposit of 50% of the Price within 7 days of the Supplier issuing the Order Confirmation ("**Deposit**"). Following receipt of the deposit, the Supplier will arrange for the production of the Product and provide an estimated delivery date to the Customer.
- 5.4 Unless otherwise agreed by the Supplier in writing, payment of the remaining 50% of the Price is due after the Seller has issued its invoice and before the Customer collects the Products under clause 7.1 ("**Payment Date**").
- 5.5 If the Customer defaults in the payment of any money due to the Supplier pursuant to these Conditions on the Payment Date, then in addition to any other rights which may be conferred upon the Supplier by law or equity, the Supplier will be entitled to be paid interest by the Customer on such money at the rate prescribed in Rule 36.7 of the Uniform Civil Procedure Rules 2005 (NSW) from the date of such default until full payment to the Supplier.
- 5.6 If payment is not made in accordance with clause 5.3, or if at any time the credit standing of the Customer, in the opinion of the Supplier, is at risk or has been impaired, the Supplier may refuse delivery of any Products ordered until alternative arrangements as to payment or credit in terms satisfactory to the Supplier have been agreed.
- 5.7 If GST is imposed on a Taxable Supply made by the Supplier to the Customer under or in connection with these Conditions, the Price of the Taxable Supply shall be equal to the GST-exclusive consideration that the Customer must pay to the Supplier for the Taxable Supply under these Conditions increased by an amount

## Terms and Conditions of Sale

(the GST Amount) equal to the amount of GST payable on that Taxable Supply and the GST Amount is, subject to the Supplier issuing a Tax Invoice to the Customer, payable at the same time and in the same manner as the consideration to which it relates.

- 5.8 The Customer may not withhold or set off any payment or make deductions from any amount owing to the Supplier without the Supplier's prior written consent.

### 6 Cancellation of Order by Customer

- 6.1 A notice of cancellation of an Order must be submitted by the Customer in writing and is only effective upon the written approval by the Supplier, whereby such approval can be withheld by the Supplier in its discretion.
- 6.2 When a Customer gives written notice of cancellation and the Supplier approves such a request in accordance with clause 6.1, without prejudice to its other rights, the Supplier reserves the right to charge for all Products and Services it has performed up to the date of cancellation or, if the work is substantially complete or the Products were made to order or are otherwise not immediately available for sale to another customer at an equivalent price, to charge for a pro rata portion of the price set out in the applicable Order Confirmation in addition to any other costs the Supplier incurs on the Customer's behalf.
- 6.3 When an Order is cancelled in accordance with this clause 6, the Supplier may charge the Customer for each cancelled Order a fee comprising storage costs, loss of value of the Product, as well as seek reimbursement from the Customer for any costs which the Supplier is charged by third parties as a result of the Order being cancelled.

### 7 Delivery

- 7.1 Unless the Supplier otherwise agree in writings, delivery of Products shall deemed to be made if, and at the time when, the Products are made available to the Customer (or its agents) for collection at the Place of Delivery. The Customer shall be responsible for collection of the Products at the Place of Delivery.
- 7.2 The Customer must take delivery of the Products ordered by it from the Supplier in accordance with the Contract. Unless otherwise agreed by the Supplier in writing, the Customer must arrange pick up from the Place of Delivery as stated in the Contract within 48 hours after the Supplier advises the Customer that the Products are ready for collection. If the Customer fails to arrange pick up within that timeframe, the Supplier may charge the Customer must reimburse the Supplier for any storage charges incurred by the Supplier.

- 7.3 If the quantity of Products delivered does not correspond with the quantity stated in an Order Confirmation, the Customer shall only be liable to pay for the quantity delivered in the case of short-delivery and for the price stated in the Order Confirmation in the case of over-delivery (subject in the latter case to the Customer permitting the Supplier to collect the surplus Products).

- 7.4 Any surplus Products delivered shall remain the property of the Supplier and the Customer shall take all necessary precautions for the safe custody and protection of such surplus Products until the time of their removal by the Supplier.

- 7.5 Subject to any right which the Customer may have under the ACL, the Customer shall not return any Products to the Supplier without its prior written consent.

- 7.6 Unless otherwise agreed by the Supplier in writing:

- (a) The Customer must inspect the Products within a reasonable time after delivery. Where the Customer believes that there has been damage to or loss of the Products during transport, the Customer must note in writing any such damage or loss at the time of delivery on the delivery documents of the transport company.
- (b) If the Customer believes that there is a defect in the Products, the Customer must not use the Products and must notify the Supplier in writing as soon as possible after becoming aware of the defect.

### 8 Installation and Maintenance

- 8.1 The Customer is responsible for checking the site to ensure that the Product can be fitted at the site, including in respect of the dimensions of the Product and any required connections to services required for the operation of the Product.
- 8.2 The Customer is responsible for arranging the installation of the Product at the relevant site and will engage contractors to undertake the installation.
- 8.3 The Supplier will cooperate with the Customer's installer by liaising with the installer regarding expected delivery dates and providing documentation regarding requirements for installation.
- 8.4 The Customer is responsible to ensuring that the floor on which the Product is to be installed at the site meets the manufacturer's specifications and is otherwise suitable and adequately prepared for the safe and lawful installation and operation of the Product.
- 8.5 The Customer is responsible for obtaining and maintaining at its own cost all licenses, permits

## Terms and Conditions of Sale

and approvals from Government Agencies which are necessary, and comply with all applicable laws, which may be required for the installation and operation of the Products at the site.

- 8.6 It is the Customer responsibility to maintain the Product after installation in accordance with manufacturer's instruction and as required to ensure that safe and lawful operation of the product.

### 9 Packaging

- 9.1 Whether or not expressly stated by the Supplier as being included in the Price of the Products, packaging cannot be returned by the Customer to the Supplier.

### 10 Passing of Risk and Title

- 10.1 Unless otherwise agreed by the Supplier in writing, risk in the Products shall pass to the Customer when the Products are delivered.

- 10.2 Notwithstanding that risk passes to the Customer under clause 10.1, until full payment in cleared funds is received by the Supplier for all Products supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer under any Contract:

- (a) legal title and property in the Products shall remain with the Supplier and does not pass to the Customer,
- (b) the Customer must store the Products separately and in such a manner and maintain any labelling and packaging of the Supplier, so that the Products are clearly and readily identifiable as the property of the Supplier,
- (c) the Customer must not sell the Products except in the ordinary course of the Customer's business,
- (d) the Customer holds and agrees to hold the proceeds of any sale, lease or other dealing with the Products for the Supplier in a separate bank account with a bank which does not (and will not in the future) provide finance to the Customer,
- (e) in addition to any rights the Supplier may have under Chapter 4 of the PPSA, the Supplier may, at any time, demand the return of the Products and shall be entitled without notice to the Customer and without liability to the Customer, to enter any premises where it suspects the Products may be located in order to search for and remove the Products without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Supplier, and for this purpose the Customer irrevocably licenses the Supplier to enter such premises, undertakes

that it will procure any necessary authority to enter from any relevant person and also indemnifies the Supplier from and against all Loss suffered or incurred by the Supplier as a result of exercising its rights under this subclause,

- (f) the Customer acknowledges and warrants that the Supplier has a security interest (for the purposes of the PPSA) in the Products and any proceeds and the Customer must do anything reasonably required by the Supplier to ensure that such security interest is enforceable, perfected and otherwise effective and has the priority required by the Supplier which, unless the Supplier agrees in writing otherwise, is first priority.

- 10.3 Until such time as Ownership in the Products passes to the Customer, the Customer shall:

- (a) be in a fiduciary relationship with the Supplier;
- (b) keep, and provide the Supplier at any time on reasonable request, proper and complete stock records covering the receipt, identification, storage, location, sale and movement of the Products; and
- (c) keep the Products, at its own cost, insured against such risks as a prudent owner of the Products would insure at their full cost price, with a reputable insurance company.

- 10.4 Notwithstanding clauses 10.2 and 10.3 the Customer is entitled until notified by the Supplier or until the happening of any of the events set out in clause 10.7 to, if the Customer is a retailer, sell the Products in the normal course of its business, in which case the proceeds of resale must be held in trust for the Supplier in a separate account.

- 10.5 The Supplier is entitled at any time while any debt remains outstanding by the Customer to notify the Customer of its intention to take possession of the Products and for this purpose the Customer irrevocably authorises and licenses the Supplier and its servants and agents to enter upon the land and buildings of the Customer with all necessary equipment to take possession of the Products.

- 10.6 On receipt of notice from the Supplier or on the happening of any of the events set out in clause 10.7, the following applies:

- a) the Customer's authority to sell or otherwise deal with the Products as set out in clause 10.4 is withdrawn;
- b) all amounts owed by the Customer to the Supplier become immediately due and payable;
- c) the Supplier may withhold delivering further

## Terms and Conditions of Sale

Products and all invoices issued by the Supplier to the Customer become due and payable immediately; and

- d) the Customer must immediately deliver to the Supplier all Products which are in the Ownership of the Supplier.

10.7 The Customer shall give immediate notice to the Supplier of:

- (a) the Customer becomes insolvent under administration as defined in Section 9 of the *Corporations Act 2001*;
- (b) any step is taken (including without limitation, any application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for the winding up or dissolution of the Customer or for the appointment of an administrator, receiver, receiver and manager or liquidator to the party or any of its assets;
- (c) the Customer resolves to enter into or enters into a scheme of arrangement or composition with, or assignment for the benefit of all or any class of its creditors or proposes a reorganisation, moratorium or other administration involving any of them;
- (d) the Customer becomes unable to pay its debts when they fall due, resolves to wind itself up or otherwise dissolve of itself;
- (e) proceedings are commenced to make the Customer bankrupt or the Customer becomes bankrupt;
- (f) an event analogous to any of those set out in clauses 10.7(a) to 10.7(e) occurs.

### 11 Personal Property Securities Act 2009

11.1 The Customer acknowledges and agrees that it grants the Supplier a Security Interest in the Products and their proceeds by virtue of the Supplier's retention of title pursuant to clause 10.

11.2 The Customer undertakes to:

- e) do all things necessary and provide the Supplier on request all information the Supplier requires to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR"); and
- f) not to change its name in any form or other details on the PPSR without first notifying the Supplier.

11.3 The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement in respect of the Security Interest created by these Conditions.

11.4 To the maximum extent permitted by law, the Customer waives any rights it may have pursuant to, and the parties contract out of, the following sections of the PPSA:

- (a) section 95 (notice of removal of accession);
- (b) section 123(2) (notice of seizure);
- (c) section 125 (obligation to dispose of or retain collateral);
- (d) section 129(2) (notice of disposal by purchase);
- (e) section 130 (notice of disposal);
- (f) section 132(3)(d) (contents of statement of account after disposal);
- (g) section 132(4) (statement of account if no disposal);
- (h) section 135 (notice of retention);
- (i) section 142 (redemption of collateral); and
- (j) section 143 (reinstatement of security agreement).

11.5 The Customer appoints the Supplier as its attorney to sign in the Customer's name all documents which the Supplier considers necessary to enforce or protect its rights and powers under these Conditions and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Conditions and the Security Interest created by these Conditions.

11.6 These Conditions create a Security Interest in all Products which the Supplier has supplied to the Customer and all Products which the Supplier supplies to the Customer in the future. Initial registration of a financing statement by the Supplier in respect of the Customer under the PPSA covers Security Interests in Products supplied now or subsequently under these Conditions.

11.7 Unless otherwise defined in these Conditions, the terms and expressions used in this clause 11 have the meanings given to them, or by virtue of, the PPSA.

### 12 Conditions and Warranties

12.1 For the purposes of these Conditions, a Consumer Guarantee means a right or guarantee that the Customer may have under the ACL or other rights in relation to the supply of goods or services (such terms as implied into a contract) that cannot be lawfully excluded.

12.2 Subject to clause 12.3, the Supplier's liability in respect of any breach of or a failure to comply

## Terms and Conditions of Sale

with any Consumer Guarantee is limited to the following:

- (a) in the case of Products, to
  - (i) the replacement the Products or the supply of equivalent products;
  - (ii) the repair of the Products;
  - (iii) the payment of the cost of replacing the Products or of acquiring equivalent products; or
  - (iv) the payment of the cost of having the Products repaired.
- (b) in the case of Services, to
  - (i) to the re-supply of the Services; or
  - (ii) the payment of the cost of having the Services supplied again.

12.3 The Supplier's liability in respect of a breach of or a failure to comply with a Consumer Guarantee will not be limited in the way set out in clause 12.2 if:

- (a) the Products or Services supplied are products or services 'of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 64A of the ACL;
- (b) it is not 'fair or reasonable' for the Supplier to rely on such limitation in accordance with section 64A(3) of the ACL; or
- (c) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the ACL.

12.4 Nothing in these Conditions excludes, restricts or modifies the application of the ACL and any rights which the Customer may have thereunder.

### 13 Limitation of Liability

13.1 Subject always to the Supplier's liability under ACL and the extent that liability cannot be legally limited or excluded:

- (a) the Supplier's total aggregate liability arising out of or in connection with the Contract of which these Conditions form part, shall be limited to the price paid by the Customer for the Products and Services under the Contract per event and in aggregate; and
- (b) the Supplier shall under no circumstances be liable for Consequential Loss whether or not such Loss was foreseeable.

### 14 Force Majeure

14.1 The Supplier shall not be liable for any Loss or damage caused by delay in the performance or

non-performance of any of its obligations under a Contract occasioned by a Force Majeure Event. If a Force Majeure Event occurs, the Supplier may vary, cancel or suspend any Order Confirmation or Contract of which these Conditions form part without incurring any liability for any such Loss or damage.

14.2 Where delivery is delayed as a result of a Force Majeure Event, the agreed delivery times will be extended as appropriate. If delivery is impossible or unreasonable as a result of a Force Majeure Event, the Supplier will no longer be obliged to effect delivery. Where the delay in delivery caused by a Force Majeure Event exceeds one (1) month, the Supplier and the Customer have the right to terminate the part of the Contract to which the delay relates.

### 15 Intellectual Property

15.1 The Supplier for and on behalf of itself, its related bodies corporate and licensors reserves ownership in any Intellectual Property, relating to the quotations, specifications, technical drawings, price lists, tender documentation and Products (including any associated software) ("**Protected Items**"). Nothing in these Conditions operates or is intended to deny the Supplier or its related bodies corporate, or confer on the Customer, the Intellectual Property or any other intellectual property rights in the Protected Items.

15.2 The Customer must not use or make the Protected Items available to third parties without the prior written consent of the Supplier.

15.3 The Customer must only use the Protected Items and any associated Intellectual Property in accordance with the terms of the Contract.

15.4 The Customer must not use, reproduce or copy any software associated with the Product, without the prior written consent of the Supplier.

15.5 If the Customer becomes aware of any actual, threatened or suspected infringement of the Intellectual Property, the Customer must inform the Supplier promptly of the actual, threatened or suspected infringement.

15.6 The Customer shall indemnify the Supplier for and in respect of claims by any third party in relation to Products where such claims arise from, or can be attributed to, the special requirements or specifications of the Customer.

### 16 Local Standards

16.1 It is the responsibility of the Customer at its own costs to observe any applicable laws in Australia in regard to the use and installation of the Products.

16.2 The Supplier is not obliged to perform any of its obligations under any Contract of which these Conditions form part, including delivery, unless

## Terms and Conditions of Sale

and until the Customer has complied with clause 16.1.

- 16.3 The Customer agrees that it releases, discharges and holds harmless the Supplier (including the Supplier's employees, officers and agents) with respect to all claims, actions, suits, demands, costs, penalties, damages and expenses (including legal expenses on a solicitor client basis) which the Supplier has or may have as a result of the Customer not having complied with its obligations under clause 8.5 or clause 16.1.

### 17 Confidentiality

- 17.1 All Confidential Information is and will remain the exclusive property of the Supplier.
- 17.2 The Customer must not, except as required by law or by the Supplier directly or indirectly communicate any Confidential Information to any person without the prior written consent of the Supplier, and must at all times use its best endeavours to prevent the use or disclosure of any Confidential Information by third parties.

### 18 Privacy

The Customer acknowledges that the Customer's personal information as defined under the Privacy Act 1988 ("**Act**") is likely to be disclosed to recipients located in Australia, being the location of the parent company of the Supplier. The Customer expressly consents by to the Supplier disclosing the Customer's personal information to third parties located outside Australia whereby a) the Supplier will not be accountable under the Act, b) the Customer will not be able to seek redress under the Act, c) the overseas recipient may not be subject to any privacy obligations or to any principles similar to the Australian Privacy Principles, d) the Customer may not be able to seek redress in the overseas jurisdiction; and e) the overseas recipient may be subject to a foreign law that could compel the disclosure of personal information to a third party, such as an overseas authority.

### 19 Assignment

The agreement of which these Conditions form part is personal to the parties and may only be assigned by a party with the prior written and informed consent of the other party.

### 20 Waiver

No neglect, delay or indulgence on the part of a party in enforcing these Conditions shall prejudice the rights of the other party or be construed as a waiver of any such rights.

### 21 Severability

If any one or part of these Conditions is illegal, invalid or unenforceable it shall be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it shall be severed from these Conditions, but in any event the remaining Conditions and any other provisions of the agreement of which these Conditions form part shall remain in full force and effect.

### 22 Amendments

Any amendments to these Conditions or a Contract must be agreed by the parties in writing.

### 23 Disputes

- 23.1 If a difference or dispute ("**Dispute**") between the Supplier and the Customer arises in connection with the subject matter of a contract of which these Conditions form part, then either party may give the other a written notice of Dispute adequately identifying and providing details of the Dispute.
- 23.2 Within 10 business days after receiving a notice of Dispute, the parties must confer at least once to resolve the Dispute or to agree on methods of doing so. At every such conference each party must be represented by a person having authority to agree to such resolution of methods. All aspects of every such conference except the fact of occurrence shall be privileged.
- 23.3 If the Dispute is not resolved within 20 business days of service of the notice of Dispute, either party may refer that Dispute to mediation administered by the Australian Commercial Dispute Resolution Centre ("**ADC**").
- 23.4 The mediation shall be conducted in accordance with the ADC Guidelines for Commercial mediation which are operating at the time the matter is referred to the ADC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are hereby deemed incorporated into this Agreement.
- 23.5 This clause shall survive termination of any contract of which these Conditions form part.

### 24 Governing Law

The Conditions and any Contract of which they form part are governed by and must be construed in accordance with the laws which apply in the State of New South Wales and the parties submit to the non-exclusive jurisdiction of that State.